U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32387864

Date: AUG. 1, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, an entrepreneur in the field of industrial and technical furniture manufacturing, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).[1] The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualifies for the underlying visa classification or merits a discretionary waiver of the job offer requirement "in the national interest." The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the

[1] Before the Director, the Petitioner alternatively sought EB-2 immigrant classification as a member of the professions holding an advanced degree. In his appeal brief, the Petitioner does not contest the Director's conclusion that he does not hold an advanced degree. Accordingly, we deem this issue abandoned. See Hristov v. Roark, No. 09-CV-2731, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

8 C.F.R. § 204.5(k)(3)(ii).[2]

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] We then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[4] See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Matter of Chawathe, 25 I&N Dec. at 376.

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[2] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[3] See generally 6 USCIS Policy Manual F.5(B)(2), https: //www.uscis.gov/policy-manual.

[4] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 USCIS Policy Manual, supra, at F.5(B)(2).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id. at 889.

## II. ANALYSIS

The Petitioner proposes to establish a "comprehensive business venture encompassing consultancy, advisory, original equipment manufacturing, training, and sales within the realm of technical, industrial, and corporate furniture." In denying the petition, the Director found the Petitioner did not hold an advanced degree. The Director further found that the Petitioner did not merit a discretionary waiver of the job offer requirement "in the national interest."

With respect to the underlying EB-2 classification, the Petitioner submitted evidence seeking to meet at least three of the six criteria of evidence for exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). The Director did not address whether the Petitioner met any of these criteria. However, as discussed below, the record does not support the conclusion that the Petitioner meets at least three criteria.

On appeal, the Petitioner asserts being an individual of exceptional ability by satisfying four of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (D), (E) and (F), and that he established by a preponderance of the evidence that he qualifies for the national interest waiver. After reviewing the evidence in the record, the Petitioner has not demonstrated satisfying at least three of the six initial evidentiary criteria and is not otherwise eligible for the requested benefit.[5]

Evidence in the form of letter(s) from current or former employer(s) showing that the individual has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).

To meet this criterion, the Petitioner claims he has more than ten years of experience as an owner, director, and general manager of multiple businesses in Brazil. The Petitioner submitted his resume and statements from companies where he was employed. A Human Resources (HR) statement from [redacted] states he worked in the position of General and Operations Manager from March 2008 to August 2016 for 40 hours per week, describes his responsibilities, and states that the Petitioner

[5] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

owned 75% of the shares in the company. The Petitioner also submitted a letter from HR of [redacted] stating he worked in the position of General Manager from July 2016 to the present for 40 hours per week, describing his responsibilities, and indicating that the Petitioner owns 50% of the shares in the company. The record also contains corroborating evidence regarding projects the Petitioner worked on at each company, proof of the Petitioner's ownership interests, and financial statements relating to his employment.

Upon de novo review of the record, we agree that the Petitioner meets this criterion. The Petitioner demonstrated at least ten years of full-time experience in the occupation of his proposed endeavor. The Petitioner supported his statements with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

To meet this criterion, the Petitioner claims he has earned income from his business in Brazil which is above the average salary for a general manager in Brazil. The Petitioner submitted an income statement from an accounting firm relating to income he received from [redacted] The statement indicates that, in 2022, the Petitioner earned a total income of R$131,343.84 annually and R$10,945.32 monthly. For comparison, the Petitioner's initial letter included evidence from vagas.com.br noting that the average salary for Financial Managers in Brazil was R$3,454.00 per month or R$41,448.00 per year. We note that the position of financial manager is not comparable to the role of general manager that the Petitioner has held. On appeal, the Petitioner furnishes a screenshot of the Vagas.com.br website page stating that "in the position of General Manager, you start earning R$2,076.00 in salary and can earn up to R$6,353.00. aThe average salary for General Manager in Brazil is R$3,454.00." The Petitioner claims this evidence shows his income exceeds the average salary for a general manager.

However, the evidence submitted is not sufficient to show he meets the criterion. The comparison evidence is limited to the Petitioner's statements, which includes an extract of the "Vagas.com.br" webpage. The webpage image does not indicate whether the general manager average salary is for Brazil, a region of Brazil, or some other area, nor does the extract set forth its methodology, including the basis for its estimated salary figures. The Petitioner's statements referencing the webpage are not sufficient to demonstrate the criterion. The Petitioner must support his statements with independent, relevant evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, the Petitioner has documented that he is a 50% owner of [redacted] and the income statement does not indicate whether the Petitioner received income for profits and for work. The evidence does not indicate what portion of his income is for his work and what portion is for profits. Without more, the Petitioner has not established the average salary for a general manager is a proper basis for comparison with the Petitioner's profit and work income as a managing partner of his business.

For these reasons, we find that the Petitioner has not established that he commanded a salary indicative of his claimed exceptional ability relative to others working in the field.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

To meet the criterion, the Petitioner submitted evidence of membership from three organizations, American Management Association (AMA), the Global Entrepreneurship Institute (GEI), and the Project Management Institute (PMI). For AMA, the Petitioner submitted a document entitled "Account Details" with details of an email address, phone number, and a unique identifier [redacted] The issue date and expiration date on the document are blank. No other details are included on the document. To show AMA is a professional association, the Petitioner's letter includes a short unattributed excerpt purportedly describing the AMA, but not stating the source of the quotation:

> The AMA is an international, non-profit association that provides a wide range of educational and management development services to individuals and organizations. AMA is dedicated to the education and certification of professionals in the field of Management,Entrepreneurship and Business. The lived experiences promote the engaged professional with insightful feedbacks that also promote responsibility.
>
> AMA work develops practical skills that can be immediately applied, thus helping to ensure a significant ROI for organizations and the market in which these professionals are established.

On appeal, the Petitioner argues that AMA is a professional association, "renowned for its dedication to education and certification in management, entrepreneurship, and business, providing valuable insights and practical skills to professionals worldwide." For the GEI and PMI, the record includes evidence of the Petitioner's payment of his membership annual fee in 2023 and descriptions of their missions, as well.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent for entry into the occupation. The record does not show that AMA, GEI, or PMI are professional associations as required under the criterion. The record does not show these entities require that its membership body be comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association. Without more, the Petitioner has not established that AMA, GEI, and PMI are professional associations such that his membership in them would be sufficient to meet this criterion.

As such, the Petitioner has not demonstrated his membership in a professional association under this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

To meet this criterion, the Petitioner submitted technical capacity certificates from clients demonstrating various purchase orders were fulfilled "in a satisfactory manner, complying with the requirements and deadlines..." The Petitioner details various projects such as customized steel furniture and factory workbenches requiring custom technical and industrial specifications. The Petitioner submitted letters of support from satisfied clients and collaborating colleagues, A-C, J-C-

Z-, M-M-C-M, N-C-, and I-K-K-.[6] The letters describe how the references met the Petitioner, their professional interactions, challenging projects that the Petitioner oversaw successfully, and descriptions of complex, technical work.

The letters of recommendation and of appreciation from his clients and peers attest to the Petitioner being a competent, reliable business professional who provided quality service and products. While the record shows the Petitioner's business clients and service recipients confirm his management experience and knowledge in the products and services for his businesses, it does not demonstrate that the Petitioner has been recognized for achievements and significant contributions to the industry or field, as required under the criterion.

The Petitioner also provided an expert opinion letter from Dr. F-J-Q-, an assistant professor of professional practice at [redacted] and adjunct professor at [redacted] who reviewed the Petitioner's professional and career goals and provided an "analysis of Positional Requirements for the National Interest Exemption." This letter addressed whether the Petitioner met the three prongs in Matter of Dhanasar, Id. at 889. The expert opinion letter does claim the Petitioner was recognized for achievements and significant contributions to the industry or field as required by 8 C.F.R. § 204.5(k)(3)(ii)(F). As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. Matter of Caron Int'l, Inc., 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in anyway questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id. Here, the expert opinion restates large portions of the claims the Petitioner made concerning the national importance of the proposed endeavor, but he does not add sufficient analysis or corroborating details to support a claim that the Petitioner was recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

On appeal, the Petitioner summarizes the evidence submitted with the initial petition. The Petitioner has not met the requirements for the criterion.

Because the Petitioner has not established that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).[7] Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established classification as an individual of exceptional ability.

[6] We use initials to protect the privacy of individuals referenced in this decision.

[7] We acknowledge the Petitioners claim that the Director did not properly advise him of his appeal rights, however the Petitioner filed a timely appeal and was not prejudiced by the error. Similarly, we acknowledge that the Director's Notice of Intent to Deny erroneously stated that the record included documentation pertaining to the pharmaceutical industry. While we may not discuss every document submitted, we have reviewed and considered each one.

## III. CONCLUSION

The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that he meets all three of the prongs under the Dhanasar analytical framework, we reserve our opinion regarding these issues. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.