U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31650741

Date: AUG. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of trucking, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. Section 203(b)(2)(B)(i) of the Act.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

Profession means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C.

§ 1101(a)(32),[1] as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(2).

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

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 that they merit 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, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[4], 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.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

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[1] Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

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

[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, District of Columbia, and Third Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

II. ANALYSIS

The 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. Section 203(b)(2)(B)(i) of the Act.

A. Advanced Degree Professional

The Petitioner did not claim eligibility for EB-2 visa classification as an individual holding an advanced degree. However, the Director determined that the Petitioner qualifies for EB-2 visa classification as an individual holding an advanced degree based on his college transcript, academic record, and letters from his employers, but we disagree.

The Petitioner submitted a diploma supplement (transcript) from [redacted] named after [redacted] showing that the Petitioner was awarded a bachelor's degree in engineering and technology from the academy in 2015. An academics evaluation report from [redacted] a senior evaluator at Silvergate Evaluations Inc., states that the course work required by the acamdemy's bachelor of technics and technology program is substantially similar to the course work leading to a bachelor's degree from an accredited institution of higher learning in the United States. As the Petitioner has not established that he possesses a U.S. advanced degree or foreign equivalent degree, he must demonstrate that he also has at least five years of progressive post-baccalaureate experience in the specialty. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

The record contains a letter from [redacted] which states that the Petitioner worked at [redacted] as a mechanic from July 2016 to October 2017. The Petitioner proposed to work in the United States as an entrepreneur in the field of trucking. This letter does not show that the Petitioner has at least five years of progressive post-baccalaureate experience in the specialty - as an entrepreneur in the field of trucking - required under 8 C.F.R. § 204.5(k)(3)(i)(B). This letter only indicates that the Petitioner worked as an auto mechanic for one year and three months. In his statement and ETA 750 (Application for Alien Employment Certification) Part B (Statement of Qualification of Alien), the Petitioner listed his work experience as the owner and director of his own trucking company, a truck driver, a food delivery driver, an advertisement maker, and a security officer for a hotel. However, the record does not contain letters from his current or former employers to establish that he has at least five years of progressive post-baccalaureate experience in the speciality.

The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence relating to qualifying experience or training shall be in the form of letters from current or former employers or trainers and must include the name, address, and title of the writer and a specific description of the duties performed by the individual or of the training received. If such evidence is unavailable, other documentation relating to their experience will be considered. *See* 8 C.F.R. § 204.5(g)(1).

Although the Petitioner holds a foreign bachelor's degree equivalent to a U.S. baccalaureate degree, he has not demonstrated that he has at least five years of progressive post-baccalaureate experience in his specialty at the time he filed the petition.[5] Accordingly, we withdraw the Director's determination that the Petitioner qualifies for EB-2 visa classification as a member of the professions holding an advanced degree.

B. Exceptional Ability

The Petitioner's brief accompanying the Form I-140 specifically claimed that he has exceptional ability in his field of endeavor, indicating that he was seeking EB-2 visa classification as an individual of exceptional ability. The Petitioner asserted that he met four of the six regulatory criteria for individuals of exceptional ability and that he provided evidence relating to the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) (an official academic record), (C) (a license to practice the profession), (E) (membership in professional associations), and (F) (recognition for achievements and significant contributions to the field).

Although we make no findings, the record does not appear to establish that the Petitioner meets at least three of the six regulatory criteria provided in 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Nevertheless, the Director's decision did not address whether the Petitioner satisfies at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification. Therefore, we will remand the matter for further consideration by the Director.

If the Director determines that the Petitioner has failed to demonstrate eligibility for EB-2 visa classification as an individual of exceptional ability, the Director should not merely make general assertions regarding this failure but must articulate the specific reasons as to why the Director concludes that the Petitioner by a preponderance of the evidence has not demonstrated his qualification for exceptional ability classification.[6] The Petitioner must demonstrate that he is above other entrepreneurs in the field of trucking; qualifications possessed by most entrepreneurs in the field of trucking cannot demonstrate a degree of expertise significantly above that ordinarily encountered.[7]

C. National Interest Waiver

We observe that the Director did not properly identify the Petitioner's proposed endeavor and that the Director's decision was not sufficient to apprise the Petitioner of any deficiencies the Director observed in the submitted evidence. In his Form I-140 and supporting documents, the Petitioner identified his proposed endeavor as an entrepreneur in the field of trucking. He indicated that he

[5] The Form I-140 was filed on February 21, 2023. With respect to the Petitioner's five years of progressive post-baccalaureate experience in his specialty, he must demonstrate such experience at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).
[6] *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[7] *See id.*

intends to own and operate his cargo trucking company, [redacted] which will provide transportation of materials, equipment, and goods to businesses operating in various industries.

However, the Director found that the Petitioner's proposed endeavor is to work as an airline pilot and determined that the Petitioner's proposed endeavor to work as an airline pilot does not have substantial merit nor national importance. The Director explained the Petitioner has not demonstrated that his work would have broader implications for the field of aviation. Although we make no findings, the record does not appear to establish national importance of the Petitioner's proposed endeavor to work as an entrepreneur in the field of trucking. Nevertheless, the Director did not discuss whether the Petitioner has established substantial merit and national importance of his proposed endeavor to work as an entrepreneur in the field of trucking. The record includes an expert opinion letter from a professor and a business plan of [redacted] but the Director's decision does not indicate whether this evidence was considered and whether this evidence was sufficient to establish substantial merit and national importance of the Petitioner's proposed endeavor.

Moreover, with respect to the second prong of the *Dhanasar* analytical framework, the Director acknowledged that the Petitioner has submitted his academic credentials, certificates, and a job offer letter[8] but did not explain why this evidence was insufficient to demonstrate that he is well positioned to advance his proposed endeavor. Regarding the third prong of the *Dhanasar* framework, the Director found the record does not contain sufficient evidence to demonstrate that his proposed endeavor would be beneficial to the United States but did not explain what evidence was considered for this determination.

The Director's decision is lacking a detailed discussion of the evidence provided in support of the petition. An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). For all the reasons discussed above, the Director did not adequately explain the reasons for denial of the petition.

III. CONCLUSION

The Director did not properly identify the Petitioner's proposed endeavor and did not adequately explain the reasons for denial of the petition. Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. The new decision should include an analysis of the totality of the record, including the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

[8] The record includes the Petitioner's school transcript, a business plan of his trucking company, a letter showing that his trucking company was established in Pennsylvania in 2021, a letter from the Internal Revenue Service showing an employer identification number issued to his trucking company, a letter from the U.S. Department of Transportation (USDOT) showing a USDOT registration number of his trucking company to operate in interstate commerce, copies of his expired Pennsylvania commercial driver licenses, a financial responsibility identification card for a truck owned by his trucking company, a lease agreement in which his trucking company leased its truck to a freight company, and a support letter from the owner of another trucking company. The record does not include any certificate or a job offer letter.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.