U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31522633

Date: AUG. 05, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a computer systems analyst, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established he was an individual of exceptional ability.[1] The Director stated that because the Petitioner had not shown he met the EB-2 classification, the threshold requirement for a national interest waiver, she did not need to do a final merits determination or review whether he was eligible for a national interest waiver under the *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), framework.

On appeal, the Petitioner does not submit additional evidence, but contends that the Director erred in finding he was not an individual of exceptional ability because he meets at least three of the required criteria and warrants a final merits determination. He also indicates that because the Director did not question the national interest waiver criteria, she implicitly acknowledged that he met the *Dhanasar* framework and is eligible for a national interest waiver.[2]

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

[1] The Petitioner did not claim to be nor did the record show he held an advanced degree.

[2] We also acknowledge the Petitioner's concerns regarding the incorrect receipt date for his request for evidence response, as reflected in the Director's decision. However, there is no indication that this response was not properly received or considered.

this classification requires that the 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.

Exceptional ability 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual. 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 a degree of expertise significantly above that ordinarily encountered in the field. *Id.*

II. ANALYSIS

In denying the petition, the Director determined that the Petitioner had met one of the criteria for exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(B), at least ten years of full-time work experience in the occupation of exceptional ability. On appeal, the Petitioner asserts that he meets criteria 8 C.F.R. § 204.5(k)(3)(ii)(A), (C), (E), and (F); while agreeing with the Director's finding that he does not meet the category under 8 C.F.R. § 204.5(k)(3)(ii)(D) concerning a salary which demonstrates 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.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

With his initial filing, the Petitioner indicated that this criteria would not be met and did not appear to submit any documentation in support. However, four certificates for computer-related courses were in the record. The certificates are as follows: a four day course in 2008 from [redacted] in Brazil; two 8 hour courses from a Microsoft Certified Trainer in 2020; and an 8 hour course from [redacted] in 2020. We acknowledge that the Petitioner submitted several new certificates in response to the request for evidence, but these courses were all completed after his filing date of April 28, 2021, and will not be considered. A petitioner must establish eligibility for the benefit they are seeking at the time the petition is filed. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc Comm'r 1998).

Furthermore, the four certificates presented do not meet the plain language of the regulation. First, these certificates show the Petitioner attended four days of instruction in 2008 and then 24 hours of instruction, over three days, in 2020. Based on hours of instruction, the record does not indicate these certificates would amount to an award similar to a diploma or degree. Second, there is no evidence showing these are official academic records from an accredited learning institution. Thus, we affirm the Director's finding that the record does not show the Petitioner meets this category.

B. A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

Again, in his initial filing the Petitioner stated that he would not meet this category, however, the certificates described above were later presented as required certifications to be a computer systems analyst. The Director found that the record did not support a finding that the certificates were required and akin to a license to practice a certain occupation. On appeal, the Petitioner claims that this reasoning is in error because although these certifications may not be required to practice this profession, they are essential to the occupation.

We will affirm the Director's finding. The Petitioner has not submitted evidence that he has a license or certification to be a computer systems analyst, nor has he shown a license or certification would be required to be employed as a computer systems analyst. We acknowledge that the certifications the Petitioner has gained in various computer systems or software may aid in his employability, but the record does not show they are required to be employed in the occupation. Finally, it is not clear which certifications the Petitioner is claiming meet this criterion and any certifications completed after his filing date of April 2021 cannot be considered. *See Katigbak, supra.*

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

The Director found the Petitioner did not meet this criterion because his certificates and reference letter did not show that he made significant contributions to his field. On appeal, the Petitioner highlights excerpts from two reference letters. Both letters describe the Petitioner as a valued employee and co-worker, making positive contributions to his employer's operations and their customers. However, these letters do not indicate that the Petitioner has been recognized for his achievements and significant contributions to the industry or field of computer systems. We will again affirm the Director's finding.

Because the Petitioner has not shown he meets the criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A), (C), (D), or (F), no purpose would be served in reviewing if he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). Even if he meets this criterion, he cannot meet three criteria as required.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification. In addition, because he has not satisfied at least three criteria, we will not conduct a final merits determination to decide whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. Furthermore, as the Petitioner has not met the threshold requirement for this classification, an analysis of his eligibility for a national interest waiver would serve no meaningful purpose.

Moreover, the Petitioner's assertions on appeal indicating that because the Director did not question the national interest waiver requirements, she implicitly acknowledged that he met the *Dhanasar* framework and is eligible for a national interest waiver are without merit. The Director was not silent as to the national interest waiver but indicated that because the Petitioner failed to meet the threshold requirement of a second preference classification as an advanced degree holder or individual of

exceptional ability, she did not need to decide, at this time, whether the Petitioner met the *Dhanasar* framework requirements for a national interest waiver. As stated above, we agree with the Director.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.