U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32371709

Date: AUG. 7, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a procurement and import specialist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Petitioner did not qualify for classification as an individual of exceptional ability. The Director further concluded that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be 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. Section 203(b)(2) of the Act. 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 [noncitizen] 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 [noncitizen] 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 [noncitizen] has commanded a salary, or other renumeration [sic] 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).

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *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); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). 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. 369, 376 (AAO 2010).

II. ANALYSIS

A. The Petitioner Is Not An Individual of Exceptional Ability

The Director determined that the Petitioner met the following two of the six categories of evidence required to demonstrate exceptional ability: an official academic record showing the Petitioner has a degree and ten years of experience. 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B). The Director also concluded the Petitioner did not satisfy any of the remaining four criteria under 8 C.F.R. § 204.5(k)(3)(ii)(C)-(F). Contrary to the Director's decision, we disagree that the Petitioner established he had ten years of experience at the time of the petition's filing, and we will withdraw the Director's conclusion on this issue.

On appeal, the Petitioner asserts that the Director's decision was erroneous, and maintains that he also meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(F) pertaining to recognition for achievements and significant contributions.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the noncitizen 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 satisfy this criterion, the evidence must show "in the form of letter(s) from current or former employer(s)…that the alien has at least ten years of full-time experience" in the proposed occupation. 8 C.F.R. § 204.5(k)(3)(ii)(B).

At the outset we note that the brief accompanying his application states that his proposed endeavor is to work as a procurement and import specialist in the food industry. The letters purporting to support the Petitioner's work experience in the specialty do not adequately reflect at least ten years of full-time experience. Two letters indicate that the Petitioner held positions as a sales trader which is a a position that differs from the proposed endeavor. It is not clear how the Petitioner's work experience as a sales trader buying and selling financial instruments like stocks is similar to the duties described in his proposed endeavor whereby the Petitioner will expand the geographical area of operation of a company and diversify imported food products. The Director requested additional information to clarify this distinction in the job duties reflected in the Petitioner's employment letters versus the duties to be performed in the proposed endeavor, but in response, the Petitioner submitted the same employment letters and did not sufficiently explain that the letters show ten years of full-time experience in the proposed position.

Further, the letter from [redacted] confirmed the Petitioner's employment at the company from 2002 to 2009 as a senior sales trader but did not provide any job duties performed by the Petitioner while he held that position. The regulations require that the evidence used to establish this criterion be "in the form of letter(s) from current or former employer(s)." Additionally, while the regulation does not require that the employment letter contain a job description, the evidence must demonstrate that the experience is "in the occupation." Because the Petitioner's employment letter states only the job title of "sales trader senior" and does not describe the Petitioner's job duties, we conclude that the letter does not provide a sufficient description of this job to establish that it relates to the occupation as outlines in the proposed endeavor. Additionally, the letter does not state that the employment was full-time.

In addition, the employment verification letter from [redacted] was written in another language and only part of the letter was translated as the Petitioner's duties were not translated into the English language. Therefore, the letter was not accompanied with a complete certified English translation as required. 8 C.F.R. § 103.2(b)(3). Because the Petitioner did not submit a properly certified English language translation of this document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

The Petitioner's evidence is not sufficient to establish that the Petitioner has the requisite ten years of full-time experience in his occupation, and we withdraw the Director's conclusion on this issue.

Accordingly, we conclude the evidence is insufficient to establish eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

> *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).

The Petitioner submitted several letters of recommendation to demonstrate that he has been recognized for achievements and significant contributions to their field by peers, governmental entities or professional or business organizations. But the evidence the Petitioner submitted did not meet the standard of proof because it did not satisfy the basic standards of the regulations. *See Matter of Chawathe*, 25 I&N Dec. at 374 n.7. The regulation requires evidence of recognition of achievements and significant contributions. When read together with the regulatory definition of exceptional ability, the evidence of recognition of achievement of significant contributions should show expertise significantly above that ordinarily encountered in the field.

On appeal, the Petitioner contends that the submitted letters provide "clear evidence of recognition and endorsement for peers, professionals, and business entities." The letters of recommendation are written by previous employers and colleagues, and the Petitioner asks us to conclude the writers' conclusions alone constitute recognition of achievements and significant contributions. But these statements are not supported by any evidence in the record which reflects that these letters represent noteworthy achievements and significant contributions.

For example, the letter from the owner of [redacted] stated that the Petitioner was hired as a customer sales representative and promoted to a chief sales officer when he surpassed his sales mark in 2022. The author outlined some major professional achievements made by the Petitioner when working at the company and the author noted the Petitioner "accomplished great things in my company." In addition, a letter from a former colleague at [redacted] indicated that the Petitioner proved to be "hard-working, smart, and talented" and was "well-prepared and had a high knowledge of the financial market." Further, the Petitioner submitted two letters from peers that worked with the Petitioner on certain projects or assignments that noted the Petitioner was knowledgeable in the financial market, worked diligently, and attracted new customers and enhanced profitability.

The letters described the Petitioner's character, work ethic, and other positive qualities like he is an "asset," "knowledgeable," "professional," and "brought a great work ethic within the company." In general, the letter writers indicated the Petitioner was a person of genial character and a knowledgeable worker. But the Petitioner's genial character, good work ethic, and knowledge are not achievements or significant contributions to their field of endeavor. While the letters discuss the Petitioner's professional skills and job experience, this evidence does not show that his work has been recognized beyond his employers and clients and their specific projects at a level indicative of "achievements and significant contributions to the industry or field." We therefore agree with the Director that the Petitioner has not established that he fulfills the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

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. The Petitioner, therefore, is not eligible for classification as an individual of exceptional ability in the sciences, art, or business.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. The Director determined that although the Petitioner's proposed endeavor has substantial merit, the record did not establish that the Petitioner's proposed endeavor has national importance or that it would be beneficial to the United States to waive the requirements of a job offer and, thus, of a labor certification. As the Petitioner has not established the threshold requirement of eligibility for the EB-2 classification, further analysis of his eligibility for a national interest waiver under the *Dhanasar* framework is unnecessary.

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility for a discretionary waiver under the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

III. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.