In Re: 33349402 Date: AUGUST 9, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in transportation and logistics, seeks employment-based second preference (EB-2) immigrant classification as 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 qualified for EB-2 classification as an advanced degree professional or an individual of exceptional ability, and did not establish 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 pursuant to 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.

II. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

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).[1] If these criteria do not readily apply to a petitioner's occupation, the petitioner may submit comparable evidence. 8 C.F.R. § 204.5(k)(3)(iii). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] 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

[1] 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).

[2] 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.

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.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act.

II. ANALYSIS

A. Advanced Degree Professional

Advanced degree is defined as any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. 8 C.F.R. § 204.5(k)(2). A United States or foreign equivalent bachelor's degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

The Petitioner submitted evidence he completed several courses in driving and cargo transportation. The Director determined the courses were not equivalent to a United States bachelor's or higher degree and the Petitioner was not eligible for EB-2 classification as a member of the professions holding an advanced degree. We agree. The Petitioner does not address this issue on appeal.

B. Exceptional Ability

The Director determined the Petitioner did not meet at least three of the regulatory criteria to establish exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). On appeal, the Petitioner asserts the Director erred and he meets all the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). As discussed below, the record does not support the Petitioner's claims.

1. Academic Record of Degree, Diploma, Certificate or Similar Award

This criterion requires 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). The Petitioner submitted certificates of course completions from the National Learning Service of Transportation, Transport Social Service in Brazil and Jose Carlos Brandao Monteiro Center for Supplementary Studies. The Petitioner claims the Director overlooked the significance of his certifications which "are highly relevant to his field and are regarded within the industry as robust indicators of professional training and expertise." The Petitioner asserts his certificates should be considered academic records.

The record does not support the Petitioner's claims. The Petitioner does not submit evidence that academic programs are not available in his field or otherwise explain why his certificates should be considered academic records. Without an academic record from a learning institution in his field, the Petitioner does not meet this criterion.

2. Ten Years of Experience in the Occupation

This criterion requires 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." 8 C.F.R. § 204.5(k)(3)(ii)(B). The Director determined the Petitioner did not meet this criterion because the letters the Petitioner submitted did not include salary information and did not address the Petitioner's employment before 2012 and after 2017.

On appeal, the Petitioner asserts the Director disregarded his extensive full-time professional experience due to "minor gaps" in the documentation he submitted and he "accumulated significant experience over the requisite ten-year period." The Petitioner submitted a letter from [redacted] stating he was employed with the company full-time from July 2012 to November 2017 as a driver. This letter shows the Petitioner has over five years, but not at least ten years of experience as a driver. Consequently, the Petitioner does not meet this criterion.

3. License or Certification

This criterion requires evidence of a "license to practice the profession or certification for a particular profession or occupation." 8 C.F.R. § 204.5(k)(3)(ii)(C). The Petitioner submitted evidence of his Brazil national driver's license, ANTT license, [redacted] Hall transport identification card as an assistant driver, and course completion certificates. The Director determined the Petitioner did not meet this criterion because the record did not show that the Petitioner's licenses were professional as profession is defined at 8 C.F.R. § 204.5(k)(2) and the Petitioner did not possess the equivalent of a United States bachelor's degree. The Director also concluded the Petitioner's certificates evidenced completion of courses, but not certification for the profession or occupation of an entrepreneur.

On appeal, the Petitioner claims the Director erroneously dismissed his licenses and certifications as insufficient. The Petitioner asserts his licenses and certifications "underscore his qualifications and compliance with industry standards" such that they satisfy this criterion. The evidence does not support the Petitioner's claim. The Petitioner's driver's licenses are not to practice a profession, as that term is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The Petitioner did not establish that any of the licensing entities require a baccalaureate degree for entry into the occupation of a driver. The Petitioner's certificates also do not satisfy this requirement because they evidence completion of coursework, but not certification for a particular profession or occupation. Consequently, the Petitioner does not meet this criterion.

4. Salary Demonstrating Exceptional Ability

This criterion requires evidence that an individual "has commanded a salary, or other remuneration for services, which demonstrates exceptional ability." 8 C.F.R. § 204.5(k)(3)(ii)(D). The Director determined the Petitioner did not meet this criterion because he submitted no relevant evidence. On appeal, the Petitioner claims the Director did not consider "industry-specific practices where such disclosures are not customary" and asserts his employment history indicates "a level of expertise and remuneration commensurate with exceptional ability." Although the Petitioner submitted a letter from

his past employer verifying his work as a driver, the letter does not state his salary and the Petitioner submitted no other evidence that he has commanded a salary or other remuneration indicative of exceptional ability. Consequently, the Petitioner does not meet this criterion.

5. Membership in Professional Associations

This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). The EB-2 regulations define "profession" as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2). The Petitioner submitted evidence of his benefits club card for the Union of Self-Employed Cargo Transporters of Vale Do Paraiba SP, information about the union, his registration with national road cargo transporters of the National Agency for Terrestrial Transportation, and information about the Agency.[3] The Director determined the Petitioner did not meet this criterion because the Petitioner did not submit evidence that the associations were professional and the Petitioner did not submit evidence that he possesses a bachelor's degree.

On appeal, the Petitioner asserts the Director did not appropriately weigh the Petitioner's "active involvement in transportation and logistics associations" which reflect "his recognized status and active engagement within the professional community." However, the information the Petitioner provided about the Union of Self-Employed Cargo Transporters of Vale Do Paraiba SP and the National Agency for Terrestrial Transportation does not indicate that a baccalaureate degree is required for entry into the cargo transporter occupation. Consequently, he has not shown that either entity is a professional association within the meaning of the regulations at 8 C.F.R. § 204.5(k)(2) and (3)(ii)(E). The Petitioner does not meet this criterion.

6. Recognition for Achievements and Significant Contributions to the Field

This criterion requires 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 Director determined the support letters the Petitioner submitted praised his skills, expertise, and work on specific client projects, but did not recognize him for achievements and significant contributions to his industry or field.

On appeal, the Petitioner claims the Director overlooked substantial evidence of recognition and accolades the Petitioner received from peers and industry professionals. The Petitioner submitted an Affidavit of Award granted to him "for being a good employee and not missing working time according to the filed registration" by [redacted] He also submitted a certificate of no records in the [redacted] traffic infractions system. This evidence shows the Petitioner was

[3] In response to the Director's request for evidence, the Petitioner submitted a January 2024 e-mail message welcoming him to the Association of Latino Professionals for America (ALPFA). As the e-mail indicates the Petitioner joined ALPFA after his petition was filed, we cannot consider it. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.").

recognized as a good employee and had a clear driving record, but it does not demonstrate recognition for achievements and significant contributions to his industry.

The Petitioner also submitted letters from employers and colleagues who praise his work, skills and experience. For example, A-B-D-A-[4] praises the Petitioner's work and skills as a bus driver and describes him as "a great professional." D-C-D-C- describes the Petitioner as "a great driver" and "correct employee." L-C-N-D-A- states the Petitioner was "an excellent driver" who grew within the [redacted] company and praises his skills and "good conduct." R-C-D-N- recounts the Petitioner's "evolution was impeccable" at the [redacted] company and states he is "a highly capable and very responsible professional." Professor F-J-Q- summarizes the Petitioner's responsibilities as a driver and states he has "vast experience in areas of transport and logistics." M-P-D-S- commends the Petitioner's work on "various household projects." W-D-S-D-S-T- states the Petitioner "exhibited exceptional skills in performing his duties."

These letters evidence the Petitioner's successful work as a driver and on household projects, but they do not recognize any specific achievements or significant contributions the Petitioner has made to the transportation and logistics industries. Consequently, the Petitioner does not meet this criterion.

B. National Interest Waiver

The Petitioner has not met at least three of the regulatory criteria required to establish exceptional ability and he consequently does not qualify for EB-2 classification. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility for a waiver of the job offer requirement in the national interest. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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).

III. CONCLUSION

The Petitioner does not meet at least three of the regulatory criteria to establish exceptional ability and is consequently ineligible for EB-2 classification.

ORDER: The appeal is dismissed.

[4] We use initials to protect the privacy of referenced individuals.