U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33362633

Date: AUG. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager in the manufacturing industry, 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 he qualifies for the underlying EB-2 classification or 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.

I. 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] 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 having the requisite degree of expertise and will

[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 aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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. 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,[3] 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.

II. ANALYSIS

Upon review of the record, the Petitioner does not indicate or establish that he qualifies as a member of the professions holding an advanced degree. Thus, the record must establish that he qualifies as an individual of exceptional ability in manufacturing.

A. Exceptional Ability

To establish eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii), summarized below:

(A) An academic degree relating to the area of claimed exceptional ability;
(B) Ten years of full-time experience in the occupation;
(C) A license or certification for the profession or occupation;
(D) A salary or other remuneration that demonstrates exceptional ability;
(E) Membership in professional associations; and
(F) Recognition for achievements and significant contributions to the industry or field.

If an individual meets at least three of the regulatory criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows a degree of expertise significantly above that ordinarily encountered in the individual's field. *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

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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

determination). *See also, generally,* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

At the time of filing, the Petitioner indicated that he satisfied all six exceptional ability criteria, relating to: (1) the academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A); (2) experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B); (3) license to practice at 8 C.F.R. § 204.5(k)(3)(ii)(C); (4) salary at 8 C.F.R. § 204.5(k)(3)(ii)(D); (5) membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E); and (6) recognition at 8 C.F.R. § 204.5(k)(3)(ii)(F).

In denying the petition, the Director addressed all six criteria the Petitioner claimed to satisfy. The Director concluded that the Petitioner submitted evidence to satisfy two of the criteria relating to experience in the occupation and salary. On appeal, the Petitioner asserts that his evidence satisfies the remaining four criteria relating to: (1) the academic record; (2) license to practice; (3) membership in professional associations; and (4) recognition.

After reviewing the evidence, we agree with the Director that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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 a copy of his degree certificate as an Aeronautical Engineer from [redacted] awarded in September 1980, which has been deemed the equivalent of a Bachelor of Science degree in Aeronautical Engineering from a "regionally accredited university in the United States" through a Certified General Foreign Academic Evaluation by Validential Corp. On appeal, the Petitioner asserts that his academic transcript, support letter from L-M-,[4] and newly submitted *Appendix to: Expert Opinion Letter* demonstrate how his degree relates to the field of manufacturing. However, we agree with the Director's determination that the Petitioner did not establish that, or explain how, this degree relates to his area of claimed exceptional ability in manufacturing.

The Petitioner initially submitted an expert opinion letter discussing his credentials in the field of engineering and manufacturing management. In relation to his academic record, the expert opinion reads:

> [The Petitioner's] Bachelor's degree in Aeronautical Engineering provided him with a solid technical background in the aeronautical engineering field, which is essential for individuals working in the engineering and manufacturing management area. Additionally, the degree also included many courses that provided a foundation of knowledge in engineering and operations management, including Principles or [*sic*] Management, Principles or [*sic*] Economics, Manufacturing Industrial Technology, and Operations Research I & II. This knowledge is essential to building the key skills needed in order to identify areas for improvement in production and reduce the costs

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

> of development. A Bachelor's degree is typically required for general and operations engineering managers in a manufacturing firm in the United States and positions him well to succeed.

In denying the petition, the Director specifically noted that the Petitioner's counsel provided a statement regarding his academic record and its relation to his proposed endeavor as a general and operations manager in the manufacturing industry in the United States, indicating that "Aeronautical Engineering is a course that involves a strong foundation in engineering principles, problem-solving, and technical expertise… transferable and can be valuable in the Manufacturing Industry, where technical knowledge is often required, especially in the production processes." However, the Director concluded that the assertions of counsel do not constitute evidence[5] and determined that the record did not contain independent objective evidence to support that the Petitioner's bachelor's degree relates to the claimed area of exceptional ability.

On appeal, the Petitioner contends that the academic transcript for his "Bachelor's Degree in Engineering" "highlight[s] a curriculum rich in subjects directly relevant to manufacturing management, underscoring his educational foundation in areas crucial for his intended endeavor." He further indicates that the academic transcript demonstrates that he studied subjects such as "manufacturing industrial technology," "probabilities and stochastic processes," "applied statistics," "machine elements," "principles of management," "principles of economics," "operational research," "transport," and "environmental sciences." The Petitioner submits an *Appendix to: Expert Opinion Letter* from the same author, to "highlight the relevance of [the Petitioner's] academic degree in regards to his proposed endeavor, which is to work in the field of engineering and manufacturing management, especially glass production, as a General and Operations Manager." The appendix to the expert opinion reads:

> Aeronautical engineering is a highly technical field that requires strong problem-solving skills. [The Petitioner's] degree in this discipline demonstrates his ability to tackle complex technical challenges, which is essential in the fields of engineering and manufacturing. Furthermore, Aeronautical engineering involves in -depth analysis and critical thinking skills that are transferable to engineering and manufacturing management. In his proposed role as a General and Operations Manager in the United States, he will need to analyze market data, assess risks, and develop strategies, all of which require a strong analytical mindset. Finally, Engineering programs, in general, typically emphasize discipline and attention to detail, qualities that are valuable for a General and Operations Manager. These traits help ensure that strategies and plans are executed meticulously and efficiently.
>
> This degree has included many courses that relate directly to [the Petitioner's] proposed endeavor, namely courses in Physics, Chemistry, Statistics, Thermodynamics, and Mathematics, which have provided [the Petitioner] with a base of knowledge necessary to grow within the field of engineering, as it is largely based in mathematics and science. Additionally, as a manufacturing manager, his understanding of economics and English obtained from this degree will be beneficial when acting as an

[5] *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

> administrator in his role. Many of his courses can also be applied directly to the manufacturing field, such as Systems Reliability, Environmental Sciences, Transport, Machine Elements, and, most notably, Manufacturing Industrial Technology.

Further, the Petitioner's academic transcript for his degree as an Aeronautical Engineer indicates that, in addition to the courses listed by the Petitioner and the expert opinion as "relevant" to the manufacturing field, he completed the following "professional courses"[6]:

1) Materials of Mechanical and Aeronautical Construction I & II
2) Theory of Structures I & II
3) Fluid Dynamic
4) Basic Elements of Experimental Aerodynamics
5) Propulsion IV (Alternative Engine)
6) Gas Dynamics
7) Wing and Airframe Aerodynamics
8) Electrotechnics Elements
9) Heat Transfer
10) Aerodynamics and Performance of the Subsonic Aircraft
11) Theory of Structures Applied to Aircraft I
12) Elements of Applied Electronics
13) Introduction to Dynamic Stability
14) Propulsion I (Turbo Reactor)
15) Stability and Control of Aircraft
16) Aircraft Systems
17) Aircraft Structures II
18) Operational Analysis of Aircraft
19) Aircraft Project I
20) Aeronautical Law
21) Aerodynamics of Missile
22) Vibrations
23) Systems Reliability

A degree in aeronautical engineering specifically involves the designing and production of aircrafts, which is evident by the courses listed in the Petitioner's academic transcript. While we acknowledge that the Petitioner completed some courses that may be fundamental to the engineering field, this academic transcript clearly indicates that the substantive courses directly relate to the aeronautics field, rather than the manufacturing field. Further, the expert opinion indicates that the Petitioner obtained the "base of knowledge necessary to grow within the field of engineering . . . [and that] many of his courses can also be applied directly to the manufacturing field." However, neither the Petitioner nor the expert opinion provide any information specifically identifying how this coursework directly relates to the manufacturing industry, such that we can determine that this degree relates to his area of claimed exceptional ability in manufacturing.

[6] We note that this list is a sampling of the courses listed on the Petitioner's academic transcript.

Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated he meets this regulatory criterion.

> *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 a copy of his professional identity card as an Aeronautical Engineer, with a registration date of February 6, 2023, issued by the Regional Engineering and Agronomy Council. In denying the petition, the Director determined that the record did not contain evidence to demonstrate that executing the responsibilities of a general and operations manager requires a license or certification in either Brazil or in the United States.

On appeal, the Petitioner concedes that "his intended role may not explicitly require engineering licensure," but his decision to obtain a license to practice as an engineer in Brazil underscores the importance of his engineering background in this field. He further states that obtaining a license to practice as an engineer demonstrates his commitment to professionalism, adherence to industry standards, and dedication to maintaining high ethical and technical standards in his professional practice and serves as a valuable asset that enhances his capabilities and credibility within the manufacturing industry.

Here, we agree with the Director that the record does not establish that a license or a certification is required to practice in the Petitioner's profession or occupation of general and operations manager in the manufacturing industry.

Thus, the Petitioner has not demonstrated he meets this regulatory criterion.

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

The Petitioner submitted a statement from the Brazilian Association of Asset Maintenance and Management (ABRAMAN), indicating that he was a "Member in the Individual Category" of this association, from January 2023 through January 2024. In response to the Director's request for evidence (RFE), the Petitioner submitted a limited translation of a document titled *ATA DA ASSEMBLEIA GERAL EXTRAORDINARIA DA ASSOCIACAO BRASILEIRA DE MANUTENCAO E GESTAO DE ATIVOS – ABRAMAN.* The translated portion of this document states the following:

> Article 4 – The membership of ABRAMAN shall be constituted by un [*sic*] unlimited number of members, which may belong to the category of taxpayers or fees.
>
> Article 5 – Contributing members are subdivided into the following classes:
>
> I. Company: which will comprise legal entities in general;
> II. Entity: which will comprise schools, entities or professional bodies of a technical-scientific nature;
> III. Individual: which will comprise individuals in general; and
> IV. Aspirant: which will comprise high school students or higher, aged up to twenty-four (24) years old.

. . . .

Article 6 – In addition to the contributing members, personalities who have provided relevant services to ABRAMAN and/or the Asset Maintenance Management community may be admitted to membership of ABRAMAN, as honorary members.

. . . .

Article 7 – For entry into the membership it is necessary:

a) In the categories of contributing members of the Company and Entity classes: favorable opinion of the Board of Directors;
b) In the categories of contributing members of the Individual and Aspirant classes: approval of at least one member of the Executive Board; and
c) In the category of honorary member: favorable opinion of three quarters of the members of the Deliberative Council.

In denying the petition, the Director noted, and we agree, that it appears the organization is not professional in nature based on the above and determined that the evidence did not sufficiently demonstrate that the Petitioner has membership in a professional association.

On appeal, the Petitioner contends that according to its bylaws, ABRAMAN is established as a private legal entity organized as a non-profit association operating on a national level, which signifies its purpose is to serve the interests of professionals and companies involved in maintenance, asset management, manufacturing industry, and related fields. The Petitioner asserts that ABRAMAN "unequivocally qualifies as a professional association based on its organizational structure, objectives, and activities outlined in its bylaws."

Here, we agree with the Director that the evidence provided does not establish that ABRAMAN qualifies as a professional association as contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(E). The evidence presented is not sufficient to demonstrate that ABRAMAN has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association.[7]

Accordingly, the Petitioner has not demonstrated he meets this regulatory 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).

[7] The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation."

The Petitioner submitted an excerpt from his own book, [redacted] [redacted] a screenshot of a YouTube live stream video, and four recommendation letters from individuals—H-R-, L-G-C-, L-M-, and M-S—all dated April 2023, to demonstrate his recognition for achievements and significant contributions to the field of manufacturing. A sample of the information contained in the letters is outlined in the Director's decision and incorporated here by reference.

In denying the petition, the Director noted that the record did not contain evidence to support the Petitioner's claim that his "contribution and recognition in the industry are highlighted by the publication of his book, showcasing his depth of knowledge and innovative thinking in corporate management," indicating that the record contained what appeared to be the book cover, an introduction, and the Petitioner's professional summary. However, the record did not contain evidence to demonstrate sales figures for his book, citations of his book by other professionals, or other evidence to support his assertions. The Director also acknowledged the Petitioner's statement that his participation in a YouTube live stream titled [redacted] "further exemplifies his recognition and contributions to the field... [t]his live [stream] had hundreds of viewers from all over the world, making its knowledge spread globally, influencing manufacturing in different countries and companies," and noted that the record only contained a screenshot from the live stream and did not include any metrics to establish the live stream was influential or supports the claim it is indicative of recognition for achievements and significant contributions to the manufacturing industry. Furthermore, the Director acknowledged that the recommendation letters spoke highly of the Petitioner's professional achievements and provided examples of how the Petitioner's contributions were impactful to the company; however, concluded that the letters did not demonstrate how the Petitioner's contributions were significant to the manufacturing industry.

On appeal, the Petitioner contends that the fact that his book is available in English and published on Amazon is highly significant and represents a substantial contribution to the manufacturing industry. He indicates that making his book accessible on Amazon, the world's largest online marketplace, greatly enhances its reach to a broad international audience of professionals, researchers, and practitioners, and impacts the manufacturing industry. The Petitioner submits a screenshot of the book for sale on Amazon's website. The Petitioner then contends that his participation in live sessions such as [redacted] demonstrates his expertise in quality management, contributing to industry discourse and knowledge dissemination. He indicates that his engagements in lectures, courses, and bibliographic production demonstrate his commitment to professional development and industry leadership. The Petitioner adds that his lectures on "Mental Health" and "Health Values" during [redacted] exemplify his dedication to employee well-being and safety improvement, showcasing his understanding of holistic workplace health and his involvement as the main speaker at the [redacted] underscores his influence in advocating for safety reforms among key stakeholders, highlighting his leadership in promoting safety values beyond organizational boundaries. Further, the Petitioner contends that his leadership in executing international projects throughout his career, as highlighted in the support and recommendation letters written by industry leaders, is undeniably a significant contribution to the industry. He asserts that these projects, conducted under his guidance, have left a lasting impact on major multinational corporations, becoming integral parts of their history and operations. He indicates that the successful implementation of these international projects has not only contributed to the growth and success of the companies involved but has also garnered attention within the industry as

exemplars of effective leadership and project execution, which have resulted in these projects becoming subjects of research and study, serving as inspiration and reference points for professionals seeking to emulate their success. The Petitioner concludes that his multifaceted engagements in lectures, courses, and bibliographic production underscore his leadership, expertise, and commitment to advancing industry practices within the manufacturing industry.

Here, while we acknowledge the Petitioner's claim that his book is available in English and sold on Amazon, the Petitioner has not provided any evidence to demonstrate sales figures for his book, citations of his book by other professionals, or other evidence to support his assertions, as noted by the Director. The Petitioner also does not address the Director's findings regarding his participation in a YouTube live stream titled [redacted] and does not provide any information relating to the metrics to establish the live stream was influential or to support the claim it is indicative of recognition for achievements and significant contributions to the manufacturing industry. Further, the Petitioner adds on appeal that he participated in lectures during [redacted] but does not provide any information regarding his direct involvement or the content of such lectures. Finally, the Petitioner asserts that his leadership in executing international projects throughout his career is a significant contribution to the industry. However, he does not provide evidence to support this claim. The plain language of the regulation calls for "evidence of recognition for achievements *and* significant contributions to the industry or field." As such, materials that identify an individual's achievements but not significant contributions to the industry or field cannot suffice to satisfy the regulatory requirements. *See Matter of Echeverria*, 25 I&N Dec. 512, 518 (BIA 2011) (holding that the use of the conjunction "and" in a series of regulatory requirements "is a clear indication" that one "must satisfy each of the [listed] requirements"). While the letters of recommendation from individuals provide details about the Petitioner's work on specific projects for his employer and with colleagues, and are very complimentary, the evidence does not show that his work has had an impact beyond his employers, clientele, and their specific projects at a level indicative of achievements and significant contributions to the industry or field of manufacturing, as required by the plain language of this criterion.[8]

Therefore, the Petitioner has not demonstrated he satisfies this regulatory criterion.

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.[9]

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. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of

[8] Formal recognition in the form of certificates and other documentation that are contemporaneous with the individual's claimed contributions and achievements may have more weight than letters prepared for the petition recognizing the individual's achievements. *See* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

[9] Because the Petitioner has not met his burden of proof to satisfy at least three of the initial criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.

exceptional ability. The Petitioner has not shown that he is an advanced degree professional or that he has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability.

ORDER: The appeal is dismissed.