U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43863372

Date: AUG. 17, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, an entrepreneur in the food and wine 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).

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

[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).

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. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[2] 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

The Petitioner's proposed endeavor is to establish an Italian Brazilian restaurant in [redacted] Florida. In his business plan, he states that he will serve as the company's owner, winemaker, and master chef.

The Petitioner claims he qualifies for the underlying EB-2 visa classification is as an individual of exceptional ability in business. As indicated above, petitioners must meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Petitioner initially claimed he met the regulatory criteria for official academic record, at least ten years of full-time experience in the occupation, license to practice the profession or certification, membership in professional associations, and recognition for achievements and significant contributions under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C), (E)-(F).

USCIS concluded that the Petitioner met at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, USCIS found the Petitioner fulfilled the criteria for official academic record, at least ten years of full-time experience in the occupation, and license to practice the profession or certification under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C). However, USCIS did not proceed to a final merits determination but rather proceeded to the determination of whether the Petitioner merits a discretionary waiver of the job offer requirement in the national interest.[3]

On appeal, the Petitioner contends USCIS erred in finding that the proposed position lacks national importance and that, on balance, waiver of the job offered and labor certification requirements would not benefit the United States.

Upon our de novo review, we disagree with USCIS' determination that the Petitioner met at least three of the six criteria and, therefore, we conclude he does not qualify as an individual of exceptional ability.[4]

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

[3] Under final merits analysis in the decision, USCIS only states, "Upon review, USCIS finds that the self-petitioner has met at least three of the six criteria."

[4] While we do not discuss every piece of evidence individually, we have reviewed and considered the record in its entirety.

A. Official Academic Records

This criterion requires "[a]n 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).

In support, the Petitioner submitted copies of certificates for attending training courses and workshops including grape juice production, viniculture technology, and sommelier. However, the record does not show that they were received from an "institution of learning" or that they are "official academic record[s]." Without more, we cannot conclude that the Petitioner meets this criterion, and we withdraw USCIS' determination to the contrary.

B. Ten Years of Full-Time Experience

This criterion requires "[e]vidence 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 Petitioner provided a letter from his business in Brazil stating that he has been the chief executive officer, wine maker, and master chef since December 1994 and that he worked full-time (40 hours per week). The letter also includes a list of his responsibilities at the restaurant. Here, the letter establishes that the Petitioner has at least ten years of full-time experience in the occupation of business and, therefore, he has established that he meets this criterion.

C. License

This criterion requires "[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 provided a business license for his restaurant in Brazil. A license to operate a business is not a license to practice a profession or a certification for a particular profession or occupation. Therefore, the Petitioner has not established that he meets this criterion, and we withdraw USCIS' determination to the contrary.

D. Membership

This criterion requires "[e]vidence of membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). The regulation at 8 C.F.R. § 204.5(k)(2) defines profession as "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 into the occupation."[5] The Petitioner claims eligibility for this criterion based on his memberships with the American Culinary Federation, Inc. (ACF), the Association of Grape and Wine Producers of [redacted] and the Agricultural Cooperative Coopervinho [redacted] However, the record does not include

[5] The occupations listed in this section are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

evidence such as the membership requirements to demonstrate that ACF and the Association of Grape and Wine Producers of [redacted] are professional associations within the meaning of the regulations at 8 C.F.R. § 204.5(k)(2) and (3)(ii)(E). Moreover, while the Petitioner provided a letter from the president of the Agricultural Cooperative Coopervinho [redacted] that includes the membership requirements, it does not indicate that a bachelor's degree or its equivalent is required. As such, the Petitioner has not demonstrated he meets this criterion.

III. CONCLUSION

The Petitioner claimed to satisfy five of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). However, we conclude that the Petitioner did not satisfy three of the five criteria. As the Petitioner has only met one criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), we need not determine whether he satisfies the remaining criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) as he would still not meet at least three of the six criteria as required and reserve our opinion on this criterion, as well as any final merits determination. *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). As this issue is dispositive of the Petitioner's appeal, we likewise decline to reach and hereby reserve the remaining issue before us of the Petitioner's eligibility for a waiver of the job offer requirement in the national interest.

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.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.