U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33349581

Date: AUG. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a musician, 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 the Petitioner did not establish eligibility for the requested EB-2 immigrant classification. 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.

The Director concluded the evidence did not establish the Petitioner met any of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) to show he is an individual of exceptional ability. On appeal, the Petitioner submits a lengthy brief largely restating the same arguments and evidence already on record.[1] And though he argues that "crucial aspects of [his] petition" were misrepresented and that "it is clear that [the Director] was completely biased and already intended to deny [his] request," he does not point to specific examples of where or how the Director misrepresented evidence or showed bias in his case.

Upon review of the entire record, we adopt and affirm the Director's decision as it relates to the following criteria: an official academic record showing that the individual 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; evidence in the form of letter(s) from current or former employer(s) showing that the individual has at least ten years of full-time experience in the occupation for which he is being sought; evidence that the individual has commanded a salary, or other remuneration for services, which demonstrates exceptional ability; evidence of membership in professional associations; and evidence of recognition for achievements and significant contributions to the

[1] We acknowledge the large number of previously submitted documents attached to the Petitioner's appellate brief.

industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (D)-(F). *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). We, therefore, agree with the Director's ultimate conclusion that the Petitioner has not met the requirements for the underlying EB-2 classification.[2]

The Petitioner's arguments on appeal are insufficient and do not overcome the Director's conclusions. The Petitioner argues that he submitted sufficient evidence to meet the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the professional membership criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). However, with regard to both of these criteria, he relies, in part, on his descriptions of these organizations in his Request for Evidence response letter to show that the organization issuing his course completion certificates is an institution of learning and that the [redacted] is a professional association. However, he submits no corroborating evidence to support these claims or otherwise address the Director's concerns. The Petitioner's bare assertions alone are insufficient to show he meets these criteria. He must support his claims with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In arguing that [redacted] is a professional association, the Petitioner urges that 8 C.F.R. § 204.5(k)(2) "must be interpreted considering the diversity and specificities of professions, including those in the field of arts, such as music, which do not necessarily require a bachelor's degree for recognition of excellence and exceptional ability." However, this goes against the plain language of the regulation. 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." The Petitioner has cited no authority to support his proposed interpretation, and we will not read such an exception into the regulation's plain language. For these reasons, we agree with the Director that the Petitioner did not submit adequate evidence to demonstrate he meets the academic record or professional membership criterion.

The Petitioner also argues that he demonstrated at least ten years of full-time experience in the relevant occupation to meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). While he has addressed the Director's concerns related to his periods of overlapping employment, the Petitioner's updated employer letters do not contain sufficient detail about his duties and responsibilities to demonstrate that he has at least ten years of full-time experience in the relevant occupation proposed here—operating a company conducting music workshops for children and adolescents. The letters are not sufficient to overcome the Director's concerns.

[2] The Petitioner should not construe this to mean we disagree with the Director's ultimate determination that the Petitioner does not meet the criterion to show a license to practice the profession or certification for a particular profession or occupation at 8 C.F.R. § § 204.5(k)(3)(ii)(C).

As for the criteria related to salary at 8 C.F.R. § 204.5(k)(3)(ii)(D) and recognition for achievements and significant contributions to the industry or field at 8 C.F.R. § 204.5(k)(3)(ii)(F), the Petitioner advances the same arguments that were considered and rejected by the Director below. The Petitioner does not offer any new arguments contesting the Director's findings and, upon our review, we are not persuaded of any error in the Director's determinations that the Petitioner did not satisfy these criteria.

Because the Petitioner did not establish the threshold requirement of eligibility for the EB-2 classification, the Director did not reach the issue of the Petitioner's eligibility for a national interest waiver under the *Dhanasar* framework. We agree with the Director's decision that the Petitioner has not established he satisfies the regulatory requirements for classification as an individual of exceptional ability. Since this issue is dispositive of the case, 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) ("As a general rule 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 D-L-S-*, 28 I&N Dec. 568, 577 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.