U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34475714

Date: DEC. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information technology architect and entrepreneur, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the applicant qualified for EB-2 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.

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 individuals 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. *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

The first issue to be addressed is whether the Petitioner established his eligibility for the underlying EB-2 classification.

The Petitioner stated on his Form I-140, Immigrant Petition for Alien Workers, that he intends to work as a software engineer and architect in the United States. According to the professional plan submitted with the petition, he specifically intends to work on a project called [redacted] but has provided limited details regarding his specific role. On appeal, he submits a business plan for [redacted], noting that his company will provide loyalty and rewards programs, marketing and advertising and a platform to generate virtual currency.

At the time of filing, the Petitioner claimed that he meets the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B)-(F) and that he otherwise qualifies for classification as an individual of exceptional ability in the sciences, arts, or business. The Director determined that the Petitioner is not eligible for EB-2 classification because he did not meet three of the six criteria. On appeal, the Petitioner argues that he meets five of the six criteria for an individual of exceptional ability. 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.

> *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 Petitioner argues on appeal that the Director did not fully consider the Petitioner's position as owner of his own business when reviewing the submitted evidence. Evidence of ownership of a company does

[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).

not satisfy the plain language of this criterion. The Petitioner has not demonstrated that the organization he owned was actively doing business during the period specified or sufficiently describe his role with the organization and his job duties. Moreover, the Petitioner stated that he has worked for several other organizations in his professional career and declined to provide evidence of his employment from those organizations. Accordingly, the Petitioner has not met his burden of proof in establishing his eligibility under this 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 argues that he received a document from "Prisma Sat" that is an official business document listing him as a participant in a professional class. The Petitioner has not provided sufficient evidence to establish that this document is the equivalent of a professional license or certification related to his occupation. The Petitioner has not met this criterion.

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner argues on appeal that the contract between [redacted] Tecnologia demonstrates earnings that prove exceptional ability. As stated by the Director, while the Petitioner has established his company received remuneration for work completed, he has not established that the sum is greater than what is normally expected in his field. The Petitioner has not provided sufficient evidence to support his claim that these payments represent his exceptional ability by comparing them to other contracts for similar services in his field. *See* 6 *USCIS Policy Manual* F.5(b)(2) www.uscis.gov/policy-manual. Accordingly, the Petitioner has not met this criterion.

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

The Petitioner claims that he was previously a member of Gristec Association from 2006 to 2009 and that this prior membership should meet this criteria even though he is no longer an active member of the organization. The plain language of the regulation is in the present tense and requires that petitioners provide evidence of membership in professional associations at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). The Petitioner has made no claim to being a current member of a professional association. Therefore, he has not met this 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).

As evidence to satisfy this requirement the Petitioner initially provided a letter from R-H- that states that the Petitioner has a "deep understanding of the internet of things." R-H- goes on to state that he and the Petitioner would demonstrate applications for clients and at trade shows and that the Petitioner is an experienced professional. The Petitioner argues that the training activities described by R-H- are evidence of his significant contributions in expanding the knowledge base around his employer's specific product. On appeal, the Petitioner argues that the letter from Gristec Association that describes him as an active member between 2006 and 2009 is additional evidence of his significant

contributions to his field. The Petitioner does not describe how being a member of Gristec Association between 2006 and 2009 contributed to the field of IT architecture more broadly and the letter from Gristec does not contain sufficient information regarding the Petitioner's specific contributions. There are no details in the letter beyond the general statement that the Petitioner participated in technology work groups. These letters provide limited details about the Petitioner's work for his employers or with the association. However, they do not describe significant contributions beyond those employers and clients to the broader industry or field of software development and architecture, as required by the plain language of this criterion. Accordingly, we agree with the Director and conclude that this evidence does not establish that the Petitioner meets this criterion.

Per the above analysis, the Petitioner has not established that he meets the initial evidentiary requirements by satisfying at least three of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we need not conduct a final merits determination of whether he has demonstrated a degree of expertise significantly above that ordinarily encountered in the field. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the expertise required for the classification sought.

The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability and is therefore ineligible for a national interest waiver. While he asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework, we will reserve these issues.[4] The petition will remain denied.

ORDER: The appeal is dismissed.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).