U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36097196

Date: FEB. 4, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a health psychology researcher, 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 Form I-140, Immigrant Petition for Alien Workers (the petition), concluding that the record did not establish that the Petitioner is either a member of the professions holding an advanced degree or an individual of exceptional ability. The Director also concluded that he is not eligible for a national interest waiver. The matter is now before us on appeal. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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). 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.

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,[1] 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 Director found that the record did not establish that the Petitioner is an advanced degree professional or an individual of exceptional ability.[2] Additionally, the Director found that the Petitioner did not establish he meets the national interest waiver requirements. Specifically, while the Director determined that the proposed endeavor has substantial merit, the Director did not find that the proposed endeavor has national importance, the Petitioner is well-positioned to advance the proposed endeavor, and waiving the job offer requirement would benefit the United States.

We determine that the record does not establish that the Petitioner is an individual of exceptional ability, and he is therefore not eligible for EB-2 classification. As such, we reserve our opinion regarding whether the Petitioner satisfies the requirements for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

The record does not establish that the Petitioner is an individual of exceptional ability as he does not meet at least three of the six relevant evidentiary criteria. We will analyze the criteria below.

1. "*An official academic record showing that the [noncitizen] 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).

[1] *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).

[2] We note that the Petitioner did not assert that he is an advanced degree professional. Rather, he conceded in response to a request for evidence that he was not one. As such, we will not address this issue on appeal.

As mentioned, the Petitioner obtained a bachelor's degree in psychology, with a concentration in health psychology, from the [redacted] His degree relates to the area of exceptional ability, which the Petitioner described as research and community-based interventions focused on understanding and addressing the psychological detriments of health disparities in the United States. Accordingly, the Petitioner has met this regulatory criterion.

2. "*Evidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] 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 record includes a letter from [redacted] verifying the Petitioner was an independent contractor delivery provider from December 2020 until November 2022, and an employer letter from [redacted], verifying the Petitioner's employment as a guest services host from February 2023 until December 2023. These letters do not establish at least ten years of full-time experience in the occupation being sought. On appeal, the Petitioner submits a letter from his current employer, [redacted] detailing his leadership and commitment to improving healthcare access in his position as health outreach program fellow. The record indicates this employment took place after the Petitioner filed the petition on June 11, 2024, and therefore it will not be considered. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 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."). Even if we considered this letter, the Petitioner has not established that he meets this regulatory criterion. The first two letters detail work unrelated to the occupation being sought, and the third letter does not establish ten years of full-time experience.

3. "*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 previously stated he does not "hold a professional license or advanced certification." He now contends that his Responsible Conduct of Research certification is essential to his work as a health psychology researcher, and his certifications from the World Health Organization (WHO) and Centers for Disease Control and Prevention (CDC) bolster his qualifications. The record includes a document from the [redacted] providing that the Petitioner "[h]as completed the following [redacted] course: Responsible Conduct of Research (RCR) (Curriculum Group) [redacted] (Course Learner Group) 1 – Basic Course (Stage)[.]" The record includes certificates and records of achievement from the WHO reflecting successful completion of several health-related online courses. The record includes certificates from the CDC reflecting participation in educational activities and awarding of continuing education units. Licenses and certifications show that a person has the specific knowledge or skill needed to do a job. A license, generally conferred by an official government body, confers legal authority to work in an occupation. A certification, whilst not always required to work in an occupation, generally requires demonstrating competency to do a specific job. While the record includes documentation that the Petitioner has taken courses through multiple organizations, these records do not establish that he has a license to practice his profession or has a certification for his profession or occupation. Accordingly, the Petitioner has not established that he meets this regulatory criterion.

4. "*Evidence that the [noncitizen] 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 does not assert, and the record does not include evidence, that he meets this regulatory criterion.

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

The Petitioner asserts that his memberships in the Global South Coalition for Dignified Menstruation (GSCDM) and the American Psychological Association (APA) fulfill this requirement. The record includes a letter from the USA Director of GSCDM, an organization headquartered in Kathmandu, Nepal, who states that the Petitioner has been an active member for five years. However, the record does not include sufficient documentation to establish that this is a professional association. Additionally, the record does not include evidence of the Petitioner's membership card, membership number, or payment of any membership fees. The record includes a letter from the APA confirming the Petitioner's membership in the APA Division 38: Society for Health Psychology. The letter is dated August 27, 2024, which is after June 11, 2024, the date the Petitioner filed the petition. The record does not mention that he was a member prior to June 11, 2024, and therefore that he was a member of the APA at the time he filed the petition. The Petitioner has not established that he meets this regulatory criterion.

As the Petitioner has not established that he meets at least two of the first five regulatory criteria for exceptional ability, we decline to reach and hereby reserve the appellate arguments regarding whether he has met the sixth criteria, which requires evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. *See INS v. Bagamasbad*, 429 U.S. at 25.

The record supports the Director's finding that the Petitioner did not meet at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(iii) allows for the submission of "comparable evidence" if the above standards "do not readily apply to the beneficiary's occupation." In this case, the Petitioner has not demonstrated that the standards at 8 C.F.R. § 204.5(k)(3)(ii) are not readily applicable to his occupation, or that any of his documentation is "comparable" to the specific objective evidence required at 8 C.F.R. § 204.5(k)(3)(ii)(A) – (F). Additionally, as the Petitioner has not established that he has met three of the six regulatory criteria for exceptional ability, no purpose would be served in us conducting a final merits determination to decide whether the evidence in its totality shows that he is 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.

The record does not establish that the Petitioner is an advanced degree professional or an individual of exceptional ability. Therefore, the Petitioner is not eligible for EB-2 classification. Since 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 three prongs outlined in *Dhanasar*. *See Bagamasbad*, 429 U.S. at 25.

ORDER: The appeal is dismissed.