U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37092441

Date: FEB. 21, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in tourism, 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 the Petitioner was an individual of exceptional ability and did not establish 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.

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.[1] 8 C.F.R. § 204.5(k)(2).

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

[1] Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[2] 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 the petitioner 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. 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.

II. ANALYSIS

A. Exceptional Ability

The Director determined the Petitioner did not meet at least three of the regulatory criteria to establish exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). On appeal, the Petitioner asserts the Director erred and he meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (C), (E), and (F). As discussed below, the record does not support the Petitioner's claims regarding the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F).

1. Academic Record of Degree, Diploma, Certificate or Similar Award

This criterion requires 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 evidence of his three-year bachelor's degree in tourism from the [redacted] Brazil. The Petitioner meets this criterion.

2. License or Certification

This criterion requires evidence of 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 evidence of his real estate broker or sales license from the Florida Department of Business and Professional Regulation Division of Real Estate. The Petitioner meets this criterion.

3. Membership in Professional Associations

This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). The EB-2 regulations define "profession" as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2).

[2] 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).

The Petitioner submitted evidence of his membership in and information about the National Federation of Independent Business, Visit Orlando, and the Brazilian Association of Turismologists and Tourism Professionals. The information submitted does not indicate that a United States baccalaureate degree or its foreign equivalent is a minimum requirement for entry into the professions covered by these organizations. Consequently, the Petitioner does not meet this criterion.

4. Recognition for Achievements and Significant Contributions to the Field

This criterion requires 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). The Petitioner asserts that in determining he did not meet this criterion, the Director mentioned only some of his support letters and ignored the other letters submitted. We have reviewed the entire record in these proceedings.

F-R-D-S-[3] praises the Petitioner's skills as a travel agent, notes certifications he obtained, and states he also worked as a tour guide, international park greeter, cultural representative, guest relations trainee, and interpreter. F-R-D-S- states the Petitioner is highly respected and excels in customer relations, but does not indicate that the Petitioner has received recognition for achievements and significant contributions to the tourism industry from peers, governmental entities, or professional or business organizations.

F-S-S- praises the Petitioner's work at [redacted] where she was his supervisor and commends his prior work at other companies. While F-S-S- commends the Petitioner's skills and experience, she does not indicate that he has received recognition for significant contributions to his field. S-C-F- and R-R-A- praise the Petitioner's past work in their real estate businesses and summarize his experience in the tourism industry, but also do not indicate that the Petitioner has received recognition for significant contributions to his field.

H-D-P-, Associate Professor of Entrepreneurship and Innovation at the [redacted] expressed his opinion that the Petitioner qualifies for a national interest waiver under the analytical framework of *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), but did not discuss the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability. H-D-P- states the Petitioner has received recognition from F-R-D-S-, F-S-S-, R-B- and three clients. While the letters from these individuals praise the Petitioner's work and skills, they do not indicate he has received recognition for significant contributions to his field. H-D-P- also summarizes the Petitioner's work experience but does not indicate that the Petitioner received recognition for any achievements or significant contributions to his field by peers, governmental entities, or professional or business organizations during his employment.

The Petitioner submitted information about the Travel Weekly Magellan Award, World Travel Awards, and Creative Tourism Awards, but did not submit evidence that he received any of these awards. The Petitioner also submitted evidence of his employment with [redacted] and other companies, but did not submit evidence of recognition for any achievements or significant contributions to the tourism industry he made while employed with these companies.

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

The Petitioner does not meet this criterion.

As the Petitioner has not established that he meets at least three criteria, we need not conduct a final merits determination.

B. National Interest Waiver

The Petitioner has not met at least three of the regulatory criteria required to establish exceptional ability and he consequently does not qualify for EB-2 classification. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of his eligibility for a waiver of the job offer requirement in the national interest. *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).

III. CONCLUSION

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.