U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29851422

Date: FEB. 27, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the martial arts training field, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner further seeks a national interest waiver of the job offer requirement attached to this immigrant visa classification. *See* section 203(b)(2)(B)(1) of the Act.

The Director of the Texas Service Center denied the petition, concluding the record did not establish, as required, that the Petitioner qualifies for EB-2 classification as either an advanced degree professional or as an individual of exceptional ability. The Director further determined that the Petitioner did not establish that a waiver of the required job offer would be in the national interest. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2) of the Act.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 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 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 a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *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.

II. EB-2 CLASSIFICATION

The first issue we will address is whether the Petitioner established his eligibility for EB-2 classification.

A. Member of the Professions Holding an Advanced Degree

At the time of filing, the Petitioner asserted that he qualifies as a member of the professions holding an advanced degree, as defined at section 8 C.F.R. § 204.5(k)(2). In a request for evidence (RFE), the Director advised the Petitioner that his initial evidence demonstrated he holds the foreign equivalent of a U.S. bachelor's degree in law but that additional evidence would be needed to establish that he possesses the required five years of progressive post-baccalaureate work experience. Specifically, the Director noted that evidence relating to qualifying experience must be in the form of letter(s) from current or former employers and shall include the name, address, and title of the writer, and a specific description of the duties the Petitioner performed. *See* 8 C.F.R. § 204.5(g)(1).

In the decision denying the petition, the Director acknowledged the Petitioner's RFE response and explained why the additional evidence (a letter from a prior employer in Brazil and the articles of organization for the Petitioner's privately-owned business) did not satisfy the regulatory requirements for documenting his five years of progressive post-baccalaureate work experience. On appeal, the

[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 aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

Petitioner does not contest the Director's specific determination or otherwise address his eligibility for EB-2 classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, we need not further address this issue. Nevertheless, we have reviewed the record and conclude it supports the Director's determination that the Petitioner did not meet his burden to establish that he holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2).

B. Individual of Exceptional Ability

In evaluating the Petitioner's eligibility for EB-2 classification as an individual of exceptional ability, the Director determined that he submitted evidence satisfying only two of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Specifically, the Director determined that the Petitioner met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B). On appeal, the Petitioner only briefly addresses his eligibility as an individual of exceptional ability, noting that the previously submitted evidence included documentation establishing that he has a license to practice the profession or certification for a particular profession or occupation, as required by 8 C.F.R. § 204.5(k)(3)(ii)(C), and that he is a member in professional associations, as required by 8 C.F.R. § 204.5(k)(3)(ii)(E).[4]

1. Evidentiary Criteria

The record supports the Director's determination that the Petitioner meets the criterion at 8 C.F.R. § 204.5(k)(3)(i)(A). However, for the reasons discussed below, the record does not demonstrate that he meets at least three of the six criteria required for classification as an individual 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 or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

This criterion focuses on evidence of experience in the occupation which a petitioner intends to pursue in the United States. The Petitioner intends to own and operate a martial arts and self-defense training business in the United States and therefore we will consider his experience in this field. Although the Petitioner asserts that he has more than 20 years of work experience, he has not submitted documentary evidence demonstrating he has at least ten years of full-time experience in the relevant occupation.

The Director determined the Petitioner met this criterion based on his submission of an "employment verification letter" dated February 13, 2023, which was authored by C-V- in his capacity as owner and head coach of a martial arts academy in [redacted] Brazil. In his letter, C-V- states "in 2006, [the Petitioner] was effective as a Jiu Jitsu coach where he remained until 2021. During this 15-year period he was the head coordinator of the graduation system to our athletes . . .."

[4] On appeal, the Petitioner does not claim that he can satisfy the criteria at 8 C.F.R. § 204.5(k)(3)(i)(D) and (F). As noted, an issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

While the letter indicates that the Petitioner worked for a martial arts academy for 15 years, it does not state that he was a full-time employee for a period of at least ten years, as required by the plain language of the regulation. Further, other evidence in the record suggests that the Petitioner had concurrent university studies and employment during significant portions of the period covered by the employment verification letter. Specifically, the record indicates that the Petitioner was enrolled as a university student from 2006 until April 2008. The Petitioner also stated in his professional plan and statement that he worked for [redacted] as a construction manager from March 2006 until December 2016, that he operated his own martial arts training academy from December 2011 until at least 2018, and that he later opened another business in 2018.

Considering these claims of concurrent employment, the sole employment verification letter from C-V- does not sufficiently document the Petitioner's ten years of full-time experience in the martial arts training field. Accordingly, the Director's determination that the Petitioner satisfied this criterion is withdrawn.

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

The Petitioner indicated that he meets this criterion based on membership in the Rio de Janeiro Judo Federation (FJERJ), the United States Brazilian Jiu Jitsu Federation (USBJJF), and the International Brazilian Jiu Jitsu Federation (IBJJF). In support of this claim, he submitted:

- A certificate from FJERJ, dated March 1, 2015, indicating that [redacted] was affiliated with this federation since December 2011.
- A certificate of registration indicating that the Petitioner's Brazilian martial arts academy [redacted] is "registered under the IBJJF for the year 2023."
- A certificate of registration indicating that [redacted] "is registered under the USBJJF for the year 2023."

The Director considered this evidence, referenced the definition of "professional" at 8 C.F.R. § 204.5(k)(2), and concluded that the Petitioner did not establish that registration of his martial arts training business(es) with the above federations demonstrates that he is a member of a professional association. The Director observed that the record did not establish, for instance, that any of these associations has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent or that they otherwise constitute "professional associations" consistent with this regulatory criterion. We agree with this conclusion and further note that it is unclear that the registration or affiliation of his martial arts training business with these federations is equivalent to a "membership." Further, we note that the submitted evidence of registration with the IBJJF and USBJJF post-dates the filing of the petition in January 2022, while the confirmation of affiliation with FJERJ pre-dates the filing of the petition by nearly seven years. A petitioner must establish eligibility for the requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1).

On appeal, the Petitioner asserts that the Director erroneously determined that he "did not [present] evidence of membership when in fact, certification of affiliating in petitioner's [profession] was sent." However, as noted, the Director did not conclude that record lacked any evidence in support of this criterion. Rather, the Director acknowledged the evidence listed above and explained why it was

insufficient to meet the requirements at 8 C.F.R. § 204.5(k)(3)(ii)(D). The Petitioner does not address or contest the Director's specific reasons for concluding that he did not meet this criterion, and, as discussed above, the record supports the Director's determination.

2. Final Merits Determination

Per the analysis above, the Petitioner has established that he meets only one of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (E). The Petitioner also claims that he can satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), which requires evidence of a license to practice the profession or certification for a particular profession or occupation. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii), we reserve and will not address this remaining criterion.[5]

Further, because the Petitioner did not satisfy the initial evidence requirements, we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

III. NATIONAL INTEREST WAIVER

The Director also denied the petition based on a conclusion that the Petitioner did not establish his eligibility for the requested national interest waiver. Based on the foregoing discussion, the Petitioner has not demonstrated that he is eligible for EB-2 classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability, and therefore cannot qualify for the requested national interest waiver. Nevertheless, we will briefly address his claims below.

In applying the *Dhanasar* framework to the facts presented, the Director concluded that the Petitioner established the substantial merit of his proposed endeavor to establish and operate a martial arts and self-defense training center in central Florida, with the goal of eventually expanding to other locations. However, the Director determined the Petitioner did not establish the national importance of the endeavor by showing its potential prospective impact, such as by providing evidence that it will have substantial positive economic effects, a significant potential to employ U.S. workers, or other broader implications within his field. The Director also determined that the record did not demonstrate that the Petitioner is well-positioned to advance the proposed endeavor and that, on balance, it would be beneficial to the United States to waive the job offer requirement.

On appeal, the Petitioner generally asserts that the Director applied a stricter standard of proof than that of preponderance of the evidence, but he does not elaborate on these claims or point to specific instances where the Director applied an incorrect standard. With respect to the first prong of the *Dhanasar* framework, the Petitioner contends the Director "did not give due regard" to the evidence

[5] *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); *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).

submitted, suggesting that the Director did not properly weigh his previously submitted professional plan, letters of recommendation, and industry reports and articles regarding his field and the potential of martial arts as a training tool for law enforcement personnel. In addressing national importance, the Petitioner's brief focuses almost entirely on his training, qualifications and experience in the martial arts and self-defense training field and makes only general claims that his proposed endeavor "will have multiple positive effects on the U.S. marketplace, thus enhancing business operations on behalf of the nation, and contributing to a streamlined economic landscape."

However, contrary to the Petitioner's claims on appeal, the record reflects that the Director did not disregard evidence relating to his qualifications and extensive experience in the field of martial arts and self-defense training. Rather, the Director acknowledged this evidence and correctly noted that it relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." 26 I&N Dec. at 890.

Further, the Director acknowledged and addressed the Petitioner's submission of media and industry reports that discuss the benefits of martial arts, their intersection with law enforcement training, and their potential to reduce the use of lethal force in police encounters. These articles provide relevant background information and establish the substantial merit of the Petitioner's proposed work. However, in determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work. In *Dhanasar*, we emphasized that "we look for broader implications" of the specific proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* at 889. We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

Here, the Petitioner suggested that by operating a martial arts training business offering services to individuals, police officers and other security personnel, he will "improve the safety of the American officer on duty without jeopardizing the safety of American citizens." He further claimed his endeavor would "improve the Police workforce, generate revenue, increase profits and create jobs," but he did not submit a business plan or similar evidence to substantiate his claims regarding the job creation and economic impacts of his proposed endeavor. Therefore, the Director determined, and we agree, that he has not demonstrated how his operation of one or more martial arts training centers would have potential prospective impacts at a level commensurate with national importance. The Petitioner's broad assertion that his proposed endeavor will "enhanc[e] business operations on behalf of the nation, and contribut[e] to a streamlined economic landscape," is not adequately supported by the record.

While the evidence indicates that his endeavor would positively impact individuals who enroll in training at his proposed business, the Petitioner did not demonstrate how this impact would extend beyond his students and clients to have broader implications within the field. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. 26 I&N Dec. at 893.

For the reasons discussed, the Petitioner's appeal does not sufficiently address or contest the specific evidentiary deficiencies the Director found in applying the *Dhanasar* framework to the facts presented, and therefore does not overcome the Director's well-reasoned grounds for denial of the petition.

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

IV. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree or as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought. Further, the Petitioner has not overcome the Director's determination that he did not establish that a discretionary waiver of the job offer requirement would be in the national interest. Therefore, the petition will remain denied.

ORDER: The appeal is dismissed.