U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34941340

Date: JAN. 08, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a martial arts educator, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 Petitioner qualified for EB-2 classification or that he merited a waiver of the job offer and labor certification requirements for that 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 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.

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).

[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.

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).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] 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,[4] 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 Petitioner claims to be a member of the professions holding an advanced degree or in the alternative an individual of exceptional ability. The Director determined that the Petitioner had not established that he had the US equivalent of a bachelor's degree and five years of progressive experience in his field. Additionally, the Director determined in a final merits determination that the Petitioner had not established he was an individual of exceptional ability. The Petitioner contests the Director's finding on appeal.

A. Advanced Degree Professional

As evidence of an advanced degree the Petitioner provided a diploma and transcript from C-C-U-[5] with a major in Combat Sports and Chinese Martial Arts. The Petitioner was enrolled from September 2013 to July 2017 representing four years of academic study. The Petitioner also provided a "course by course evaluation" from E-C-E- as evidence of the U.S. equivalency of his degree. The document

[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).

[3] 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.

[4] *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).

[5] We use initials to protect the privacy of individuals and organizations.

makes a summary determination of the U.S. equivalent of the Petitioner's degree and lists the courses he attended without providing a narrative explanation for the equivalency finding. Given the academic evaluation's lack of information regarding the title and equivalency of the academic record, the evaluation is of minimal probative value. Absent an explanation for the determination that the Petitioner's degree in Combat Sports and Chinese Martial Arts is the equivalent of a U.S. Bachelor's degree in Sports Science, the Petitioner has not demonstrated that his foreign degree is the equivalent of a U.S. Bachelor's degree.

As evidence of his five years of progressive experience in his field the Petitioner provides two employment verification letters on appeal. The employment verification letter from H-C-W-C- indicates that the Petitioner began working as a full-time instructor in July 2017 and served as head coach from November 2017 to September 2019. The Petitioner's responsibilities included training instructors, teaching martial arts courses, dojo event planning, choreography and performance arrangements, and serving as a judge for martial arts school evaluations and competitions. The Petitioner also provided a letter from H-A-C-. The letter states that the Petitioner was employed as the CEO and Principal Instructor from September 2020 to the present. The letter states the Petitioner engaged in martial arts research and development, teaching martial arts classes and training martial arts coaches. The Petitioner's job duties and position description from the two employers contain similar descriptions of his role and responsibilities as an instructor. Moreover, the Petitioner has presented contradictory information regarding his "full-time" employment during this time period. The expert opinion letter from Professor M-R- states that the Petitioner began an apprenticeship in the United States in 2022 and carried out Martial Arts instruction at an elementary school. The letter from H-A-C- states that during this time the Petitioner was working full-time at the dojo abroad. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795. However, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. The submission of expert opinion letters is not presumptive evidence of eligibility. *Id.; see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence of to determine a fact in issue.'"). Due to the discrepancies between the expert opinion letters provided, they are insufficient to establish that the Petitioner has five years of progressive experience in his field.

Because we cannot conclude that the Petitioner possesses a foreign education equivalent to a U.S. baccalaureate degree, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B), we cannot conclude that the Petitioner qualifies for the requested EB-2 classification as an advanced degree professional.

B. Exceptional Ability

To establish eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii), summarized below:

(A) An academic degree relating to the area of claimed exceptional ability;
(B) Ten years of full-time experience in the occupation;

(C) A license or certification for the profession or occupation;
(D) A salary or other remuneration that demonstrates exceptional ability;
(E) Membership in professional associations; and
(F) Recognition for achievements and significant contributions to the industry or field.

If an individual meets at least three of the regulatory criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows a degree of expertise significantly above that ordinarily encountered in the individual's field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). *See also, generally,* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

The Petitioner argues that he meets five of the six criteria to qualify as an individual of exceptional ability. The Director addressed all six criteria in their decision, although the Petitioner had claimed to meet only five. The Director concluded that the Petitioner submitted evidence to satisfy two of the criteria, relating to academic record and license to practice the profession. On appeal, the Petitioner asserts that his evidence satisfies the criteria relating to membership, recognition and experience.

As explained below, we conclude that the Petitioner has not satisfied the regulatory requirements necessary to establish that he is an individual of exceptional ability.

> *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 cited his bachelor's degree in Combat Sports and Chinese Martial Arts as evidence that he has an academic record related to the claimed exceptional ability. We agree with the Director's determination that the Petitioner established his degree relates to his claim of exceptional ability.

The Petitioner has met his burden of proof to satisfy the requirements of this criterion.

> *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 Director concluded that letters from several employers did not satisfy the requirements of this criterion. The Petitioner submitted several letters attributed to current and former employers, but only two of those letters include the required specific description of duties performed. Those two letters account for full-time employment experience beginning in November 2017. The Petitioner filed the current visa petition in January 2024. Therefore, the Petitioner has not accounted for ten years of full-time experience in his occupation as a martial arts instructor.

The Petitioner has not met his burden of proof to satisfy the requirements of 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 Director concluded that the Petitioner had provided sufficient evidence of this criteria with evidence of his coaching license, archery certificate, and artistic dance license. We agree with the Director that this criterion has been met.

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

Copies of certificates indicate that the Petitioner is a member and martial arts technical advisor for T-Y-Culture and Arts Association. The Petitioner claims that the organization is a non-profit of professionals in traditional culture who organize cultural lectures on traditional Chinese culture topics. The Director concluded that the Petitioner did not meet the regulatory requirements for this criterion because he did not provide evidence that he is currently a member of the organization. The membership certificate submitted with the response to the RFE had a validity period between July 2019 and July 2021. On appeal, the Petitioner provides an updated membership certificate showing validity from August 2023 to July 2025.

The Petitioner submitted a document on appeal containing a description of T-Y- Culture and Arts Association. The description indicates it is an organization with 36 members organized to promote Chinese culture as a non-profit social organization. The membership certificate states that the association brings together "social elites" to "make traditional and classical arts more deeply appreciated." The Petitioner did not show that the association's members are professionals as defined at 8 C.F.R. § 204.5(k)(2) or that being a professional is a requirement for membership.

For the above reasons, we conclude that the Petitioner has not met his burden of proof to show that he meets the requirements of this regulatory 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).

The plain language of the regulation calls for "evidence of recognition for achievements *and* significant contributions to the industry or field." As such, materials that identify an individual's achievements but not significant contributions to the industry or field cannot suffice to satisfy the regulatory requirements. *See Matter of Echeverria*, 25 I&N Dec. 512, 518 (BIA 2011) (holding that the use of the conjunction "and" in a series of regulatory requirements "is a clear indication" that one "must satisfy each of the [listed] requirements").

As evidence of this criterion the Petitioner submitted multiple letters of support from individuals familiar with his career in martial arts. The letter from Y-L- describes the establishment of [redacted] in the United States and their plans for the Petitioner if his visa is approved. The letter does not satisfy the regulatory requirements above.

The opinion letter from Professor M-R- describes the Petitioner's background and education in martial arts from 2013 to the present. The letter additionally described the Petitioner's apprenticeship in the

United States and teaching martial arts classes at a U.S. Elementary school in 2022. As stated above, this letter directly contradicts the employment letter from H-A-C- and casts doubts on the Petitioner's claim of full-time employment. The letter concludes by providing excerpts from the other letters of support provided by the Petitioner with this application. While the letter describes the Petitioner's achievements in his professional life it does not provide a sufficient description of his "significant contributions" in his field.

On appeal the Petitioner also provides a letter from J-Z- that describes his relationship with the Petitioner. The majority of the letter focuses on the writer's achievements and background rather than on the Petitioner's contributions to his field. The letter provides a list of individuals from whom the Petitioner has learned, describes the importance of preserving traditional martial arts, and compliments the Petitioner's skills as a teacher and performer. The letter concludes by discussing the Petitioner's involvement in founding [redacted] in the United States. The Petitioner has claimed and provides evidence supporting, his desire to be an instructor at [redacted] The letter from J-Z- is insufficient to establish that the Petitioner has made significant contributions to his field as required by the regulation.

The Petitioner also provided various awards for his performance in martial arts tournaments and a thank you letter from T-C-S-A- describing the Petitioner's efforts in providing lectures on Chinese culture across Taiwan. While these awards show the Petitioner's achievements in his field, they do not, in and of themselves, provide details of his significant contributions to his field. Collectively, the evidence provided in support of this criterium does not establish the Petitioner's substantial contribution to martial arts. Therefore, the petitioner has not met this criterion.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

III. NATIONAL INTEREST WAIVER

A. Substantial Merit and National Importance

Although the record does not demonstrate that the Petitioner qualifies for EB-2 classification under section 203(b)(2) of the Act, we will address the Director's determination that he did not establish his eligibility under the first prong of the *Dhanasar* analytical framework. The Director found substantial merit in the proposed endeavor but concluded that the record did not establish that the Petitioner's endeavor has national importance and therefore did not meet the first *Dhanasar* prong. The Director also concluded that the Petitioner did not establish that he was well-positioned to advance the proposed endeavor or that, on balance, it would be beneficial to the United States to waive the requirement of a job offer, and thus of a labor certification, under the second and third *Dhanasar* prongs. On appeal, the Petitioner asserts that he submitted enough evidence to establish eligibility, and that, by failing to give that evidence sufficient weight, the Director imposed an improperly strict standard of proof.

We adopt and affirm the Director's decision as it relates to the first prong of the *Dhanasar* framework. *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).

The Director's decision reflects a careful and thorough review and analysis of the Petitioner's claims and supporting evidence under the first prong of *Dhanasar*. The Petitioner broadly contends on appeal that the Director did not give due consideration to his proposal to "build" the first degree granting martial arts college in the United States and instead focused on his role as a martial arts instructor. However, the letter from Y-L-, the President of [redacted] where the Petitioner intends to work, indicates the Petitioner is to be hired as an instructor. The Petitioner has not provided evidence that he is a shareholder, board member, or would otherwise have a role in the formation or administration of the college. Even if the Petitioner had provided sufficient evidence that his role with the newly formed college was more than a faculty member, he has not established that the college itself would generate sufficient revenue or create sufficient U.S. jobs to rise to the level of national importance.

The Director correctly concluded that the Petitioner's teaching activities would not rise to the level of national importance. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the 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.* 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. While we acknowledge the Petitioner's contention that his knowledge of traditional Chinese culture and martial arts would contribute to the development of a successful society, as would any educational endeavor, he has not established that his proposed endeavor would have broader implications in the field of education or anthropology or impact anyone beyond the organization he works for and its students.

III. CONCLUSION

As the Petitioner has not met the requirements for EB-2 classification or 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.