U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28962813

Date: JAN. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an audio-video editor, filmmaker, and producer, seeks the second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner was ineligible for the EB-2 classification as an advanced degree professional or an individual of exceptional ability. She also determined a waiver of the required job offer, and thus of the labor certification, was not in the national interest as a matter of discretion. 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 an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

"Advanced degree" is defined as 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).

"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 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).

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). 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to determine 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. *See Matter of Chawathe*, 25 I&N Dec. at 369 (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality"). USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally*, 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

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 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As a preliminary matter, the Petitioner asserts on appeal that the Director's "denial letter does not provide specific reasons for [the] determination[s]" regarding his ineligibility for the EB-2 classification. We disagree. As noted, the Director first concluded in the denial that the Petitioner did not qualify for the EB-2 classification, either as a professional holding an advance degree or as an individual of exceptional ability. The Director identified and analyzed the evidence provided in support of these EB-2 avenues, discussed the collective shortcomings of the submitted evidence, and explained the reasons why the record did not establish the Petitioner's eligibility for the EB-2 visa category. Notably, the Petitioner presents arguments on appeal alleging that the Director erred in making several of the detailed determinations in the denial.

[1] *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).

When denying a petition, a director must fully explain the reasons for denial to allow a petitioner a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Based on our review of the record, we conclude that the Director did so here, and the Petitioner's allegations on appeal to the contrary are without merit.

We also note that, on appeal, the Petitioner points to a sentence in the denial in which the Director states, "USCIS has evaluated the evidence on an individual basis and determined that the evidence *does establish* that the petitioner meets at least three of the six criteria found at 8 C.F.R. Section 204.5(k)(3)(i)" (emphasis added). The Petitioner then notes "[the decision] confusingly states USCIS does not find the petitioner to be an individual of exceptional ability." Based on our review of the decision it appears the Director's first sentence erroneously excludes "not"—i.e., it was intended to read, "the evidence does not establish . . . ." Because the Director fully discussed the deficiencies of the evidence of record regarding the Petitioner's eligibility as an individual of exceptional ability—not only in her denial order, but also in the request for evidence (RFE) she issued prior to the denial of the petition—we conclude that the Director made a harmless error which has no negative impact in the adjudication of this appeal. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

For the reasons discussed below, we conclude that the Petitioner has not demonstrated his qualifications as an advanced degree professional or as an individual of exceptional ability. While we may not discuss every document submitted, we have reviewed and considered each one.

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

Based on our review, we agree with the Director that the Petitioner does not possess either a foreign degree equivalent of a U.S. advanced degree or a foreign degree equivalent of a U.S. baccalaureate degree with at least five years of progressive post-baccalaureate experience in the specialty. *Id.*

To qualify as an advanced degree professional, a petitioner relying on foreign education must have a single, foreign degree that equates to at least a U.S. baccalaureate degree. The regulations do not allow baccalaureate equivalents based on combinations of lesser educational credentials or of education and experience. *See Employment-Based Immigrant Petitions*, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to . . . have experience

equating to an advanced degree under the second [preference category], a [noncitizen] must have *at least* a bachelor's degree") (emphasis added).

The record reflects that in December 2010, the Petitioner earned a *Título de Licenciado* in physics from a university in Brazil. The academic records accompanying the Petitioner's certificate show that his program of study included courses taken in 2008, 2009, and 2010, which indicates that his *Título de Licenciado* is a three-year credential. Although the Petitioner provided an academic equivalency evaluation from [redacted] (S-) which states that the Petitioner's credential is the foreign equivalent of a U.S. bachelor's degree in physics, the record does not support this conclusion. The evaluation does not provide an analysis of the Petitioner's academic record, but simply lists his courses and includes a chart titled "Education System in Brazil"; this chart shows a "Bacharelado, Licenciado (Undergrad.)" as "4 – 6 yrs."

In cases involving foreign degrees, USCIS may favorably consider a credentials evaluation performed by an independent credentials evaluator who has provided a credible, logical, and well-documented case for an equivalency determination that is based solely on the individual's foreign degree(s). As in this case, opinions rendered that are merely conclusory and do not provide a credible roadmap that clearly lays out the basis for the opinions are not persuasive. *See* 6 *USCIS Policy Manual* E.9, https://www.uscis.gov/policy-manual/volume-6-part-e-chapter-9. Without more, the evaluation from S- does little to support the Petitioner's assertion that his *Título de Licenciado* is the foreign equivalent of a U.S. bachelor's degree. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. He has not done so here.

We also reviewed the American Association of Collegiate Registrars and Admissions Officers (AACRAO) EDGE database to determine whether the Petitioner's *Título de Licenciado* is comparable to a U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. For more information, visit https://www.aacrao.org/edge. The database provides the following concerning the Petitioner's three-year degree:

> The *2-* to *3-year Título de Licenciado (Licencciatura)* represents attainment of a level of education comparable to 2 to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis. The *4-year Título de Licenciado (Licencciatura)* represents attainment of a level of education comparable to a bachelor's degree in the United States.

According to EDGE, the Petitioner's *Título de Licenciado*, considered alone, is not the foreign equivalent of a U.S. bachelor's degree.

Similarly, the record includes the Petitioner's *Titulo de Especialista* for a "Pos-Graduação – *Lato Sensu* – MBA em Cinema" program; the documentation consists of a certificate and academic record for a program of study in cinema ending in July 2017. A credential evaluation report from S- lists the Petitioner's combined credentials (*Título de Licenciado* and *Titulo de Especialista*) as the U.S. equivalent of a "Bachelor of Science degree in Physics and a Postgraduate certificate in Cinema Business Administration." Again, the report does not provide an analysis of the Petitioner's academic record; the report shows a chart titled "Education System in Brazil" showing various education levels, including "Especialização (Graduate)" as "1 yrs" and "Mestre (Graduate)" as "1 – 2 yrs." Without

more, the evaluation lacks a logical, documented analysis sufficient to show that the Petitioner has earned the U.S. equivalent of either a bachelor's degree or an advanced degree based solely on his foreign education credentials. We conclude that these credential evaluations hold little probative value in this matter. *See Matter of Chawathe, supra.*

On appeal, the Petitioner points to the evaluation from S- in which the evaluator acknowledges that the Petitioner's *Titulo de Especialista* is not the foreign equivalent of a U.S. master's degree in the following discussion (quoted as written):

> While licentiate obtained by the applicant alone would not meet requirements for the 4 years of a baccalaureate, with the additional undergraduate-level study in the MBA 'lato sensu' program, we would consider this to be equivalent to a US bachelor's degree. The added year of this undergraduate coursework enables us to have both a completed benchmark (the 3-year licentiate) and 4 years of undergraduate coursework. While this coursework is not progressive in the specialty, and while the lato sensu program would not be considered equivalent to studies in a master's degree program, it does rise to both our benchmark and year-count limits for bachelor's degrees in the United States.

The evaluation from S- also does not support the Petitioner's assertions because while he discusses the total years of schooling that the Petitioner gained through obtaining these credentials, his conclusions do not bear out the Petitioner's contention that either credential considered on its own equates to at least a U.S. bachelor's degree.

The Petitioner points to an additional evaluation initially included in the record from [redacted] (G-) which provides the following analysis (quoted as written):

> Considering that [the Petitioner] with a three-year degree in Licentiate in Physics followed by more than five years of full-time work experience in the field of Film and Media Production is equivalent to a U.S. degree of Master of Fine Arts in Film and Media Production, it is my expert opinion that [redacted] with a *Licentiate in Physics, a Post-Graduation Lato Sensu Specialization Course in MBA in Cinema,* and 11 years of experience, has the equivalent of a U.S. degree of Master of Fine Arts in Film and Media Production awarded by regionally accredited universities in the United States.
>
> . . . .
>
> Under the provision of USCIS, the "3-for-1 Rule" states that three years of relevant work experience is equal to one year of education. Therefore, it can be determined that the beneficiary attained sufficient years of specialized training and work experience to equate to the college coursework in Film and Media Production.

This evaluation does not provide explanations of how the Petitioner's coursework and work experience in Brazil equate to the receipt of a U.S. bachelor's degree or advanced degree. The regulation at 8 C.F.R. § 204.5(k)(2) does not provide for a substitution of training or experience to be considered

as the equivalent of a bachelor's degree; both section 203(b)(2)(A) of the Act and the EB-2 regulations contemplate only a single bachelor's degree, not a combination of education and experience claimed as the equivalent, in aggregate, of a bachelor's degree. We also note that the evaluation from G- uses an argument to equate the Petitioner's work experience that does not apply to immigrant petitions but appears instead to rely on an unrelated regulatory provision reserved for certain nonimmigrant petitions. Credential evaluations are reviewed for advisory purposes only; if questionable in any way, USCIS may give them less weight. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r) 1988). While we have considered each of the evaluations provided by the Petitioner, they do not demonstrate that the Petitioner has earned the foreign equivalent of a U.S. bachelor's degree or an advanced degree.

Lastly, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign *Titulo de Especialista* is comparable to a U.S. master's degree. The database provides the following information concerning this education credential:

> CREDENTIAL DESCRIPTION
> [Specialist]. Awarded following programs of various lengths; most are at least 1 year long.
>
> CREDENTIAL ADVICE
> The *Especializaçãol Titula de Especialista* represents attainment of a level of education comparable to up to 1 year of graduate study in the United States.
>
> CREDENTIAL AUTHOR NOTES
> Professional development and specialization programs are considered *lato sensu* wide sense graduate level programs and following independent legislation. Such programs lead toward professional certificates, not graduate degrees. They require 1 to 2 or 3 years of study.

The information in the EDGE database indicates that the Petitioner's *Titulo de Especialista* equates to a professional certificate, as opposed to a graduate degree. Considering this information and the evidence of record, the Petitioner has not demonstrated that he has attained the foreign equivalent of a U.S. bachelor's degree or advanced degree. Therefore, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree pursuant to section 203(b)(2)(A) of the Act and 8 C.F.R. § 204.5(k)(2). Furthermore, as he does not hold at least a U.S. bachelor's degree or its foreign equivalent, the Petitioner has not demonstrated that he has at least five years of progressive *post-baccalaureate* experience consistent with 8 C.F.R. § 204.5(k)(2). Therefore, the Petitioner does not qualify for the EB-2 classification as an advanced degree professional.

B. Eligibility as an Individual of Exceptional Ability

As noted above, to demonstrate eligibility as an individual of exceptional ability, a petitioner must initially submit documentation that satisfies at least three of six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Director determined that the Petitioner met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B) but did not meet the remaining criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C)-(F).

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 determined that the Petitioner's membership with the Union of Workers in Broadcasting and Television Companies in the State of Sao Paulo (the union) did not demonstrate that he has a license to practice a profession or certification for a particular profession or occupation. On appeal, the Petitioner quotes articles from the statute of the Syndicate of Workers in Radio Broadcasting and Television Companies in the State of Sao Paulo (the syndicate) which describe its formation and that it was "constituted for the purpose of defense and legal representation of the professional category of workers in radio broadcasting companies, active or retired in the State of Sao Paulo." The Petitioner states that his membership "constitutes certification for the occupation of workers in Radio Broadcasting and Television companies in the state of Sao Paulo, Brazil, affiliated to the interstate Federation of Workers in Broadcasting and Television Companies – FITERT."

The Petitioner's membership card depicts registration, enrollment, identification, and taxpayer numbers; issuance, validity, and affiliation dates; a website and phone number; and the Petitioner's occupation as a radialista, or radio broadcaster. Neither the card nor the quoted articles from the syndicate indicate that membership constitutes either a license to practice a profession or a certification for an occupation. We also note that the occupation(s) for which the Petitioner claims to have exceptional ability is not that of radio broadcaster, but that of an audio-video editor, filmmaker, and producer; as such, his membership is not indicative of the Petitioner's claim that he holds a license to practice or certification within the occupations in which he seeks employment through this petition. We agree with the Director that the record does not satisfy this criterion.

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

The Director determined that the Petitioner did not meet this criterion because the translations for his tax returns did not include a certification from the translator indicating that the translations are accurate and complete and that he or she is competent to translate from the foreign language into English. On appeal, the Petitioner states that the record does include a certification from the translator and that, because the Director did not challenge his salary, he has met this criterion. Upon review, we observe that the record does include a certification from the translator for the Petitioner's tax documents.

These documents list the fiscal year as 2019 and the tax reference year as 2018, and they show earnings totaling R$ 137,430.05. The record also includes printouts for career openings at the Library of Congress for the positions of Quality Assurance Specialist and Audio Preservation Specialist; these vacancy announcements are from 2022 and show salaries ranging from $74,950 to $116,788 per year. It is not clear whether these announcements were submitted as evidence to show that the Petitioner's earnings in Brazil demonstrate his exceptional ability. The record does not include salary information for careers similar to the Petitioner's career during the years identified on his tax documents, nor has the Petitioner offered other documentation showing how his earnings compare to the earnings of others in his field to demonstrate his claimed exceptional ability. The record does not satisfy this criterion.

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

The Director determined that the Petitioner did not meet this criterion because he did not provide documentation showing the requirements for membership in the union. On appeal, the Petitioner reiterates his previous contention that his membership should be considered a license to practice an occupation under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) as well as for *membership* under this criterion. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Accordingly, a professional association is one which requires its members to be members of a profession as defined in the regulation.

The evidence of the Petitioner's union membership does not show that his membership requires the attainment of, at minimum, a baccalaureate degree related to radio broadcasting, the occupation designated on his membership card. The record does not include other information specifically about the union concerning its membership requirements to establish that it qualifies as a professional association for EB-2 eligibility purposes. We also incorporate our previous discussion under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) that the Petitioner has not adequately established how his union membership as a radio broadcaster relates to his prospective occupation(s) as an audio-video editor, filmmaker, and producer. We agree with the Director that the record does not satisfy 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).

The Director determined that the Petitioner did not meet this criterion. The Director acknowledged that, while the "evidence reflects that the petitioner performed admirably for his employer, and for the individuals [to whom] he and his team provided their services," the evidence did not demonstrate that the Petitioner has been recognized for achievements and significant contributions to the industry or field by any entities listed within the criterion.

On appeal, the Petitioner cites to several previously submitted letters and asserts they serve as evidence that he meets the criterion, including one from a former colleague, Mr. P-, and his Florida business partner, Mr. H-. We observe that these letters from colleagues and clients of the Petitioner speak to his editing skills, creativity, and professionalism, among other talents he has used to successfully complete projects. The letters show that the Petitioner has production experience in the education sector and in the entertainment, real estate, restaurant, automotive, and airline industries. The letters do not, however, adequately address how the Petitioner has garnered recognition for achievements and significant contributions to his industry or field by peers, governmental entities, or professional or business organizations. For instance, Mr. P- explains in his letter:

> I first met [the Petitioner] in 2019 when he joined the team as an editor in the program called [redacted]. . . . His work demanded creative capacity, and wisdom in the development of different videos and languages (institutional, documentary, journalism, [soap] opera, announcements, and internet), for this it is fundamental to have the ability to assemble the shooting materials, and technical knowledge in different TV programs,

> to know how to work with the image and its colors, the audio and soundtrack. [The Petitioner] fulfilled all the requirements.
>
> I believe in [the Petitioner's] capacity to edit new episodes and to connect new subjects. [The Petitioner] is organized, and he knows how to explore all possibilities of the work.

As another example, Mr. H- explains in his letter:

> In 2022, [the Petitioner] joined my team to promote my companies through commercial videos on the internet [and] helped to overcome our sales goal for that date, which was $70,000.
>
> [The Petitioner] has shown professionalism, exceptional knowledge of equipment and audiovisual language, disposition, innovative ideas, and administrative capacity. He has the vision and the general knowledge of how a communicative enterprise works from the best and necessary equipment, the planning, screenwriting, production, video recording, editing, soundtrack to color adjustment, whether these videos are commercial, institutional, documentaries, cultural, entertainment, or journalistic.

While these authors and other letter-writers laude the Petitioner's skills, without more detailed explanations about the Petitioner's specific contributions to the industry or field that are supported by documentary evidence, the letters in the record do not sufficiently support the Petitioner's assertion that he has met this criterion. *Chawathe, supra*. Here, the Petitioner has not met his burden to establish that he has garnered recognition for achievements and significant contributions to the industry or field as contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner has not established that he meets three of the six evidentiary criteria under 8 C.F.R. 204.5(k)(3)(ii), and so he has not met the initial requirement to demonstrate his eligibility as an individual of exceptional ability. Thus, we need not conduct a final merits determination of whether he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

In sum, the Petitioner has not established eligibility for the EB-2 classification as a member of the professions holding an advanced degree or, alternatively, as an individual with exceptional ability. Therefore, he is ineligible for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 has not established that he meets the requirements for EB-2 classification. His petition will remain denied.

ORDER: The appeal is dismissed.