U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31672206

Date: JUL. 8, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft maintenance specialist, 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 he qualifies for the underlying EB-2 classification or 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.

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 the requisite degree of expertise and will

[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.

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. 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.

Id.

II. ANALYSIS

Upon review of the record, the Petitioner does not indicate or establish that he qualifies as a member of the professions holding an advanced degree. Thus, the record must establish that he qualifies as an individual of exceptional ability in aviation or aircraft maintenance.

A. 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

[3] *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).

determination). *See also, generally,* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual.

At the time of filing, the Petitioner indicated that he satisfied four exceptional ability criteria, relating to: (1) the academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A); (2) license to practice at 8 C.F.R. § 204.5(k)(3)(ii)(C); (3) membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E); and (4) recognition at 8 C.F.R. § 204.5(k)(3)(ii)(F). In response to the Director's request for evidence (RFE), the Petitioner added that he also satisfied an additional exceptional ability criterion relating to salary at 8 C.F.R. § 204.5(k)(3)(ii)(D).

In denying the petition, the Director addressed the five criteria the Petitioner claimed to satisfy. The Director concluded that the Petitioner submitted evidence to satisfy one of the criteria relating to license to practice. On appeal, the Petitioner asserts that his evidence satisfies the remaining four criteria relating to: (1) academic degree; (2) salary; (3) membership in professional associations; and (4) recognition.

After reviewing the evidence, we agree with the Director that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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 a copy of his degree certificate as a Systems Technician from [redacted], awarded in November 2013, which is the equivalent of an Associate of Science degree in Systems Technology from an accredited institution of higher education in the United States. On appeal, the Petitioner asserts that he "submitted further evidence that demonstrates how his diploma in Computer Technician [*sic*] relates to the field of aviation or aircraft maintenance given that airplanes are technical and are all computerized" in response to the Director's RFE. He contends that this evidence was overlooked and not given proper review. We agree with the Director's determination that the Petitioner did not establish that, or explain how, this degree relates to his area of claimed exceptional ability in aviation or aircraft maintenance.

In the initial filing brief, the Petitioner stated the following:

> Aircraft Maintenance Specialists work with avionics electronics systems, which are instruments and computers that control engine, flight and other primary functions including aircraft navigation and radio communications. These systems are now an[] integral part of aircraft maintenance design and have had a huge influence on aircraft capability. The job of Aircraft Maintenance Specialists is to maintain and repair these systems. With the increasing use of technology, more time is spent repairing computerized controls and other electronic systems. In addition, Aircraft Maintenance Specialists may need to analyze and develop solutions for complex electronic problems. [The Petitioner's] Aircraft Maintenance Technician degree and a Computers Technician [*sic*] diploma allow him to better understand, create, and execute processes that promote the development of technology within the aviation industry. Thus, [the

> Petitioner's] degree in his field of expertise specifically applies to his work as an Aircraft Maintenance Specialist.

In response to the RFE, the Petitioner indicated that his Associate degree in Systems Technology allows him to "have a firm technological base for his specialization in aircraft maintenance." However, although the Petitioner contends on appeal that evidence demonstrating how his degree relates to the field of aviation or aircraft maintenance was submitted in response to the RFE, the record does not include any evidence to corroborate his statements and, therefore, he has not met his burden of proof. This general and unsupported assertion does not overcome the Director's determination. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

Further, the Petitioner's academic transcript for his degree as Systems Technician indicates that he completed the following courses:

> 1) Apply office automation tools, social and collaborative networks in accordance with the project to be developed.
> 2) Understand English texts in writing and aurally [*sic*].
> 3) Implement the network structure according to a pre-established design based on international technical standards.
> 4) Promoting appropriate interaction with oneself.
> 5) Carry out preventive and predictive maintenance to extend the functioning of computer equipment.
> 6) Learning results of the practical stage.

This academic transcript does not reflect aviation or aircraft maintenance-related coursework and the Petitioner has not provided any information specifically identifying how this coursework directly relates to his area of claimed exceptional ability.

Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated he meets this regulatory 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).

In response to the RFE, the Petitioner submitted copies of two pay stubs from [redacted] in Colombia, both in the position of "heavy maintenance technician," for the periods of September 2019 and December 2020. The Petitioner also submitted an excerpt from the website TuSalario.org, printed March 9, 2023, as comparative evidence of the average salary for airplane mechanics in Colombia.

In denying the petition, the Director noted that the information provided from TuSalario.org did not include average salary statistics for 2019 or 2020, the relevant periods on the pay statements of the Petitioner, to show how the Petitioner's earnings in 2019 and 2020 would compare to the average salary of an aircraft mechanic in Colombia during the same period. On appeal, the Petitioner contends that "[n]ormally, salary scales increase from year to year," which "demonstrates that [the Petitioner's] 2019-2020 salary must have been high in 2019-2020 if it is higher than the 2023 salary scale."

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of their claimed exceptional ability relative to others working in the field.[4] The Petitioner's pay stub for the pay period of September 1, 2019 to September 30, 2019, specifically lists his "base rate" as Col$ 1.652.365, and indicates a gross pay of Col$ 4.550.510 and net pay of Col$ 3.623.987. In addition to the "base salary," the pay stub lists additional earnings for "no absenteeism incentive[;] holiday/Sunday compensation[;] transportation allowance[;] employee meal benefit[;] non-salary compensation bonus[;] uniforms laundry allowance[;] healthcare special allowance[;] nightly surcharge[; and] holidays enjoyed" to make up the gross pay of Col$ 4.550.510 in September 2019. The Petitioner's pay stub for the pay period of December 1, 2020 to December 31, 2020, specifically lists his "base rate" as Col$ 1.709.041, and indicates a gross pay of Col$ 4.376.521 and a net pay of Col$ 3.988.890. In addition to the "base salary," the pay stub lists additional earnings for "holiday/Sunday compensation[;] transportation allowance[;] employee meal benefit[;] compensation bonus[;] uniforms laundry allowance[;] healthcare special allowance[;] nightly surcharge[; and] legal service bonus" to make up the gross pay of Col$ 4.376.521 in December 2020. The website excerpt from TuSalario.org indicates that "aircraft engine mechanics and repairers," with four years of experience in this job and working 48 hours per week,[5] earn an average gross monthly salary of Col$ 2.545.642.[6] However, this evidence is not persuasive.

First, the excerpt from TuSalario.org does not include any information regarding how the average gross monthly salary listed is calculated or how it obtains the information to make up the comparative data. Second, the excerpt from TuSalario.org does not specifically indicate whether the average gross monthly salary listed is a base rate or a rate including additional incentives, such as those earned by the Petitioner. If it is a "base rate," the evidence does not demonstrate that the Petitioner has commanded a higher salary relative to others working in the field. Third, while we note that the excerpt from TuSalario.org submitted was printed by the Petitioner in March 2023, it does not indicate the dates for which the listed gross monthly salary applies to demonstrate that it is relevant to the time periods covered by the Petitioner's wage and earnings evidence. The Petitioner contends on appeal that because salary scales normally increase each year, his 2019 and 2020 salary must have been high as it is higher than the 2023 salary scale provided in the excerpt from TuSalario.org. However, again, this general and unsupported assertion does not overcome the Director's determination.

Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated he meets this regulatory criterion.

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

The Petitioner submitted a copy of his official membership card as a "regular member" for the Professional Aviation Maintenance Association (PAMA). In response to the RFE, the Petitioner provided an excerpt of PAMA's website and a letter from the PAMA President both indicating the following:

[4] *See* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).
[5] It appears that the Petitioner entered this qualifying information to get the listed results.
[6] It further indicates that the minimum gross monthly salary is Col$ 1.622.249 and the maximum is Col$ 4.779.260.

> To be eligible for regular membership, an applicant must be certificated under Federal Aviation Administration (FAA) Title 14 Code of Federal Regulations (CFR) part 65, subpart D—Mechanics or Subpart E—Repairman, or foreign national aviation authority equivalent, or hold a Federal Communications Commission General Radio and Telephone certificate. Regular members are granted voting rights and may serve as an officer or director of the association.

The Director concluded, and we agree, that the evidence provided does not establish that PAMA qualifies as a professional association as contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(E).[7] The evidence presented is not sufficient to demonstrate that PAMA has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association.[8]

Accordingly, the Petitioner has not demonstrated he meets 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 Petitioner submitted six recommendation letters from individuals, all dated November 2021, and one expert opinion letter, dated May 2023, to demonstrate his recognition for achievements and significant contributions to the field of aviation or aircraft maintenance. These include: (1) a letter from C-A-Q-T-,[9] Co-founder and General Manager of [redacted] (2) a letter from J-L-R-, Aeronautical Engineer; (3) a letter from C-Z-L-, Aeronautics Maintenance Technician, [redacted] (4) a letter from J-D-V-S-, Aeronautics Maintenance Technician, [redacted] (5) a letter from O-F-C-, Senior Services Supervisor, [redacted] (6) a letter from J-R-C-; and (7) an expert opinion letter from T-S-, Aviation Capstone Coordinator & Lecturer. The information contained in each letter is detailed in the Director's decision and incorporated here by reference.

The Director noted that the recommendation letters from individuals lacked detailed explanations about the Petitioner's specific contributions to the aviation industry and were not supported by documentary evidence. The Director also noted that the expert opinion letter did not specifically discuss the Petitioner's eligibility as an individual of exceptional ability under this criterion (or any other criterion) and opined only on whether the Petitioner satisfies the *Dhanasar* analytical framework for a national interest waiver. The Director concluded, and we agree, that the record does not include information about the Petitioner's specific contributions to the aviation industry and that the letters submitted were not supported by independent, documentary evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. On appeal, the Petitioner contends that the Director's reasoning that the letters do not offer a sufficiently detailed explanation about the Petitioner's specific contributions to

[7] The Petitioner does not address the Director's determination on this criterion on appeal.

[8] The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "Profession means 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 in the occupation."

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

these projects supported by documentary evidence "does not allow for proper decision making especially since the [*USCIS Policy Manual*] does not give proper guidelines as to what the letters should entail." The Petitioner also highlighted an error in the Director's decision where the Director included contradictory statements regarding the sufficiency of the evidence for this criterion and indicated that "when comparing both statements, it demonstrates that there were mixed reviews of [the Petitioner's] letters showing that a proper review of his evidence was not done." We disagree.

While we acknowledge the contradictory language highlighted by the Petitioner in the Director's decision, it appears to be a typographical error. In reading the Director's decision, specifically as it relates to this criterion, it is clear that the Director determined that the letters submitted did *not* sufficiently mention, document, or analyze the ways in which the Petitioner has made significant contributions to his field, or otherwise explain how he has been recognized by peers for achievements in their chosen field. Further, the Petitioner's contention that because the *USCIS Policy Manual* does not provide guidelines for the information that should be included in recognition letters, it "does not allow for proper decision making" is erroneous.

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"). While the letters from individuals provide details about the Petitioner's work on specific projects for his employer and with colleagues, and are very complimentary, the evidence does not show that his work has had an impact beyond his employers, clientele, and their specific projects at a level indicative of achievements and significant contributions to the industry or field of aviation or aircraft maintenance, as required by the plain language of this criterion.[10]

Therefore, the Petitioner has not demonstrated he satisfies this regulatory 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.[11]

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that he is an advanced degree professional or that

[10] Formal recognition in the form of certificates and other documentation that are contemporaneous with the individual's claimed contributions and achievements may have more weight than letters prepared for the petition recognizing the individual's achievements. *See* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

[11] Because the Petitioner has not met his burden of proof to satisfy at least three of the initial criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.

he has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Because 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 the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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 has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability.

ORDER: The appeal is dismissed.