U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40138466

Date: JUL. 08, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a fitness and wellness coordinator, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the record establishes that the Petitioner qualifies as an individual of exceptional ability, but that the record does not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit

[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).

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,[2] 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.

Matter of Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Petitioner is a fitness and wellness coordinator whose proposed endeavor is to open and operate a company to provide services as a consultant and trainer to reduce health issues among children and adolescents. The Director determined that the Petitioner qualifies for EB-2 classification as an individual of exceptional ability but did not identify which of the six criteria the Petitioner met. To establish exceptional ability, the Petitioner must meet at least three of six criteria under 8 C.F.R.§ 204.5(k)(3)(ii) and then establish a degree of expertise significantly above that ordinarily encountered in the field under 8 C.F.R. § 204.5(k)(2). The Petitioner claims that he meets five of the six criteria. Upon de novo review, we conclude the Petitioner has not met any of the criteria to establish EB-2 classification as an individual of exceptional ability for the reasons discussed below.[3]

A. Ten Years of Full-Time Experience in the Occupation

The Petitioner submitted evidence of his work experience asserting he has at least ten years of full-time experience in the occupation for which he is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B). As stated above, the Petitioner is a fitness and wellness coordinator whose proposed endeavor is to open and operate a company to provide services as a consultant and trainer. Although he provided letters from past employers that detail over ten years of experience, none of the letters indicate that he was employed on a full-time basis. Further, 8 C.F.R. § 204.5(k)(3)(ii)(B) states that the Petitioner's evidence must show that he has at least 10 years of full-time experience in the occupation for which he is being sought. While the letters detail a total of 12 years of experience; 10 years were as a professional soccer player, and 2 years were as the assistant manager of a soccer team. Here, the Petitioner does not propose to work as a professional soccer player or coach; but as a fitness and wellness coordinator owning his own business. In fact, the Petitioner specifically states in his response

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[3] We note that the Petitioner does not assert eligibility for EB-2 classification as a member of the professions holding an advanced degree nor does the record contain evidence of an advanced degree. Therefore, our analysis will only be in relation to his eligibility for EB-2 classification as an individual of exceptional ability.

to the request for evidence (RFE), "[i]t is very important to understand that [the Petitioner] is not planning to work as a soccer manager, or simply as a coach in the sport industry." Therefore, although he documents over 10 years of experience, the record does not establish the experience was full-time or for the occupation for which he is being sought and therefore he does not meet this criterion.

B. License to Practice the Profession

The Petitioner further asserts that he has a license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C). The Petitioner initially provided evidence of a card issued by the U.S. Soccer Learning Center. He contends that this is a "learning management system designed to house all U.S. Soccer educational programs." However, the record does not contain evidence to demonstrate that this card constitutes a license to practice the profession. In response to the RFE, the Petitioner submits evidence of four online soccer "coaching licenses" he received from the U.S. Soccer Federation. We note, however, that all the "coaching licenses" were obtained in April 2025. The underlying petition was filed in March 2024. The Petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Subsequent developments cannot retroactively cause the Petitioner to have been eligible at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, the record establishes he obtained these "coaching licenses" after filing the petition and therefore they cannot be considered in our analysis. Accordingly, he does not meet this criterion.

C. Salary or Other Remuneration

In response to the RFE, the Petitioner states that his success in sports has led to monetary awards that establish he has commanded a salary, or other renumeration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D). In addition, the *USCIS Policy Manual* states "[t]o satisfy this criterion, the evidence must show that [the Petitioner] has commanded a salary or remuneration for services that is indicative of his or her claimed exceptional ability relative to others working in the field." *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual. The Petitioner highlights the employment letters in the record as evidence of his eligibility for this criterion. The employment letters detail his salary for each employer; however, they do not speak of monetary awards. Further, the record does not contain additional evidence in order to compare his salary to others in the field. Therefore, we are unable to determine that his salary demonstrates exceptional ability, and he does not meet this criterion. 8 C.F.R. § 204.5(k)(3)(ii)(D).

D. Membership in Professional Associations

The Petitioner submits evidence of membership in *Asociacion Unica de Futbolistas Profesionales de Venezuela* in support of his assertion that he meets the requirements of membership in a professional association. 8 C.F.R. § 204.5(k)(3)(ii)(E). He describes this association as self-regulated to represent the rights and needs of professional soccer players in Venezuela. We first note that the record is unclear in regard to the Petitioner's current membership status in this association. The membership card in the record expired on December 31, 2016, and his curriculum vitae states that he is a "former member" of this association. However, the Petitioner also submitted a letter from the board of directors for the Merida State Soccer Association; which states he is currently a member of the association. The Petitioner must resolve inconsistencies in the record with independent, objective

evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the record contains unresolved inconsistencies on this matter and therefore, we cannot determine that he is a current member of this association. Additionally, we note that the term "profession" is defined at 8 C.F.R. § 204.5(k)(2) 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 record does not show that the above organization requires that its membership body be comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association. Therefore, we cannot conclude that he is a member of a professional association. Accordingly, he does not meet this criterion.

E. Achievements and Significant Contributions to the Industry

The Petitioner contends that he has submitted 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 record contains various letters from individuals who have personal knowledge of the Petitioner's soccer career. These letters demonstrate his experience as a professional soccer player; however, they do not show significant contributions made to the industry. For example, in the letter written by E-A-C-, the author highlights the Petitioner's "important achievements both for the institution and personally, being [a] champion on repeated occasions and obtaining the champion goal award in some tournaments." Although the letter discusses the Petitioner's personal accomplishments and his role in helping the [redacted] win, the letter does not detail how these constitute significant contributions to the industry. Another letter applauds the records the Petitioner is credited with within [redacted] such as scoring the [redacted] goal for the institution by a player from the [redacted] of the country, [redacted] of the opening tournament in 2009, and scoring the goal that achieved the last victory made on [redacted] Although we acknowledge his experience and his soccer career, the record does not demonstrate how these records are significant contributions to the industry. The remaining letters further discuss his dedication, his soccer skills, and his leadership, but do not establish that the Petitioner has made significant contributions to the soccer industry and therefore this criterion has not been met. Further, the Petitioner intends to be a wellness and training coordinator and not a soccer player. Therefore, the record does not show that the Petitioner has been recognized for his achievements and significant contributions to his intended field of wellness and training, as required under the criterion.

F. Eligibility and Final Merits Determination

Due to the issues discussed above, we conclude that he has not met the required three of the six criteria to meet an exceptional ability determination. Accordingly, we withdraw SCOPS' finding of exceptional ability and conclude that the record does not establish his eligibility for EB-2 classification as an individual of exceptional ability. Because the Petitioner has not established that he meets the minimum required criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that he possesses a degree of expertise significantly above that ordinarily encountered in his field.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. The Petitioner has not established he qualifies for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework, we reserve our opinion regarding these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

We conclude by a preponderance of the evidence that the Petitioner has not established that he qualifies as an individual of exceptional ability, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification and therefore is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.