U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31491605

Date: JUL. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a senior project manager, seeks employment-based second preference (EB-2) immigrant classification, as an individual of exceptional ability, and a national interest waiver of the job offer requirement attached to this classification. See section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Workers (national interest waiver), concluding the Petitioner had not established eligibility for the underlying EB-2 immigrant classification and 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. 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 a national interest waiver, a petitioner must first show eligibility 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.

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

[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.

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 Petitioner did not claim that he qualifies for EB-2 classification as a member of the professions possessing an advanced degree under section 203(b)(2)(A) of the Act at the time of filing but asserted he was an individual of exceptional ability in the sciences, arts, or business. The Director determined the Petitioner met three of the six regulatory criteria in 8 CFR § 204.5(k)(3)(ii), but the evidence in its totality did not demonstrate the Petitioner has a degree of expertise significantly above that ordinarily encountered in the field. As a result, the Director concluded the Petitioner had not established eligibility for the underlying EB-2 immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business.

A. Advanced Degree Professional

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). 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. Id.

In completing Form ETA 750, Part B, which requests information regarding all schools, colleges or universities attended, the Petitioner indicated he completed a degree as an electromechanical technician, a yearlong certificate program in international business administration at a U.S. school, a three-month project management program in Austria, and a six-month management program in Brazil. The Petitioner also submitted an evaluation report stating his degree as an electromechanical technician is equivalent to a U.S. high school degree. In response to a request for evidence (RFE) issued by the Director, the Petitioner made no assertions with respect to whether he is an advanced degree professional, rather arguing he is an individual of exceptional ability in the sciences, arts, or

[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).

business. On appeal, the Petitioner does not claim that he qualifies for EB-2 classification as a member of the professions possessing an advanced degree.

Because the Petitioner has not submitted evidence that he holds an advanced degree or foreign equivalent degree, or a bachelor's degree followed by five years of progressive post-baccalaureate experience, he has not established his eligibility for EB-2 classification as a member of the professions possessing an advanced degree under section 203(b)(2) of the Act.

B. Exceptional Ability

Exceptional ability is analyzed under a two-step process. First 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)(A)-(F). When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i). The Director determined that the Petitioner met the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E), but the totality of the evidence did not demonstrate that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in his field.

On appeal, the Petitioner submits a brief and re-submits evidence presented in the record below. Upon de novo review, as discussed below, we withdraw the Director's finding that the Petitioner established 8 C.F.R. § 204.5(k)(3)(ii)(E) and agree with the Director that the Petitioner did not establish the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C), (D), and (F). The Petitioner has therefore not established at least three of the six regulatory criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) and thereby has not demonstrated he is an individual of exceptional ability in the sciences, arts, or business.

The Director properly concluded that the Petitioner had not established that he has a license to practice the profession or certification for a particular profession or occupation to demonstrate exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(C). In support of this criterion the Petitioner submitted information of his membership at the Project Management Institute (PMI) in the record below. According to the documentation provided by the Petitioner on PMI, it is a project management organization that provides its members with access to knowledge, networks, and resources. In response to the Director's RFE, counsel acknowledged that membership in PMI is not required to practice the Petitioner's occupation but holds significant value in the project management field. On appeal, the Petitioner asserts that members of PMI are professionals and PMI membership is highly desired by employers. However, these assertions and the current record do not establish that his certificate of membership is a license to practice his occupation or is a requirement for employment as a project manager.

The Petitioner does not claim and did not provide evidence that he has commanded a salary, or other renumeration for services, which demonstrates exceptional ability under 8 CFR § 204.5(k)(3)(ii)(D) in the record below or on appeal. As a result, he has not established this criterion.

As stated, we withdraw the Director's determination that the Petitioner established 8 CFR § 204.5(k)(3)(ii)(E) because the Petitioner also has not provided sufficient evidence of his membership in professional associations to demonstrate his exceptional ability. In support of this criterion the

Petitioner submitted documentation for PMI and the Institute of Electrical and Electronics Engineers (IEEE), and IEEE's subsociety Power and Energy Society (PES). We note that the Petitioner's card for IEEE reads "society affiliate." According to the bylaws of IEEE, submitted in the record by the Petitioner, this designation "refers to individuals who are not IEEE members but who are entitled to participate in certain activities of the Society." For this reason, we will only analyze whether the Petitioner's membership in PMI meets this criterion. 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." The PMI documentation in the record does not demonstrate that a U.S. bachelor's degree or foreign equivalent is a requirement for membership. Therefore, the Petitioner has not established that he meets this criterion.

As the Director found, the Petitioner has not provided sufficient evidence of his recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations to demonstrate exceptional ability under 8 CFR § 204.5(k)(3)(ii)(F). In the record below, the Petitioner provided a letter by the director of finance and administration at his former employer, dated July 2022, who testified to working with the Petitioner on a project management team. He stated that the Petitioner improved the company's practice in mechanical and electrical equipment, managed routines using the project management office body of knowledge (PMBOK) system, assisted an internal working group on transferring technology from European to Brazilian equipment by developing local suppliers. He described one project they worked on where the Petitioner, for example, used practice recommendations under the PMBOK system, prepared and produced management reports, ensured integration with other teams such as sales and engineering, monitored project timeliness and managed claims, e.g., with suppliers and customers. The Petitioner also submitted another letter by his former mentor and the owner of a project management firm he worked with in 2001 on a thermoelectric power plan project. The author described the Petitioner's responsibilities which included analyzing and approving service line contracts, supervising phases of technical projects, training new employees, and managing construction of a hydraulic power plant, which involved complex project design because it required the building of tunnels and penstocks and using flow releases from a large reservoir of water. The author also described working with the Petitioner from 2006 to 2015 but restates many of the duties listed in the other recommendation letter and does not add additional information. While both authors are highly complimentary of the Petitioner, neither detail how the Petitioner's contributions to bettering their employer's practices or successfully fulfilling his duties amount to significant contributions to the broader industry or field of project management as required by the plain language of this criterion.

Accordingly, the Petitioner has not established three out of the six evidentiary criteria of 8 C.F.R. § 204.5(k)(3)(ii) to satisfy step one of the analysis, and we therefore withdraw the Director's determination to the contrary.

In determining that the Petitioner had not established EB-2 classification as an individual of exceptional ability, the Director conducted a final merits determination and concluded the evidence in its totality did not show that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in the field. We agree. In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence. See generally 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual (explaining, as guidance, how to evaluate evidence

in the exceptional ability context). The relevant evidence, which includes the Petitioner's education, his membership in PMI, his affiliation with IEEE, his letters of recommendation, and his opinion letters, do not establish in totality that the Petitioner has an exceptional ability.

On appeal, the Petitioner again highlights his two recommendation letters from former colleagues and asserts the letters demonstrate he has contributed to the field of energy project management. In support of his assertion, he quotes the letters' description of his duties. However, as described above, the recommendation letters do not provide details on how the Petitioner contributed to project management more broadly and merely commends the Petitioner's performance of his job duties, which does not establish the Petitioner has an expertise significantly above that ordinarily encountered by others in his field. The Petitioner also describes the importance of the projects he has worked on, giving the example of one project that provided electricity to over 400,000 customers, and described the monetary value of the projects he worked. However, he does not describe what control or influence he had in the projects' successes such that it could be considered his success and how that success contributed to the industry.

The Petitioner also asserts that his PMI membership demonstrates his dedication to project management and reflects that his training is above what is typically expected and explains that membership in PMI is desired by employers. However, the evidence submitted by the Petitioner on PMI does not demonstrate that PMI has membership requirements above those commonly found by project managers working in the field such that his PMI membership reflects his exceptional ability. The Petitioner also emphasizes his affiliation with IEEE and explains that the requirements for membership in the IEEE make it a professional organization, and asserts that we should weigh his membership in the totality of the evidence. However, as discussed above, the Petitioner has not established he is a member of the IEEE. While we acknowledge his affiliation with IEEE, the Petitioner does not describe how this affiliation with the organization reflects that he possesses a degree of expertise significantly above that ordinarily encountered in the field.

With respect to the expert opinion letters in the record, the Petitioner asserts that the Director erred in not considering them. We note that the letters appear to be written to support the Petitioner's national interest waiver claim under the Dhanasar framework. One expert opinion letter, dated May 2023, is authored by an associate teaching professor in aerospace engineering at [redacted] who described the Petitioner's current employer as a global solutions provider committed to growth on a global scale and explained the duties of electromechanical technicians and their role in renewable energy infrastructure, highlighting the growing shortage of these technicians. Based on their experience, the author attested to the Petitioner's technical expertise but did not, for example, describe how that expertise is above those found in other project managers, or how the Petitioner's contributions to his job are on a global scale, or how the Petitioner's background in electromechanics makes him exceptional. Similarly, another expert opinion letter, dated September 2022, authored by an associate professor of electrical engineering at [redacted] added some detail to the Petitioner's job duties and noted the Petitioner's growing level of responsibility in his work. The author of the September 2022 letter described the Petitioner as highly qualified, as having knowledge and ability to contribute to power and energy generation based on his previous services, and claimed the Petitioner is one of few professionals in energy generation capable of reaching his high-level goals. However, the generality of the author's descriptions does not provide sufficient detail to support his conclusion that the Petitioner is one of few capable of reaching high-level goals.

We also acknowledge the Petitioner's education, which is equivalent to a high school degree, and training certificates in business administration, program management, and management. However, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning is not in and of itself sufficient evidence of exceptional ability. Section 203(b)(2) of the Act. Here, the Petitioner's degree and certificates evidence he has the minimum qualifications to perform in his field and does not demonstrate he possesses a degree of expertise significantly above that ordinarily encountered in the field.

Accordingly, the Petitioner's evidence does not demonstrate in its totality that he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business to establish exceptional ability, as required under 8 C.F.R. § 204.5(k)(2). He therefore has not established eligibility for the EB-2 immigrant classification.

Because the national interest waiver cannot be approved unless the Petitioner qualifies for the underlying EB-2 classification, we will reserve the Petitioner's arguments regarding the Director's determination that he also did not establish eligibility for a national interest waiver under the first and third prongs of the Dhanasar framework. 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).

III. CONCLUSION

The Petitioner has not established that he qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. Therefore, the Petitioner has not shown eligibility for the underlying EB-2 classification. Without such a showing, the Petitioner cannot qualify for the national interest waiver of the job offer attached to that classification.

ORDER: The appeal is dismissed.