U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31381433

Date: JUL. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chief executive officer (CEO) of a lighting event design group, 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 a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director specified the Petitioner did not demonstrate he is eligible for the underlying visa classification; his proposed endeavor is of substantial merit and national importance; he is well-positioned to advance her proposed endeavor; and, on balance, waiving the job offer requirement would benefit the United States. 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. 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).[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 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. ADVANCED DEGREE AND EXCEPTIONAL ABILITY

A. Member of the Professions Holding an Advanced Degree

The Director determined the Petitioner did not establish he qualifies for EB-2 classification as either as an advanced degree professional or an individual of exceptional ability. The Director found that, though the Petitioner submitted evidence of several completed courses and certificates, he did not submit evidence of a bachelor's degree or foreign equivalent degree. The regulations at 8 C.F.R. § 204.5(k)(2) require submission of a bachelor's degree or foreign equivalent degree to qualify as an advanced degree professional. Petitioners may not combine experience, training, or education to substitute this requirement. *See id.* Accordingly, we concur with the Director's determination that the Petitioner has not established he holds an advanced degree for EB-2 classification. The Petitioner does not dispute this finding on appeal.

[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 individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[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).

B. Exceptional Ability

On appeal, the Petitioner asserts he is a professional of exceptional ability, as he meets at least three of the regulatory criteria for this classification. A petitioner is initially required to submit documentation that satisfies at least three of the following criteria:

- An official academic record showing the noncitizen's possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- Letter from current or former employers showing that the noncitizen has at least 10 years of full-time experience in the proposed occupation;
- A license to practice the profession or certification for the profession or occupation;
- Evidence of the noncitizen's receipt of a salary or other renumeration demonstrating exceptional ability;
- Proof of membership in professional associations; or
- 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).

In denying the petition, the Director determined the Petitioner did not fulfill any of the exceptional ability criteria listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). After reviewing the evidence, we agree with the Director that the record does not support a finding the Petitioner meets at least three criteria to demonstrate exceptional ability for EB-2 visa classification.

1. Official Academic Record

The Petitioner previously submitted a certificate from [redacted] for participating in a web design course from September 2000 to November 2000, for a total of 160 hours. The Petitioner also submitted similar certificates for his participation in a webinar with [redacted] and training with [redacted]. On appeal, the Petitioner relies upon these previously submitted documents in asserting he meets this criterion. However, these certificates do not constitute official academic records[4] and the Petitioner has not demonstrated that [redacted] or [redacted] constitute "a college, university, school, or other institution of learning" under 8 C.F.R. § 204.5(k)(3)(ii)(A). Accordingly, the Petitioner has not established he meets the plain language of this criterion.

2. Ten Years of Full-Time Experience

The Petitioner previously submitted a May 2023 letter from the Petitioner's partner at [redacted] stating the Petitioner has been working full-time as a director since February 2019, two subcontractor

[4] The Petitioner also submitted untranslated documents from [redacted] The Petitioner is required to submit a copy of documents accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). Absent a certified English translation, we are unable to consider this evidence on appeal.

agreements for lighting projects, and a May 2023 letter from the Petitioner's partner at [redacted] stating the Petitioner had been working full-time as a director from November 2009 to November 2012. Although the letters from the Petitioner's partners both characterize the Petitioner's work as full-time, both letters also indicate the Petitioner was responsible for the creation and execution of holiday lighting projects including Christmas, New Year's Eve, Carnival, Easter, Mother's Day, Father's Day, and Children's Day. It is not clear that the holiday-related job duties articulated by the Petitioner's partners support the indication that the Petitioner's work was on a full-time basis throughout the year. In addition, the two subcontractor agreements do not address whether the work performed by the Petitioner was part- or full-time.

On appeal, the Petitioner asserts the letters from his partners constitute "substantial evidence of his comprehensive experience and proficiency in lighting design." Though the Petitioner acknowledges that some of his roles have been part-time, he contends we should "recognize the cumulative experience amassed across various positions and companies." While we do not question the Petitioner's varied experience in holiday lighting design, the Petitioner has not demonstrated that he has accumulated at least ten years of full-time experience, as required under the regulations at 8 C.F.R. § 204.5(k)(3)(ii)(B).

3. License or Certification to Practice

The Petitioner submitted before the Director contracts from several clients, including the [redacted] and the [redacted] These contracts indicate the clients' satisfaction with the work performed and the Petitioner's compliance with technical standards in his work. On appeal, the Petitioner relies upon these previously submitted documents in asserting he meets this criterion. However, the Petitioner does not assert that a license or certification is required to practice his profession or that he possesses such a license or certification. Accordingly, the Petitioner has not demonstrated he has a license to practice the profession or certification for the profession or occupation under 8 C.F.R. § 204.5(k)(3)(ii)(C).

4. Salary or Other Renumeration

The Director indicated the Petitioner did not submit any evidence that he has commanded a salary or other renumeration for services that demonstrates exceptional ability. The Petitioner does not contest this finding on appeal or otherwise submit related documentation. We concur with the Director that the Petitioner has not demonstrated he meets this criterion.

5. Additional Criteria and Eligibility

As the Petitioner has not met his burden of satisfying at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not determine whether he satisfies the additional criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E), (F), and reserve our opinion on this matter.[5]

[5] *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 alternate issues on appeal where applicants do not otherwise meet their burden of proof).

Similarly, as the record does not establish the Petitioner qualifies for EB-2 classification either as an advanced degree professional or an individual of exceptional ability, further analysis as to whether he is also eligible for a national interest waiver under *Matter of Dhanasar* would serve no meaningful purpose. We also reserve our opinion on this matter.

The appeal will be dismissed for the above-stated reasons.

ORDER: The appeal is dismissed.