U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30967677

Date: JUN. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a helicopter pilot, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 the Petitioner is an individual of exceptional ability, that the proposed endeavor is nationally important, or that it would be beneficial to waive the requirements of a job offer. 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

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). When assessing exceptional ability, USCIS uses a two-step analysis. *See generally 6 USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual. First, a petitioner must submit at least three of the following types of evidence:

- 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;
- Letters 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 remuneration 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). If these types of evidence do not "readily apply" to a beneficiary's occupation, a petitioner may establish eligibility by submitting "comparable evidence." 8 C.F.R. § 204.5(k)(3)(iii).

Meeting at least three criteria does not, in and of itself, establish eligibility for this classification.[1] If a petitioner does so, we will then conduct a final merits determination. Wherein, USCIS evaluates all evidence, considering the petition in its entirety. *See generally 6 USCIS Policy Manual*, *supra,* at F.5(B)(2). The Agency must determine whether a petitioner, by a preponderance of evidence, has demonstrated a beneficiary's possession of a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

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.

II. ANALYSIS

A. Exceptional Ability

The first issue to be addressed is whether the Petitioner established his eligibility for EB-2 classification. The Petitioner claims eligibility as an individual of exceptional ability.[2]

As a preliminary matter, the Petitioner asserts on appeal that in denying the petition, the Director "imposed novel substantive and evidentiary requirements." An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v). Although the Petitioner asserts that he has provided evidence sufficient to demonstrate his eligibility for a national interest waiver, he does not specify, as required, how the Director erred or what factors in the decision were erroneous.

The Director determined that the Petitioner met three of the six criteria within the exceptional ability determination. However, in a final merits analysis, the Director determined that the evidence did not establish the Petitioner's eligibility as an individual of exceptional ability.

Meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. *See* 6 *USCIS Policy Manual, supra,* at F.5(B)(2). In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id.* The officer must determine whether or not the petitioner, by a preponderance of the evidence, has

[1] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally 6 USCIS Policy Manual*, *supra,* at F.5(B)(2).

[2] The Petitioner has not asserted at any time in these proceedings that he is a member of the professions holding an advanced degree.

demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.* For the reasons discussed below, we conclude that the Petitioner does not qualify as an individual of exceptional ability.[3]

On appeal, the Petitioner argues that as he met three of the six criteria, he established that he is an individual of exceptional ability. The Petitioner did not provide further argument on how he qualifies as an individual of exceptional ability or address how or if the Director erred in their final merits determination. As outlined above, more is required to establish a degree of expertise significantly above that ordinarily encountered in the profession. Meeting the criteria requirement merely advances a petitioner along to a final merits determination.

Upon de novo review of the record, we agree with the Director that the Petitioner established three of the six criteria. Nonetheless, considering all the evidence, the Petitioner has not established by a preponderance of the evidence that he is an individual of exceptional ability.

The evidence presented demonstrates that the Petitioner is a member of his profession and has met the general qualifications for individuals working in his occupation. Yet, considering the totality of the record, he has not demonstrated that he has skills significantly above that ordinarily encountered in his field. For example, his training certificates and licensure are common for those working in the industry as minimum qualifications to enter the field and maintain competitive skills. Similarly, the Petitioner's resume and employment confirmation letters affirm his employment history. His work history indicates that he has worked as a helicopter pilot and flight instructor with several different companies over the course of his career.

Furthermore, the letters of recommendations provided only denote the Petitioner's work in the context of his association with each letter's writer. Additionally, several of them make generalized statements about the Petitioner's skills but do not specify how the Petitioner has a significant degree of expertise above what is encountered in the wider community of pilots. For example, although one friend stated that the Petitioner was "lauded for his dedication and commitment to safety," they do not explain how the Petitioner's safety record set him apart from others in the field. Another friend wrote that the Petitioner was making a "significant impact" in the field as he was "lauded by various peers and companies," but did not explain how he was making this claimed impact or in what way or why he was being lauded by companies and peers.

The Petitioner also submitted one advisory opinion letter from [redacted] that discusses the Petitioner's work history. As a matter of discretion, we may use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the advisory opinion is of little probative value as Mr. [redacted] mainly recites the Petitioner's education and work history and then makes sweeping conclusory statements regarding the Petitioner's expertise. He provides little objective basis for his opinions, nor does he explain how the Petitioner's personal work history makes

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

him a "respected leader among his contemporaries." Nothing in the letter states how his work experience translates into someone who has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In summation, none of the evidence provided shows the impact of the Petitioner's work in the field, such as examples of the implementation of his strategies, methodologies, or innovations, or how the Petitioner's work is significantly above others helicopter pilots. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376.

Therefore, we agree with the Director that considering all the evidence, the Petitioner has not established by a preponderance of the evidence that he is an individual of exceptional ability. As the Petitioner has not shown that he is as an individual of exceptional ability and has not asserted that he is an advanced degree professional, the documentation in the record does not establish eligibility for the underlying EB-2 classification.

B. National Interest Waiver

As the Petitioner has not established eligibility for the EB-2, 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 qualifies as an individual of exceptional ability, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.