U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31134856

Date: JUN. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an environmental and sustainability professional, seeks classification as a member of the professions holding an advanced degree or of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so. *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v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner qualified for classification as an individual of exceptional ability. 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 appeals of immigration benefit decisions de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Contrary to the Petitioner's assertions, we are not constrained by the Director's conclusions when we consider the merits of the Petitioner's appeal. Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest, but only if a petitioner categorically establishes eligibility in the EB-2 classification.

The regulation at 8 C.F.R. § 204.5(k)(2) defines exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii):

> (A) 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;
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> (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
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> (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
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> (E) Evidence of membership in professional associations; or
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> (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

But meeting at least three criteria does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If we conclude that a petitioner has an advanced degree or is of exceptional ability such that they have established their eligibility for classification as an immigrant in the EB-2 classification, we evaluate the national interest in waiving the requirement of a job offer and thus a labor certification.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, *see supra*. *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. AUTOPEN SIGNATURE

We observe upon our de novo review that the Petitioner signed the underlying Form I-140, Immigrant Petition for Alien Worker by creating a signature using an autopen. The petition was not properly filed as a result.

The regulation at 8 C.F.R. § 103.2(a)(2) provides that "[u]nless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS [U.S. Citizenship and Immigration Services] is one that is either handwritten or, for benefit request filed electronically as permitted by the instructions to the form, in electronic format."[1]

USCIS policy explains that a valid signature is "any handwritten mark or sign made by a person" and such signature must be made by the person who is the affected party with standing to file the benefit request to signify that "[t]he person knows of the content of the request and any supporting documents; [t]he person has reviewed and approves of any information contained in such request and any supporting documents; and [t]he person certifies under penalty of perjury that the request and any other supporting documents are true and correct." *See generally* 1 *USCIS Policy Manual* B.2(B), https://www.uscis.gov/policymanual. A person's signature on an immigration form establishes a strong presumption that the signer knows and has assented to its contents, absent evidence of fraud or other wrongful acts by another person. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (citing *Thompson v. Lynch*, 788 F.3d 638, 647 (6th Cir. 2015); *Bingham v. Holder*, 637 F.3d 1040, 1045 (9th Cir. 2011). The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant.

The *USCIS Policy Manual* provides that in "general, any person requesting an immigration benefit must sign their own immigration benefit request, and any other associated documents, before filing it with USCIS." *See generally* 1 *USCIS Policy Manual*, *supra*, at C.1 (citing to 8 C.F.R. § 103.2(a)(2)). Although a signature may be considered valid if it is "photocopied, scanned, faxed, or similarly reproduced....the copy must be of an original document containing an original handwritten signature, unless otherwise specified." *See generally* 1 *USCIS Policy Manual*, *supra*, at B. If someone acting on behalf of a petitioner's signatory, such as someone from their attorney's office, performs the function of electronically applying a signature to a required form, that act nullifies the filing because it is not a valid signature, and it is not properly signed under penalty of perjury. Ultimately, even if a filing party presents a photocopy of a form to USCIS, that photocopied form must contain a filing party's original signature that is consistent with how the person normally signs their name because "[a]n applicant or petitioner must sign his or her benefit request." 8 C.F.R. § 103.2(a)(2).

The *USCIS Policy Manual* further explains that the agency interprets the regulatory term "valid signature" to mean a signature that "is consistent with how the person signing normally signs his or her name." *See generally* 1 *USCIS Policy Manual*, *supra*, at B (explaining that the appearance of the signature on USCIS forms must be preponderantly consistent with that person's normal signature).

In the same way that one person signing a declaration "for" another person carries no evidentiary force, neither will an image of a signature duplicated using some electronic means or method. Without

[1] Because this Form I-290B was not electronically filed, none of the provisions governing electronic filings apply.

the signatory's actual and personal signature as the declarant, the declaration under the penalty of perjury on immigration forms has no evidentiary force. *See in re Rivera*, 342 B.R. 435, 458-459 (D. N.J. 2006). Moreover, if we determine that a benefit request does not contain a valid or a proper signature, we reject, deny, or dismiss it without providing an opportunity to correct or cure a deficient signature. 8 C.F.R. § 103.2(a)(7)(ii)(A); *see generally* 1 *USCIS Policy Manual*, *supra*, at A.

And whilst the "regulations do not require that the person signing submit an 'original' or 'wet ink' signature on a petition, application, or other request to USCIS," we do "not accept signatures created by a typewriter, word processor, stamp, auto-pen, or similar device." *See generally* 1 *USCIS Policy Manual*, *supra*, *at B. See also generally* 1 *USCIS Policy Manual*, *supra*, at A (stating that "[e]xcept as otherwise specifically authorized, a benefit requestor must personally sign his or her own request before filing it with USCIS"). USCIS has implemented these regulations and attendant policies "to maintain the integrity of the immigration benefit system and validate the identity of benefit requestors." *See generally* 1 *USCIS Policy Manual*, *supra*, at A.

As stated previously, the Petitioner signed the underlying Form I-140, Immigrant Petition for Alien Worker by creating a signature using an autopen. Consequently, the petition was not properly filed. And, if the petition was not properly filed, this appeal is not properly before us and we could dismiss this appeal on this ground alone for the reasons set forth above without any additional discussion. But, for the reasons listed below, the petition would not have been approved even if the Petitioner had properly signed the Form I-140 because they have not demonstrated that they are eligible for classification in the EB-2 permanent immigrant category as a noncitizen of exceptional ability.

III. EXCEPTIONAL ABILITY

The Petitioner is an environmental and sustainability development professional seeking to demonstrate eligibility in the EB-2 classification based on their exceptional ability.[2] A Petitioner must demonstrate expertise significantly above that ordinarily encountered to show that they are of exceptional ability. We agree with the Director's conclusion that the Petitioner is not of exceptional ability and therefore categorically ineligible for the EB-2 permanent immigrant classification.

The Director concluded that the Petitioner met three of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii).[3] Specifically, the Director concluded that the Petitioner demonstrated they met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B),[4] and (E) but, upon final examination of the record in totality, did not demonstrate a degree of expertise significantly above that ordinarily encountered in their field to merit a determination of exceptional ability.

[2] The Petitioner does not claim eligibility for, nor do they submit evidence seeking, classification in the EB-2 permanent immigrant category as an advanced degree professional.

[3] The Petitioner did not submit evidence of a license to practice the profession or certification for a particular profession or occupation to meet the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(C). The Petitioner also did not submit evidence demonstrating they had commanded a salary, or other remuneration for services demonstrating exceptional ability to meet the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(D).

[4] We conclude the Petitioner has submitted sufficient evidence demonstrating at least ten years of full-time experience in the occupation they seek to fulfill meeting the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(B).

We conduct a final merits determination only after determining a Petitioner met three of the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). And we consider evidence demonstrating eligibility under the respective criteria the Petitioner in their totality. But the Director's final merits determination evaluated evidence under criteria the Director had concluded the Petitioner had not met. Since this was clearly erroneous, we hereby withdraw the Director's final merits determination.[5]

So, whilst we agree with the Director's conclusion the Petitioner did not demonstrate eligibility for EB-2 permanent immigrant classification, we do so on a different basis. Upon de novo review, we conclude we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification because the Petitioner has not demonstrated that they met at least three of the six threshold criteria contained at 8 C.F.R. § 204.5(k)(3)(ii) for the reasons set forth below.

> *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).

We disagree with the Director's conclusion the Petitioner met this criterion and hereby withdraw it. To demonstrate eligibility under this criterion, the Petitioner submitted 12 certificates demonstrating completion of 12 specific individual courses. The certificates contained the logos of several United States and international institutions of higher education (University of Michigan, University of Alberta, Technical University of Denmark, University of Colorado Boulder, Duke University, and Duke University). The certificates were issued by [redacted]

The criterion requires that a certificate be issued by a college, university, school, or other institution of learning. [redacted] is not an institution of learning.[6] And the specific certificates the Petitioner submitted only demonstrate the completion of an individual and singular "online non-credit course." There is no evidence in the record demonstrating that the certificates are like a degree, diploma or other award which typically reflect completion of a curriculum, earning of credits, and are issued from a college, university, school, or other institution of learning.

Moreover, the evidence does not sufficiently describe how the courses the Petitioner participated in are related to their claimed area of exceptional ability. The topics of the non-credit courses the Petitioner participated in are diverse and disparate. The Petitioner is an environmental and sustainability development professional. It is not readily apparent from the certificates the Petitioner presented how the topics of the non-credit courses the Petitioner participated in relate to their area of exceptional ability. Whilst we observe on de novo review that some of the topics contain buzz words like "renewable," "green building" "climate change" and "sustainability," we also observe others are

[5] It would serve no legal purpose to remand this appeal to the Director to conduct a final merits determination because our decision today concludes the Petitioner has not met the threshold requirement of demonstrating the evidence they submitted supports eligibility under three of the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii).

[6] Whilst [redacted] states that it offers certain programming that culminates in the award of a degree, diploma, certificates, or similar awards, those credentials would ostensibly be issued by United States and international institutions of learning based on credits applied towards a degree. But those credentials are not the endpoint of all [redacted] programming. As stated earlier, the courses the Petitioner's certificates correspond to are in fact "online non-credit courses" not reflecting the award of a degree, diploma, certificate, or similar award from an institution of learning.

on topics named "Electric Industry Operations and Markets," "Human Health Risks, Health Equity, and Environmental Justice," and "Introduction to the Arctic: Climate." The certificates do not describe, and the record does not contain, any other official academic record to shed light on how this diverse and disparate range of topics related to the Petitioner's claimed area of exceptional ability in environmental and sustainability development. So, we conclude the evidence does not support the Petitioner's eligibility under this criterion.

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

We disagree with the Director's conclusion that the Petitioner met this criterion and hereby withdraw it. The Petitioner's membership in the Florida Association of Environmental Professionals (FAEP), Solid Waste Association of North America, International Society of Sustainability Professionals, National Association of Environmental Professionals, and Associação Nacional de Gestores Ambientais (ANAGEA) is not sufficient evidence of membership in a professional association.

The evidence the Petitioner submitted establishes the Petitioner's membership in the associations. But the evidence does not specify if a bachelor's degree is a minimum requirement for membership as a professional in the association. So, we are unable to evaluate whether membership in the associations is reserved for professionals in the field of environmental and sustainability development.

And even if the organizations did require members of the association to have bachelor's degrees in related fields required to enter the profession, the Petitioner would not be eligible for membership because they have not demonstrated that they have earned a bachelor's degree in the field of environmental and sustainability development or related such that they could enter the profession and qualify for membership in the relevant association.

So, the evidence in the record does not materially, relevantly, or probatively establish that the associations the Petitioner is a member of are professional association as that term is contemplated in the regulations, and the Petitioner has not met this 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 several support letters/letters of recommendation and award certificates to document the recognition of their achievements and significant contributions to their field.[7]

The evidence the Petitioner submits does not meet the standard of proof because it does not satisfy the basic standards of the regulations. *See Matter of Chawathe*, 25 I&N Dec. at 374 n.7. The regulation requires evidence of recognition of achievements and significant contributions. When read together with the regulatory definition of exceptional ability, the evidence of recognition of achievement or significant contributions should show expertise significantly above that ordinarily encountered in the field.

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

The record does not adequately support the Petitioner's assertion that their "achievements and significant contributions" were recognized as significantly above those ordinarily encountered in their industry or field. For example, the letter of [redacted] a high-ranking diplomat in their country's foreign service, states the Petitioner "dedicates his career to the development of unique projects, new techniques, and education." But they do not specify examples of the Petitioner's development of unique projects, new techniques, and education and how it would describe an expertise significantly above that ordinarily encountered. And whilst the writer has had "several conversations" with the Petitioner throughout the years, it is unclear how these conversations showcase an expertise significantly above that ordinarily encountered on the basis that they may have informally informed a high-level engagement with ranking counterparts in the foreign service of other nations.

The letter of [redacted] describes the Petitioner's coordination of a project to capture and burn biogas for a sanitary landfill. The writer describes the Petitioner's work as an "interconnected network of PAD pipelines drilled in surface trenches in the ground." Specifically, the writer describes the Petitioner's "horizontal capture technique" crediting it with "30% of gains in capturing and flaring biogas and obtaining Carbon Credits." It is not patent from the evidence in the record how a 30% gain as described by the writer is an exceptional achievement above that ordinarily encountered in the field or a realized project objective based on competent prosecution of assigned job duties.

The letter of [redacted] testified to the importance of the work the Petitioner performed and their utilization of "superficial horizontal capture." But they did not adequately describe any achievements or significant contributions above that ordinarily encountered. Or, if "superficial horizontal capture" is a technique of note, how it is an achievement or a significant contribution above that ordinarily encountered in the field.

A letter from [redacted] credits the Petitioner with conducting projects and developing techniques that have promoted improvements on the combat of serious climatic problems, identifying the reduction of pollutant gases like methane. However, it is not sufficiently evident what techniques the Petitioner utilized and how they were achievements or a significant contribution above that ordinarily encountered in the field. Or in other words, it is not apparent how the reduction of the cost of projects by 25% and incrementing biogas collection results by 30% is an achievement or significant contribution above that ordinarily encountered in the field.

And the letter of [redacted] verifies the work the Petitioner consulted with them about and speaks of the Petitioner and their work conduct effusively. The writer does not credit the Petitioner with any achievements or significant contributions above that ordinarily encountered in the field.

The letters, in sum, reflect that the Petitioner is a seasoned professional whose competence and reliability as an employee, consultant, colleague, or partner is valued and appreciated. But the letters, along with the remaining evidence in the record, did not evidence any achievement and significant contributions significantly above that ordinarily encountered in the field required to demonstrate the Petitioner's exceptional ability.

So, we conclude that the evidence does not support the Petitioner's eligibility under this criterion.

IV. CONCLUSION

The Petitioner has not established eligibility in at least three of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). So, they cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). And we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification. In addition, we need not reach a decision on whether, as a matter of discretion, the Petitioner is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible). The appeal is dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.