U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31381486

Date: JUNE 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a mechatronics engineer, 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 the Petitioner held an advanced degree, nor was he an individual of exceptional ability, nor that a waiver of the job offer requirement is in the national interest. 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 establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification 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. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

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v. Garland, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

- 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. ANALYSIS

The Director found that the Petitioner neither established that he has an advanced degree nor that he is an individual of exceptional ability, and as such did not establish that he qualifies for EB-2 classification. The Director further found that the Petitioner did not establish eligibility under any of the three required prongs of the Dhanasar analytical framework, and therefore did not establish that a waiver of the classification's job offer requirement is in the national interest.

A. Qualification for EB-2 classification

On appeal, the Petitioner does not dispute the Director's determination that he is ineligible for EB-2 classification as a member of the professions holding an advanced degree. Instead, the Petitioner asserts that he qualifies for EB-2 classification as an individual of exceptional ability. "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). An individual 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).[2] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[3] If a petitioner does meet at least three criteria, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the individual is 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. The Director found that the Petitioner met only two of the six initial criteria and, as a result, that he was ineligible for EB-2 classification as an individual of exceptional ability. For the reasons provided below, we agree with the Director and conclude that the Petitioner does not meet the initial evidentiary requirements for classification as an individual of exceptional ability. We evaluate each of the regulatory criteria in turn.

> 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).

As evidence of meeting this criterion, the Petitioner submitted a copy of his vocational high school diploma as an electrical and electronic technician and letter attesting to completion of five additional

[2] 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).

[3] 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 F.5(B)(2), https://www.uscis.gov/policy-manual.

training courses.[4] The Director accepted this as evidence to meet this criterion, as it relates to engineering, the Petitioner's stated area of exceptional ability. We agree with the Director's finding that the Petitioner has established eligibility that he meets this criterion.

> 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. 8 C.F.R. § 204.5(k)(3)(ii)(B).

As claimed evidence of meeting this criterion, the Petitioner initially submitted two employment letters that provided the requisite dates of employment but did not state whether the Petitioner worked full-time. In response to a request for evidence (RFE), the Petitioner furnished additional employment letters specifying that the Petitioner has ten years of experience, and worked full-time, in the engineering field. We agree with the Director's finding that the Petitioner meets this criterion.

> A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

This criterion requires "[a] license to practice the profession or certification for a particular profession or occupation." The Director found that no evidence was submitted to meet this criterion. On appeal, the Petitioner did not furnish evidence of a license to practice the profession or certification for a particular profession or occupation.

A petitioner can submit comparable evidence to establish eligibility if the regulatory standards do not readily apply but must explain 1) why he has not submitted evidence that would satisfy the criteria set forth in 8 C.F.R. 204.5(k)(3)(ii); and 2) why the evidence he has submitted is "comparable" to that required under 8 C.F.R. 204.5(k)(3)(ii). See generally 6 USCIS Policy Manual F.5(B)(2). General assertions that any of the six objective criteria do not readily apply to the Petitioner's occupation are not acceptable. Id.

On appeal, the Petitioner asserts that "electromechanics technician(s) and mechatronics technologists(s) typically need either an associate degree or post-secondary certificate degree to get their certifications" and points out that Petitioner's academic record shows the attainment of various training course certifications as well as "specialized certifications in the field of electrical and electromechanical systems installation that allows him to practice in the U.S." The Petitioner provided an employer's letter stating that he completed training courses in Field service management; SL 70 labeler installation; Equipment Modularity Fundamentals, SINCRO non-conformity management; and Microsoft PowerPoint. However, the Petitioner has not sufficiently demonstrated that the evidence he submitted is comparable to having a certification or license to practice the profession.

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[4] We reviewed the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE). According to EDGE, the diploma represents attainment of a level of education comparable to completion of a vocational or other specialized high school curriculum in the United States. We consider EDGE to be a reliable source of information about foreign credential equivalencies. See Confluence Intern., Inc. v. Holder, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); Tisco Group, Inc. v. Napolitano, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); Sunshine Rehab Services, Inc. No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also Viraj, LLC v. Holder, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013). See https://www.aacrao.org/edge/country/italy for information regarding the education system in Italy.

First, the Petitioner has not established that his completion of a vocational high school diploma as an electrical and electronic technician is comparable to a license or certification to practice his occupation.

Secondly, we also find that the Petitioner did not demonstrate that taking five additional training courses is comparable to obtaining certification or licensure. Although the Petitioner claims that these training courses establish his exceptional ability in engineering, the record does not sufficiently demonstrate that the completion of these training courses show the same caliber of expertise as receiving a license to practice the profession or a certification for a particular profession. Licensure to practice a profession and certification for a profession or occupation generally demonstrate a level of knowledge or skill associated with the related occupation. Here, the Petitioner has not provided any supporting evidence to establish the requirements, if any, for taking additional training courses. The Petitioner's general assertions, without more, are not probative evidence and do not demonstrate that taking five additional training courses post-high school is comparable to obtaining a professional license or certification commensurate with the criterion. The Petitioner has also not shown that these training courses "allow[] him to practice in the U.S." Therefore, the Petitioner did not demonstrate that he meets this criterion through the submission of comparable evidence.

We conclude that the Petitioner's unsupported assertions, and absent the submission of the specific certifications he references, are not sufficient to meet his burden of proof for this criterion. See Matter of Chawathe, 25 I&N Dec. at 375-76. Therefore, we conclude that the Petitioner has not provided sufficient documentary evidence to establish this criterion.

> Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner submitted letters from employers, pay statements, and tax documents. In response to an RFE, the Petitioner submitted additional tax documents, pay statements, and wage comparisons for the job title "electronics technician" from talent.com, salary.com, and indeed.com. The documentation indicates that the Petitioner was a senior field service engineer with responsibilities including managing installation projects, supervising technicians, and ensuring compliance with industry standards. The wage comparisons for "electronics technician" do not meet the Petitioner's burden to demonstrate he commanded a salary demonstrating exceptional ability for a senior field service engineer. Moreover, he has not established whether his wages include additional pay for overtime, hazard pay, or other additional amounts that would increase his earnings but would be unrelated to whether he demonstrates exceptional ability. For these reasons, we conclude that the Petitioner has not established that the salary ranges represent an accurate salary comparison, nor has he established that the salary difference between the stated average salary and the Petitioner's salary is due to the Petitioner's exceptional ability.

As such, we conclude that the Petitioner has not provided sufficient documentary evidence or information to establish this criterion.

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

The Petitioner does not assert that he meets this criterion. Accordingly, we conclude that the Petitioner has not provided sufficient documentary evidence to establish 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 does not assert that he meets this criterion. Accordingly, we conclude that the Petitioner has not provided sufficient documentary evidence to establish this criterion.

Therefore, the Petitioner has established that he satisfies only two of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner does not satisfy at least three of the criteria, we need not conduct a final merits determination to evaluate whether he has achieved the degree of expertise required for exceptional ability classification. As such, the Petitioner does not qualify as an individual of exceptional ability. Having determined that the Petitioner does not qualify as an individual of exceptional ability, we conclude that the Petitioner has not demonstrated eligibility for the underlying EB-2 classification.

B. Eligibility for a National Interest Waiver

The next issue is whether the Petitioner has established that a waiver of the classifications' job offer requirement is in the national interest. Because the Petitioner has not established that he meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether he is eligible for, and merits as a matter of discretion, a waiver of that classification's job offer requirement. 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).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(3). Because the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, we conclude that the Petitioner has not established eligibility for a national interest waiver. We reserve our opinion regarding whether the Petitioner has satisfied any of the three prongs of the Dhanasar analytical framework.

ORDER: The appeal is dismissed.