U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36982835

Date: MAR. 19, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an IT specialist, seeks employment-based second preference (EB-2) immigrant classification, 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's eligibility for the requested national interest waiver. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. 8 C.F.R. § 204.5(k)(2). 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. *Id.*

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

[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).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual. 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. *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,[2] 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. EB-2 Immigrant Classification

The Petitioner claimed to qualify for the underlying EB-2 immigrant classification as an alien of exceptional ability. While the Director's decision does not address the Petitioner's eligibility for the underlying EB-2 immigrant classification, we acknowledge that in the request for evidence (RFE), the Director determined, without discussion, that the Petitioner qualified for the requested EB-2 immigrant classification as an advance degree professional. For the reasons below, we disagree. Accordingly, on remand, the Director should evaluate the evidence to determine if it establishes the Petitioner's eligibility for EB-2 immigrant classification as an alien of exceptional ability.

A. Advanced Degree Professional

The Petitioner submitted a copy of his [redacted] diploma in computer networks, received after completing two-and-a-half years of study. According to the American Association of Collegiate Registrars and Admissions Officers' Electronic Database for Global Education (EDGE), the [redacted] represents the attainment of education comparable to 2 to 3 years of university study in the United States.[3] As such, the record does not establish the Petitioner attained a U.S. bachelor's degree or a "foreign equivalent degree" as required by the regulation at 8 C.F.R. § 204.5(k)(2).

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

[3] The EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. *See generally* American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, https://www.aacrao.org/edge.

B. Exceptional Ability

The Petitioner claimed to satisfy five of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii) related to attainment of a degree, diploma, or certificate in the area of exceptional ability; ten years of full-time experience in the occupation sought; salary or remuneration demonstrating exceptional ability; membership in a professional association; and recognition for achievement and significant contributions to the industry.[4] Additionally, he claimed to submit comparable evidence to 8 C.F.R. § 204.5(k)(3)(ii)(C), relating to having a license to practice the profession or certification for an occupation. Because the Director determined that he established eligibility for EB-2 immigrant classification as an advanced degree professional, the Director did not evaluate his claims relating to eligibility for the underlying classification as an individual of exceptional ability.

On remand, the Director should review the evidence in the record and determine whether the record establishes the Petitioner meets at least three of the regulatory criteria related to exceptional ability. In doing so, the Director should evaluate the evidence and fully explain how the evidence in the record does or does not establish each criterion. For example, the only evidence in the record relating to the Petitioner's claims of commanding a salary that demonstrates exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(D) are letters confirming his salary in the last months of his employment with two companies and a printout from payscale.com identifying the average annual salary for information technology specialists in Brazil. Accordingly, on remand the Director may want to consider whether the evidence confirming only his monthly earnings for the last months of his employment is sufficient to establish the Petitioner's annual income. And the Director may want to consider whether the comparative evidence indicating the average salary across Brazil is a valid point of comparison.

Similarly, regarding the Petitioner's claim of membership in a professional association, the Director may want to consider whether the evidence in the record, which indicates that [redacted] requires its members to "adhere[] to a code-of-ethics, [and] continual[ly] demonstrate[] professional development" is sufficient to establish the association is a "professional association" as contemplated by the regulation. Specifically, the Director may evaluate whether this evidence sufficiently demonstrates that the association is a "professional association" considering the regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" to include occupations whose minimum requirement for entry is a U.S. baccalaureate degree or its foreign equivalent.

The Director may also want to consider if the Petitioner has properly made a comparable evidence claim relating to 8 C.F.R. § 204.5(k)(3)(ii)(C) by first considering whether the Petitioner established this criterion does not apply to his occupation, and if so, whether the completion of a diploma and an individual Microsoft course is comparable to the attainment of a license or certification.[5] Additionally, the Director should evaluate whether the evidence and letters discussing the Petitioner's employment and the trainings he conducted for his former employer constitute significant contributions to the field, rather than establishing that the Petitioner competently performed his prior positions.

[4] *See* 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B), (D), (E) and (F).
[5] *See generally* 6 *USCIS Policy Manual*, *supra,* at F.5(B)(2).

In sum, the Director should consider whether the evidence in the record establishes the Petitioner meets at least three of the regulatory criteria related to exceptional ability and, if necessary, fully explain how the evidence in the record does or does not establish each criterion. If the evidence does satisfy at least three of the criteria, the Director should then conduct a final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field and would, as a result, meet the exceptional ability standard as a threshold issue prior to considering eligibility for a national interest waiver.

III. NATIONAL INTEREST WAIVER

If the Director determines that the Petitioner has established eligibility for the underlying EB-2 immigrant classification, they should then determine whether the Petitioner is eligible for a national interest waiver under the *Dhanasar* analytical framework. We note that an officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

The Petitioner intends to work in the United States as an IT specialist to enhance the cybersecurity for U.S. enterprises, and reduce the risk of cyber attacks, data breaches, and financial losses. In denying the petition, the Director concluded that the Petitioner did not establish the national importance of his proposed endeavor without providing an explanation for their conclusion. On remand, the Director should review the record and determine whether, for example, the potential prospective impact of his specific endeavor, which appears to be limited to his immediate employers and/or customers, would result in broader implications at a level commensurate with national importance.

Regarding *Dhanasar's* second and third prongs, the Director provided similarly brief discussions without analyzing the evidence in the record and explaining their reasoning. For example, in evaluating whether the Petitioner is well-positioned to advance his proposed endeavor, the Director focused solely on the letters of recommendation contained in the record, concluding that they did not establish the Petitioner's achievements in the field, but did not provide an analysis of evidence submitted initially or in response to the RFE. And the Director's decision did not provide any analysis regarding why the Petitioner did not meet the requirements of the third prong of the *Dhanasar* framework, stating only that the evidence did not support the Petitioner's assertion 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.

IV. CONCLUSION

For the reasons discussed, we withdraw the Director's decision and remand the matter for a new decision for further consideration and the entry of a new decision. On remand, the Director should review the entire record, including the appeal documents, and determine whether the Petitioner has sufficiently established his eligibility for the underlying EB-2 classification as an alien of exceptional

ability, and, if he has, whether he warrants a national interest waiver under the *Dhanasar* analytical framework.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.