U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37174181

Date: MAR. 26, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a management analyst and entrepreneur in the field of human resources management, seeks employment-based second preference (EB-2) immigrant classification as either a member of the professions holding an advanced degree or 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 the record did not establish the Petitioner is eligible for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be 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 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 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. ADVANCED DEGREE AND EXEPTIONAL ABILITY

A. Member of the Professions Holding an Advanced Degree

As indicated above, the Petitioner must first demonstrate qualification for the underlying EB-2 visa classification. Section 203(b)(2)(B)(i) of the Act. The Director determined the Petitioner is not an advanced degree professional and we agree.

The Petitioner provided various documents, including a copy of his foreign graduation certificate and transcript, along with certified translations, from the [redacted] in Brazil. The graduation certificate states that the Petitioner completed the administration course in February 2007 and was awarded a degree in March 2023. He also submitted a credential evaluation, which states that his foreign academic coursework is equivalent to a U.S. bachelor's degree in business administration. As explained by the Director, the credential evaluation provides conflicting information as it states that the Petitioner qualified for his degree in 2023 rather than February 2007.

On appeal, the Petitioner asserts he fulfilled the course requirements and obtained his degree in 2007 and that the Director and the evaluation company mistakenly concluded that he graduated in 2023. The Petitioner however does not address the Director's finding that the graduation certificate does not indicate that he obtained a bachelor's degree. Thus, the Petitioner has not sufficiently established that he holds the foreign equivalent of a U.S. bachelor's degree as required by 8 C.F.R. § 204.5(k)(2).

[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] *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).

Moreover, the record also does not show he has at least five years of progressive experience in the specialty. A petitioner must provide "evidence in the form of letters from *current or former employer(s)* showing that [the petitioner] has at least five years of progressive post-baccalaureate experience *in the specialty*." 8 C.F.R. § 204.5(k)(3)(i)(B) (emphasis added). On appeal, the Petitioner provides three new employment letters. However, the employment letters are insufficient to establish that the Petitioner possesses at least five years of progressive post-baccalaureate experience in the specialty. For instance, the letters are for administrative positions such as an administrative assistant, which are positions unrelated to the specialty, management analyst. Therefore, the record does not establish that the Petitioner possessed at least five years of progressive post-baccalaureate experience in the specialty.

Because the Petitioner has not established that his degree is the foreign equivalent of a U.S. bachelor's degree or that he has five years of progressive experience in the specialty, we cannot conclude that the Petitioner has established eligibility as an advanced degree professional.

B. Exceptional Ability

On appeal, the Petitioner also asserts he is an individual of exceptional ability. As stated, a petitioner is initially required to submit documentation that satisfies at least three of the six relevant categories of evidence. In denying the petition, the Director determined the Petitioner met only two 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

This criterion requires 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. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A). Based upon the submitted evidence, we concur with the Director that the Petitioner has met this criterion.

2. Ten Years of Full-Time Experience

This criterion requires evidence in the form of a letter from current or former employers showing that the alien has at least 10 years of full-time experience in the proposed occupation. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A). The Director determined the Petitioner did meet this criterion; however, we disagree. As noted above, the employment letters submitted do not sufficiently establish the Petitioner's employment was related to the occupation outlined in the proposed endeavor, management analyst. For instance, the letter from [redacted] states that the Petitioner "worked at this institution from April 3, 2006 to January 28, 2011, in the position of Administrative Assistant." In addition, the letter from [redacted] states that the Petitioner "was an employee of this company from 11/06/2017 to 03/28/2019, holding the position of Technical Professional Medium Level A" where he "carr[ied] out activities in the administrative/technical/financial/personnel area." Without more, we cannot conclude that the Petitioner meets this criterion and withdraw the Director's determination to the contrary.

3. License or Certification

This criterion requires evidence of a "license to practice the profession or certification for a particular profession or occupation." 8 C.F.R. § 204.5(k)(3)(ii)(C). In support of this criterion, the Petitioner submitted a Professional Identification Card from the [redacted] and the [redacted]. As explained by the Director, the Petitioner did not establish that the card is a license or certification to practice the profession.

On appeal, the Petitioner states that the card demonstrates his official recognition as a management analyst and it confirms his eligibility "to take on management roles, ensuring compliance with the legal and professional standards defined by Brazilian and international regulatory bodies." Beyond the Petitioner's unsubstantiated assertions however, there is no information regarding the requirements for issuance of the card, evidence that the title listed on the card is a profession as that term is defined at 8 C.F.R. § 204.5(k)(2) or that it is either a license to practice the asserted profession of management analyst or a certification for a particular profession or occupation as required by the plain language of the regulation.[3] Without more, the Petitioner has not established eligibility under this criterion.

4. Salary or Other Remuneration

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of their claimed exceptional ability *relative to others working in the field*.[4] 8 C.F.R. § 204.5(k)(3)(ii)(D). The Director stated that the Petitioner did not provide "evidence of an average monthly salary, monthly bonuses, or annual salary of management analyst in the business administration field during this period or other sufficient evidence to establish that [his] remuneration were indicative of his claimed exceptional ability relative to others in the field." On appeal, the Petitioner continues to rely on his prior work experience. However, as noted above and by the Director, his prior work experience was in administrative positions and not as a management analyst. Regardless, the Petitioner did not provide a salary survey or other source to show that his salary or remuneration demonstrated his exceptional ability. Accordingly, we concur with the Director that the Petitioner has not demonstrated he meets this criterion.

5. Membership in Professional Associations

This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E); *see also* 8 C.F.R. § 204.5(k)(2). On appeal, the Petitioner highlights his membership with the [redacted]. However, the Petitioner has not asserted, and the record does not otherwise demonstrate, that [redacted] requires its members to possess the equivalent of a U.S. bachelor's degree. Consequently, the Petitioner has not shown that [redacted] is a professional association within the meaning of the regulations at 8 C.F.R. §§ 204.5(k)(2) and (3)(ii)(E). As such, the Petitioner has not demonstrated he meets this criterion.

[3] "Profession" is defined as the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

[4] *See 6 USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

6. Additional Criteria and Eligibility

As the Petitioner has only met one criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), we need not determine whether he satisfies the remaining criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) as he would still not meet at least three of the six criteria as required and reserve our opinion on this criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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 alternative issues on appeal where an applicant is otherwise ineligible). As this issue is dispositive of the Petitioner's appeal, we likewise decline to reach and hereby reserve the remaining issue before us of his eligibility for a waiver of the job offer requirement in the national interest.

III. CONCLUSION

The Petitioner does not meet at least three of the regulatory criteria to establish exceptional ability and is consequently ineligible for EB-2 classification.

ORDER: The appeal is dismissed.