U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36986598

Date: MAR. 27, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of sales management, 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 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.

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.[1] Section 203(b)(2)(A) of the Act.

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).[2] 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

[1] As the Petitioner has not claimed to qualify as a member of the professions holding an advanced degree, we need not address the separate requirements for that classification.

[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).

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.

In the decision, the Director determined the Petitioner satisfied two of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), official academic record and ten years of full-time experience in the occupation. As indicated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. On appeal, the Petitioner asserts he also meets the remaining four regulatory criteria for this classification. For the reasons provided below, we agree with the Director that the Petitioner does not meet the initial evidentiary requirements for classification as an individual of exceptional ability.

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 his Brazil Professional Identity Card stating he is registered with the [redacted] as a Technologist in Management Processes, along with a document entitled Law No. 4769 of [redacted] 1965 that provides the legal basis for the practice of administration technicians in Brazil. The Petitioner asserts "this evidence clearly meets the required criterion for holding a professional license." First, the Petitioner has not established or even explained the relationship between a Technologist in Management Processes (as listed on the Professional Identity Card) and an administration technician position (the position described in Law No. 4769). Moreover, even if he had established that the positions were the same, the Petitioner has not demonstrated that an administration technician position is a profession. As noted by the Director, the regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Article 3 of the Law No. 4769 provides, in part, that the occupation of an administration technician can be exercised by those who did not graduate but possess "five years or more of their own activities" in the field of administration technician. Because Law No. 4769 allows an individual without a U.S. bachelor's degree or its foreign equivalent to register with the [redacted] to qualify as an administration technician, the record does not demonstrate that an administration technician is a profession. The Petitioner also has not established he possesses the equivalent of a U.S. bachelor's degree and, therefore, he has not established that an administration technician meets the definition of a profession. Furthermore, the Petitioner has not established that the Professional Identity Card is a certification for his particular occupation. Notably, the record indicates the Petitioner has practiced his occupation since 1990; however, the Professional Identity Card shows a registration date of [redacted] 2021. For all of the reasons above, the evidence does not establish the Petitioner meets 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).

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.*[3] On appeal, the Petitioner submits the same documentation he previously submitted with the initial petition and in response to the Director's request for evidence, including the Previdentiary Extract from the National Social Security of Institute of Brazil, his income statements, a printout from the Salario BR website, and professional experience statements from his previous employers.

Regarding the Previdentiary Extract, income statements, and professional experience statements, we note that they are not substantiated with independent and objective evidence, such as invoices, bank statements, and/or tax returns. Further, the Salario BR website screenshot does not offer sufficient information or details to verify the applicability and accuracy of the stated salary information. For instance, the screenshot lacks such critical information as the year or date range to which the data refers, how the data was compiled, the statistical significance of the data, the geographic location to which the data pertains, and other indications of the reliability and comparability of this data to the Petitioner's occupation.

Even if the Petitioner had provided such evidence, it would not be sufficient to establish eligibility under this criterion. The Petitioner requests us to compare the Salario BR figures for sales consultant earnings with his income as a managing partner. As a sales consultant and a managing partner of a company are two distinct occupations, the Petitioner has not provided us with a proper basis for comparison.

For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

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

This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). As previously noted, "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.[4] 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] are professional associations 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] *See 6 USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[4] 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.

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).

In support of this criterion, the Petitioner submitted several recommendation letters from his associates. While the letters of recommendation commend the Petitioner's services, the personal recognitions described and documented in the letters do not demonstrate that he has been recognized for "achievements and significant contributions" to the broader sales industry. The plain language of the regulation calls for "evidence of recognition for achievements *and* significant contributions to the industry or field." As such, materials that identify an individual's achievements but not significant contributions to the industry or field cannot suffice to satisfy the regulatory requirements. *See Matter of Echeverria*, 25 I&N Dec. 512, 518 (BIA 2011) (holding that the use of the conjunction "and" in a series of regulatory requirements "is a clear indication" that one "must satisfy each of the [listed] requirements"). While we acknowledge the Petitioner's assertions on appeal that his "significant contributions and achievements in business consulting and sales management have been recognized by peers and industry leaders," the evidence does not show that he has made a significant contribution to the industry. Therefore, the Petitioner has not established eligibility for this criterion.

As the Petitioner has not met his burden of satisfying at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii), he has not established eligibility for underlying EB-2 classification as an individual of exceptional ability. We therefore need not conduct a final merits determination, and reserve our opinion on this additional issue on appeal. *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.

ORDER: The appeal is dismissed.