U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38204340

Date: MAY. 08, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an aircraft mechanic and technician, 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 field denied the petition, concluding the Petitioner did not establish that he was an individual of exceptional ability. SCOPS also determined the Petitioner did not demonstrate 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. 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 visa 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. 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.

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

[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).

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.

Once a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the 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 U.S. Citizenship and Immigration Services (USCIS) may, as a 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.

II. EXCEPTIONAL ABILITY

The Petitioner submitted evidence reflecting that he earned a technical degree as an aircraft maintenance technician and completed related courses in this field in Brazil. He further provided documentation showing that he worked for more than ten years fulltime as an aircraft maintenance technician in Brazil and that he held a professional registration from the [redacted] The Petitioner also asserted that the average salary for aircraft technicians in Brazil in 2019 and 2020 was 3416 Brazilian Reals (R$) per month (or about R$40,992 annually), while he earned R$6197.52 Brazilian Reals monthly during this time (or approximately R$80,567 per year). He stated this reflected that he earned significantly more than the median compensation for his profession. The Petitioner also emphasized that he was a member of [redacted] and the [redacted]

In addition, the Petitioner provided several recommendation letters from colleagues and asserted these demonstrated his recognition for achievements and significant contributions to the industry. He stated that three letters showed "detailed testimonials of how the petitioner's work has influenced the lives of other people and how it is being used by other professionals through learning imparted by the petitioner." The Petitioner further pointed to his proposed endeavor, a plan to design and manufacture a hybrid aircraft. The Petitioner contended that the totality of this evidence established he possessed a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

The Director determined that the Petitioner met three of the six criteria to initially establish eligibility as an individual of exceptional ability, including demonstrating that: 1) he held an official academic record showing he had a degree, diploma, certificate, or similar award from a college, university, school or other institution relating to his area of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A); 2) he had a license to practice the profession or certification for a particular

[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 to be discretionary in nature).

profession or occupation consistent with 8 C.F.R. § 204.5(k)(3)(ii)(C); and 3) he was a member in a professional association pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(E). However, the Director determined the Petitioner did not demonstrate that he had a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Director reasoned that although the Petitioner submitted evidence reflecting he had expertise and credentials to work in the field, they also concluded he did not establish that his certifications, license, and memberships in a professional association distinguished him from others in the field.

On appeal, the Petitioner again points to his proposed endeavor related to the design and manufacturing of a hybrid aircraft and asserts that he sufficiently explained how he possesses, "through the engineering area, a degree of expertise above that ordinarily encountered." The Petitioner states he is not just an ordinary aircraft technician. He indicates that he plans to lead a specific proposed endeavor that is "an innovation project for the manufacturing of an affordable hybrid aircraft, designed to reduce flight hour costs for newly certified pilots and aviation schools in the United States." He added this would be a "one or two-seater aircraft equipped with a hybrid system that combines combustion and electric engines." The Petitioner states that unlike most technicians focusing "solely on aircraft maintenance and repair" he holds "unique ability." He asserts that "few professionals in the field possess the depth of knowledge and skill required to conceptualize, develop, and refine an aircraft from the ground up, particularly one that incorporates hybrid technology."

The Petitioner emphasizes on appeal his expertise in engineering and manufacturing an innovative one or two-seat aircraft equipped with a hybrid system combining combustion and electric engines. However, questionably, The Petitioner's assertions related to his expertise in innovative hybrid systems combining combustion and electric engines bears little relation to the other evidence he submitted to demonstrate that he is an individual of exceptional ability. For instance, the Petitioner provided employment letters and documentation indicating projects he worked during his employment abroad in Brazil, but these reflected he had expertise in aircraft interiors and their electrical components. He also submitted recommendation letters further emphasizing his experience mainly in the interior of aircraft, noting his work on "executive interiors" and in replacing a "sub-woofer" inside a cabin.

The Petitioner's personal statements, recommendation and employment letters, training certificates, and the other documentation reflect little expertise in aircraft design, engines, or hybrid technologies, leaving substantial question as to whether his knowledge of these aspects of the industry is significantly above that of others as he asserts on appeal. In fact, the Petitioner made no mention of his proposed endeavor related to hybrid systems combining combustion and electric engines in support of the petition or his expertise in these technologies, but now on appeal, offers this as his only basis for exceptional ability. The Petitioner must resolve inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Beyond this, the Petitioner provides little basis to conclude that his knowledge is significantly above that of others in his field. For example, the Petitioner discussed him receiving a technical degree as an aircraft maintenance technician and completing related courses in this field in Brazil, but he did not articulate how this set him apart from other aircraft technicians and showed a degree of expertise significantly above that ordinarily encountered in his field. Likewise, he emphasized his more than

ten years of work experience, which based on supporting documentation, appeared to reflect that he acquired a specialty in the electrical interiors of aircraft. The Petitioner did not explain or document how his work experience gave him "unique ability" or significant expertise in "aircraft from the ground up, particularly one that incorporates hybrid technology" in relation to others in the field. The Petitioner did not establish how his completion of his technical degree and trainings, along with his work experience, compared to the overall education and experience of other aircraft technicians.

Further, the Petitioner emphasized that he was a member of [redacted] the [redacted], and the [redacted], the Brazilian [redacted]. The Petitioner likewise provided a legal document from Brazil reflecting that he was recognized by the government for having "5 years of integrated activity in the field of mid-level industrial technology." However, the Petitioner provided no explanation as to what was required to be a member of [redacted] such as higher-level expertise. The Petitioner did not sufficiently explain how being recognized by Brazil as a mid-level industrial technician with five years of experience, a member of an aeronautical maintenance association, and an airline workers union demonstrated how he was set apart from other airline maintenance workers. The evidence of his membership in technical and industry organizations did not support he had a degree of expertise significantly above that ordinarily encountered in his field.

As discussed, the Petitioner further asserted that his renumeration abroad was reflective of exceptional ability. The Petitioner provided documentation reflecting that the average salary for aircraft technicians in Brazil in 2019 and 2020 was approximately R$40,000 annually, while he earned about R$80,567 per year. The Petitioner contended that he earned more than the median compensation for his profession. Likewise, the Petitioner pointed to internet printouts from "Glassdoor.com" showing that the average salary for aircraft maintenance workers ranged from R$36,000 to R$72,000 annually. However, the Petitioner did not sufficiently demonstrate the significance of his 2020 wage, nor did he establish he earned income commensurate with a degree of expertise significantly above that ordinarily encountered in his field. For example, based on the supporting evidence provided by the Petitioner, it appears that he made a salary on the higher end of the profession, but he did not explain how this, alone, established him as one who likely had a degree of experience significantly above others in the field. In fact, given his stated years of experience, it would seem reasonable that he would earn a salary at the higher end of the profession, and this is not necessarily reflective of a high level of expertise within the industry.

Finally, in regard to his recognition and contributions, the Petitioner provided reference letters from colleagues discussing his contributions to projects they worked on with him commending his general skill in the profession. As discussed, these letters largely explain electrical work he did on aircraft interiors, not him gaining experience, getting recognition, or contributing to innovative projects related to affordable hybrid aircraft or combustion and electric engines, the basis of his asserted exceptional ability asserted on appeal. While the letters confirm his employment and praise his skills and abilities, they do not discuss his specific achievements and significant contributions to the industry or field. The Petitioner provided little supporting evidence to substantiate that he received recognition for achievements or made significant contributions to his field reflective of him possessing expertise significantly above that of his colleagues. Rather, the letters make broad statements and limit their discussion to his individual employers, and the lack of detailed information does not place the Petitioner at a level of expertise significantly above that ordinarily encountered in his field.

The submitted evidence does not establish the Petitioner's eligibility as an individual of exceptional ability. Although the Director determined that the Petitioner satisfied three of the initial categories of evidence, the record does not demonstrate that the Petitioner has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).[3] As such, we need not reach a decision on whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver. Accordingly, we reserve this issue.[4]

ORDER: The appeal is dismissed.

[3] See also 6 USCIS Policy Manual, supra, F.5(B)(2).

[4] *See INS v Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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).