U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31125045

Date: MAY 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional or as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that he qualified for the EB-2 classification as an individual of exceptional ability. The Director also determined that the Petitioner did not merit a national interest waiver as a matter of discretion. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States 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. 8 C.F.R. § 204.5(k)(2).

"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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. 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 a degree of expertise significantly above that ordinarily encountered in the field.

If 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 USCIS may, as matter of discretion,[1] 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Petitioner, who specializes in automotive paintless dent repair, or PDR, intends to operate a repair facility in the United States. As noted above, to demonstrate eligibility as an individual of exceptional ability, a petitioner must initially submit documentation that satisfies at least three of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Petitioner initially claimed to satisfy all six categories, and the Director issued a request for evidence (RFE) requesting documentation to support his claims that he met the requirements of each category. In response to the RFE, the Petitioner did not address the categories concerning a license or certification (C) or salary (D). The Director determined that the Petitioner satisfied the categories at (B) regarding his years of experience in his occupation, and the record supports that determination. The Director also determined that the Petitioner met the requirements for the category at (E) concerning his claim of membership in professional associations; as discussed later in this decision, we disagree with that determination. Finally, the Director concluded the Petitioner did not submit evidence sufficient to establish his qualifications under the category concerning an academic record relating to his claimed area of exceptional ability (A) or the category related to recognition for achievements and significant contributions to his field (F).

On appeal, the Petitioner asserts that USCIS "erroneously denied" the petition and "imposed novel substantive and evidentiary requirements beyond those set forth in the regulations." The Petitioner, however, does not identify any unusual requirements imposed, nor does he specify how the Director erred or what in the decision was erroneous.[2] The Petitioner also contends, without further

[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 to be discretionary in nature).

[2] An appeal must specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. *See* 8 C.F.R. § 103.3(a)(1)(v).

explanation, that the Director applied a stricter standard of proof than the preponderance of the evidence[3] and "did not give due regard" to the evidence submitted. The Petitioner does not specifically articulate any erroneous conclusion of law or statement of fact. This alone is grounds for summary dismissal. 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, as more fully discussed below, we agree with the Director that the Petitioner has not met the requirements of at least three of the six categories at 8 C.F.R. § 204.5(k)(3)(ii)(A)–(F) to establish his eligibility for the EB-2 classification.

> *An official academic record showing that the individual 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).*

The Petitioner submitted documents reflecting his completion of several courses, including training to repair hail damage and complete aluminum autobody work. The Director determined that the certificates submitted did not qualify as official academic records. On appeal, the Petitioner points to the submitted evidence as establishing his eligibility under this criterion. The record includes certificates from [redacted] related to his completion of autobody repair courses and a certificate stating that he "is awarded this master craftsman certificate for Vale PDR assessment on March 11, 2023." The record does not include supporting documentation demonstrating that the provided certificates originated from a college, university, school, or other institution of learning. The Petitioner provided a high school transcript and certificates from the [redacted] for his completion of a courses titled "Purpose and Quality of Life: Discoveries for Personal Development" and "Remote Work." The Petitioner did not submit evidence to show how these courses relate to his purported area of exceptional ability. As such, the Petitioner has not met the requirements of this criterion.

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

The Petitioner provided documentation indicating his membership in the National Alliance of Paintless Dent Repair Technicians—or NAPDRT—including a document explaining the alliance's mission and vision. Although the Director determined that the documentation met the requirements of this criterion, we observe that the record does not include evidence to demonstrate that the NAPDRT is a professional association. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Accordingly, in order to qualify as a professional association, the association must require that its members be members of a profession as defined in the regulation. The documentation in the record does not indicate that NAPDRT membership requires the attainment of, at minimum, a baccalaureate degree related to autobody repair. Therefore, we will withdraw the Director's determination as the submitted evidence does not establish that the Petitioner has satisfied 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).*

[3] *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place).

The Petitioner submitted letters of support from previous employers, colleagues, and potential investors in his business discussing his professionalism and expertise. The Petitioner also provided a certificate of participation and photos related to an award that he won for setting a record for auto repairs at a competition. The Director determined the evidence did not sufficiently demonstrate that the Petitioner was recognized for achievements or significant contributions to the autobody repair field. On appeal, the Petitioner points to letters of support and states that the authors' praise for his skills and assertions of the potential for his business to succeed in the United States "provide compelling evidence of his impact and success." As the Director discussed, while these letters highlight the Petitioner's talent in the field of autobody repair and assert his positive contributions to his previous employers' businesses, none of the submitted letters serve as objective evidence of recognition for achievements and significant contributions to his field. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner has not met his burden of proof to demonstrate his eligibility under this criterion.

Because the Petitioner has not established that he meets three of the six evidentiary criteria under 8 C.F.R. 204.5(k)(3)(ii), he has not met the initial requirement to demonstrate his eligibility as an individual of exceptional ability. Therefore, we need not conduct a final merits determination of whether he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Nevertheless, we have reviewed the totality of the evidence and conclude that he does not meet the elevated standard for this classification. While the Petitioner may have experience in the field of autobody repair, the record does not show that his level of expertise is unusual or stands out in the field.

In sum, the Petitioner has not established eligibility for the EB-2 classification as an individual of exceptional ability. Therefore, he is ineligible for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

III. CONCLUSION

The Petitioner has not established that he meets the requirements of EB-2 classification. The petition will remain denied.

ORDER: The appeal is dismissed.