U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32327323

Date: SEP. 03, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and jiu-jitsu instructor, 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 that the record did not establish that the Petitioner qualifies as an individual of exceptional ability and the record does not establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. 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.

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.[2] 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

[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] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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,[3] 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.

Dhanasar, 26 I&N Dec. at 889.

II. ANALYSIS

The Director concluded that the Petitioner met two of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, the Director concluded that the Petitioner demonstrated they met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), but did not meet the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(C), (D), (E), or (F). On appeal, the Petitioner states that the evidence in the record was "seemingly overlooked." Upon de novo review, we agree with the Director's decision that the Petitioner only meets two of the six exceptional ability criteria and is therefore ineligible for the EB-2 classification.

> *An official academic record showing that the individual has a degree, diploma, certificate, or other 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 a diploma and academic records from [redacted] where he earned the degree of "*titulo de Licenciatura em Marketing.*"[4] The Petitioner states that his degree in marketing gives him, "full knowledge to work with great depth and success in my academy in the [m]arketing field, which is bringing more and more students and publicizing the success of my work," and therefore is integral to his work as an entrepreneur in the jiu-jitsu industry. The Director determined that this criterion had been met through the Petitioner's degree in marketing and we agree.

[3] *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 is discretionary in nature).

[4] We note that the Petitioner refers to the degree in the record as a bachelor's degree in marketing; however, the record does not establish his degree is the equivalent of a U.S. bachelor's degree. The submitted transcript only accounts for two years of study. A U.S. baccalaureate degree generally requires four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). Although the record does not establish the degree is equivalent to a U.S. bachelor's degree, a bachelor's degree is not required to meet this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Director concluded that the record shows the Petitioner has over ten years of full-time experience, in the field of the proposed endeavor. The Petitioner provided a letter from his former employer where he served as a "Brazilian Jiu-Jitsu teacher, Advisor, and Marketing Professional," working over 40 hours per week from February 2009 to January 2021. We also conclude that the Petitioner has met this criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Director stated that the Petitioner did not provide evidence that a license or certification is required to be a business owner of a martial arts academy. On appeal, the Petitioner states that in the jiu-jitsu industry, "[e]stablishments are predominantly led by certified professionals" and that the Director's decision, "[a]ppears to stem from a lack of knowledge regarding the specific requirements and norms within the martial arts sector, highlighting a critical gap in the understanding of how martial arts academies operate and thrive." The Petitioner does not specify whether he is submitting evidence as a license to practice the profession or certification for a particular profession or occupation. We further note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent degree for entry into the occupation. The record does not establish that the Petitioner's endeavor as an entrepreneur and jiu-jitsu instructor is a profession under 8 C.F.R. § 204.5(k)(2). The Petitioner also states that he considers his job under the title of "Self-Enrichment Teacher," however he has not submitted evidence that this would qualify under the definition of profession and has not submitted a license to practice the profession of "Self-Enrichment Teacher."

The record shows a certificate awarding the Petitioner the title of "Red Bar Black Belt," "First Degree Black Belt," and a certificate for completing an "Arbitration Rules Course," along with referencing other courses and jiu-jitsu certifications he has completed. However, the Petitioner still has not established that these are certifications for a particular profession or occupation. As noted, the record does not establish that jiu-jitsu instructor qualifies as a profession under 8 C.F.R. § 204.5(k)(2). Further, the record does not establish that attending occupation-related training such as "Arbitration Rules Course" constitutes a certification for his occupation, rather than developing knowledge in a subject matter. The Petitioner's assertions alone not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The Petitioner included links to the websites of the institutions that issued the certificates, however, we are not able to access all the referenced websites and therefore cannot confirm the information the Petitioner referenced since the printed website pages were not provided. It is ultimately the petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Center*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Ho*, 19 I&N Dec. 582, 588-89 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). Therefore, we conclude that the Petitioner has not met this criterion.

Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner also asserts on appeal that he has a salary above others in his field. The record contains an affidavit from his accountant along with a portion of a website showing the average wage of martial arts teachers. However, as stated above, we are not able to access the websites by the link provided in the request for evidence (RFE). From what is submitted, it is unclear if this information is for the same geographical area where the Petitioner was working and if it is for the same level of expertise in martial arts that the Petitioner possesses, in order for us to verify that this is comparable evidence. The Petitioner claims to be a self- enrichment teacher along with his employment as a "Jiu-Jitsu teacher, Advisor, and Marketing Professional" and the snapshot that is included in the RFE response letter does not establish the Petitioner's salary is comparable to the martial arts teacher's salary as listed. Therefore, we conclude the Petitioner has not met this criterion.

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

On appeal the Petitioner highlights his membership in the American Management Association, along with his membership with the Brazilian Jiu-Jitsu Confederation and the International Brazilian Jiu-Jitsu Federation. The Petitioner also points to documentation in the record that shows his extensive experience in the field. While we acknowledge the Petitioner's experience in the field, the record does not establish his membership in a professional association. As noted above, the term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The record does not establish that membership in any of the above associations requires a U.S. bachelor's degree or foreign equivalent. The Petitioner states, "[t]he lack of recognition of the significance of these. . . memberships . . . disregards the established standards and practices within the martial arts sector." However, as these associations do not meet the regulatory definition of professional associations, we conclude that he has not established that he meets 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).

The Director determined that the recommendation letters in the record establish the Petitioner's experience as an athlete and a coach, but do not establish significant contributions to the industry. We agree. The Petitioner contends the Director's decision shows, "[a] lack of understanding of the nature and impact of such achievements within the martial arts community, underscoring a critical gap in recognizing the broader implications of individual accomplishments on the field at large." However, as we state above, the Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence by submitting relevant, probative, and credible evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. The record contains multiple recommendation letters which highlight the Petitioner's experience and personal accomplishments in the field; however, they do not establish "significant contributions to the industry." For example, the record contains a letter discussing his experience with the Petitioner as a coach and his positive contributions to both the author and the team. While these can establish that he is a proficient jiu-jitsu instructor, they do not

show a significant contribution to the industry. Next, the record contains a letter from another client who praise the Petitioner's "unique strategy for the emotional preparation of athletes who are in competition" and his personal abilities as a trainer. Similarly, while this establishes his experience in the field as an instructor, this does not establish significant contributions to the industry in a broader sense.

Further, the record contains a letter from the Petitioner's former employer attesting to the Petitioner's journey from a teaching assistant to teacher and the accomplishments that the Petitioner helped a team achieve. As above, while this shows the Petitioner's training yielded achievements for those he trained, it does not establish significant contributions to the industry in a broader sense. Lastly, the record contains a letter from someone who previously worked with the Petitioner attesting to his, "gift for observing students to determine qualifications, limitations, abilities, interests, and other individual characteristics; a consultant and professor in the field with exceptional talents." While we acknowledge the Petitioner's experience as a teacher in the field, this does not establish that he has made significant contributions to the broader field of jiu jitsu. Therefore, he has not met this criterion.

> *If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.* 8 C.F.R. § 204.5(k)(3)(iii).

Finally, on appeal the Petitioner points to the documentation in the record to demonstrate his "competitive achievements as an athlete. . .educational initiatives and community engagement," which he states show his, "unique contributions to the field." He states that his achievements and experience align with the, "[n]ational interests in health, education, and cultural diversity." Even if true, this does not speak to how this documentation is comparable evidence to show his exceptional ability. This assertion points to why he believes his endeavor is of national importance but does not further his claim that he is eligible for the EB-2 classification as an individual of exceptional ability. In addition, if a petitioner wishes to submit comparable evidence, they must first establish that the other standards for establishing exceptional ability do not apply to their occupation. The Petitioner has not asserted that the other criteria do not readily apply to his occupation, and in fact, he argues that he has met the other criteria, therefore we will not consider the additional evidence.

For the reasons given above, the evidence does not establish that the Petitioner meets the eligibility requirements as an individual of exceptional ability and therefore does not meet the requirements for EB-2 classification. Because the Petitioner has not established that he meets the minimum required criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination. Nevertheless, we note that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that he possesses a degree of expertise significantly above that ordinarily encountered in his field.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver. While the Petitioner asserts on appeal that he meets prongs one and three under the *Dhanasar* analytical framework, we reserve our opinion regarding these issues. *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

We conclude by a preponderance of the evidence that the Petitioner has not established that he qualifies as an individual of exceptional ability, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification and therefore is not eligible for a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.