U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24217138

Date: SEP. 20, 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 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. The Director further concluded that the Petitioner had not established 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.

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

[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.

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. 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 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.

Id.

II. ANALYSIS

As noted above, the Director concluded that the record did not establish that the Petitioner qualified for classification as an individual of exceptional ability. Specifically, although the Petitioner asserted that he satisfied the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C) and (F), the Director concluded that the Petitioner satisfied (A) and (C). On appeal, the Petitioner does not pursue his initial claim that he meets the criterion relating to evidence of at least ten years of full-time experience in the occupation for which is being sought. We therefore consider this issue abandoned.[4] On appeal, the Petitioner reasserts that he satisfies the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(F). For the reasons discussed below, the record does not establish that the Petitioner has satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii).

A. Evidence of Recognition for Achievements and Significant Contributions to the Industry

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." The Director discussed the two letters submitted in support of this criterion, one from the Petitioner's prior employer and one from his current employer. The Director acknowledged that the letters compliment the Petitioner's work but did not elaborate regarding the Petitioner's recognition for achievements and significant contributions to the industry or field as a

[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] *See Matter of R-A-M-*, 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

whole. On appeal, the Petitioner reiterates previous statements made in the initial petition and in response to the Director's request for evidence and does not provide any new evidence or arguments which overcome the Director's determination.

For this criterion, the Petitioner must establish that the claim that he has received recognition for achievements and significant contributions to the industry or field of aviation by peers, governmental entities, or professional or business organizations is probably true. *See id.* The letters from the Petitioner's prior and current employers are relevant to the issue because they are from business organizations, but they bear minimal probative value. *See* 8 C.F.R. § 204.5(k)(3)(ii)(F); *see also Matter of Chawathe*, 25 I&N Dec. at 76.

The letter from the Petitioner's former employer, [redacted] written by a Captain and Director of Training, confirmed that the Petitioner was employed as a first officer. Much of the letter discusses how the Petitioner worked beyond his ordinary duties as first officer and "performed extraordinary rescue missions worthy of high praise and bravery in a time of life-threatening ecological disaster in Venezuela in 2015," by volunteering to fly humanitarian missions to transport victims to safety. The author stated that the Petitioner "inspired other pilots and set an example of bravery and selfless proactivity in a time of need," and he was able to complete this mission due to his technical abilities and professional aptitude. While we agree that the Petitioner performed an admirable mission, the letter did not address how the Petitioner's volunteer work assisting during this disaster relief demonstrates that he received recognition for achievements and significant contributions to the industry or field of aviation. Without more, achievements or significant contributions to a particular entity are not automatically achievements or significant contributions to a greater industry or field merely because the entity operates within a greater industry or field.

Although the letter from the Petitioner's current employer is also relevant, it also bears minimal probative value. The letter from the Petitioner's current employer indicated that it intended to hire the Petitioner, and it briefly summarized what his duties would be. The letter also stated that the Petitioner has "performed various international flights on the McDonnell Douglas MD-83 aircraft," and has "assisted in the execution of vital rescue missions during the COVID-19 Pandemic which involved transporting individuals stranded abroad back to the United States." While the letter details achievements and contributions by the Petitioner, it does not explain how these achievements and contributions significantly affected the aviation industry. Therefore, the probative value of the letters from the Petitioner's current employer is diminished. Because the record does not contain evidence of recognition for achievements and significant contributions to the industry or field of aviation by peers, governmental entities, or professional or business organizations, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

B. Reserved Issue

Per the analysis above, the Petitioner has not established that he meets at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). Since the Petitioner did not satisfy the initial evidence requirements, we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions

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).

II. NATIONAL INTEREST WAIVER

The Petitioner has not established his qualification for the requested EB-2 classification and is therefore ineligible to be granted a national interest waiver as a matter of discretion. Although the Petitioner asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework and that the Director erred in concluding otherwise, we will reserve these issues. *See Bagamasbad,* 429 U.S. at 25-26; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

Because he did not submit sufficient evidence to satisfy three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), the Petitioner has not established that he is eligible to be classified as an individual of exceptional ability in the sciences, arts, or business. Accordingly, the petition will remain denied and the appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.