U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33948908

Date: SEPT. 25, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the airline industry, 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 an individual of exceptional ability and 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.

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] U.S. Citizenship and Immigration Services (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. 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.

The Petitioner has not claimed he is a member of the professions holding an advanced degree, nor does the record contain evidence that the Petitioner previously earned a U.S. baccalaureate degree or its foreign equivalent. Therefore, to qualify for EB-2 immigrant classification, the Petitioner must establish he is an individual of exceptional ability in the sciences, arts, or business.

The Director determined the Petitioner met official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A), ten years of full-time experience at 8 C.F.R. § 204.5(k)(3)(ii)(B), and a license to practice the profession at 8 C.F.R. § 204.5(k)(3)(ii)(C). However, after evaluating the totality of the evidence in the context of the final merits determination, the Director concluded the Petitioner did not establish he was an individual of exceptional ability. The Director reviewed and analyzed the Petitioner's exceptional ability claims, including his academic record, additional training, employment verification letters, licenses, support letters, and awards earned during his military service, and concluded he did not show he possessed a degree of expertise significantly above that ordinarily encountered in his field.

Upon review, we adopt and affirm the Director's analysis and decision regarding the underlying EB-2 classification with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230,234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner asserts he's an individual of exceptional ability and contends the Director "disregard[ed] the unique contributions [he] has made to the aviation sector." The Petitioner further

[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).

states "[h]is training involved highly specialized programs not universally pursued by every professional in his field" and that "[h]is role in critical missions and his leadership in aviation operations demonstrate a degree of expertise that is not merely ordinary but exceptional."

The Petitioner also claims the support letters from "distinguished colleagues" and "various prestigious awards, including the Pilot Proficiency Award from the Federal Aviation Administration, underline his outstanding contributions to aviation." Beyond these general assertions, however, the Petitioner does not provide any new evidence or arguments which substantiate these conclusory statements and overcome the Director's determination. For example, while we acknowledge the Petitioner was awarded a Pilot Proficiency Award, it simply states the Petitioner "[h]as satisfactorily completed the requirements to become eligible to wear The Pilot Proficiency Wings Phase I attesting to this individual's dedication to aviation safety."

Because the documentation in the record does not sufficiently establish he has a degree of expertise significantly above that ordinarily encountered in the aviation industry, the Petitioner has not demonstrated eligibility for the underlying EB-2 classification as an individual of exceptional ability. This identified basis for dismissal is dispositive of the Petitioner's appeal, and therefore we decline to reach and hereby reserve the Petitioner's appellate arguments and eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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).

ORDER: The appeal is dismissed.