U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12458781

Date: JUL. 08, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an advanced degree professional or that he possesses exceptional ability in the sciences, arts, or business. The Director further determined that the record did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. 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.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[1] Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director determined that the record did not establish the Petitioner is a member of the professions with an advanced degree. Although the Director found that the evidence supported a conclusion that the Petitioner holds the equivalent of a U.S. bachelor's degree, the Director concluded that there was insufficient evidence to establish that the Petitioner had five years of progressively responsible post-baccalaureate work experience.

The Director then examined the Petitioner's eligibility as an individual of exceptional ability and determined that the evidence suggested that the Petitioner met three of the six criteria within the exceptional ability determination. However, the Director concluded that, while the Petitioner has an academic record equivalent to a U.S. bachelor's degree, a license, and a professional membership, the evidence did not support a finding that the Petitioner has expertise significantly above that which is ordinarily encountered in the profession. Therefore, in a final merits analysis, the Director determined that the evidence did not establish the Petitioner's eligibility as an individual of exceptional ability.

In our de novo review of the Petitioner's eligibility for the underlying classification, we agree with the Director and conclude that the Petitioner has not established that he is a member of the professions holding an advanced degree or that he is an individual of exceptional ability.

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

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[1] In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998).

[2] See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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

As stated, the Director determined that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree, but that the record did not establish that he possessed the requisite five years of progressive post-baccalaureate experience in the specialty. For the following reasons, we withdraw the Director's finding with regard to the Petitioner's academic record and conclude that the evidence is insufficient to establish the U.S. equivalency of the Petitioner's foreign education. The Petitioner claims to hold two master's degrees in business administration, one from the University of [redacted] Poland, where he studied from 1994 to 1999, and the other from [redacted] University in Sweden, where he studied from 1999 to 2000.

Regarding the education documents from Poland, the Petitioner initially submitted a copy of a signed and dated certificate of graduation from the University of [redacted] and a list of courses completed each semester with his grades categorized in columns below headings entitled "classes" and "examination."[4] The list of courses and grades bear the Petitioner's name at the top of the document, a stamp with the university's name and address, and on the final page only, a stamp with an unknown individual's name and signature. The documents are undated, in English (but for the stamps), and unaccompanied by copies of the original Polish documents. The irregular font, indentation, and headings, as well as the spelling errors and overall low quality of the document suggest it was informally printed and is not an official copy of the Petitioner's academic record. Moreover, we have little information concerning who stamped and signed the documents and whether the person had the authority to do so. It is unclear why the course list and grades document is in English and not accompanied by a copy of the original Polish document, whereas the certificate of graduation is in Polish and accompanied by an English translation, albeit one which does not comply with the regulation at 8 C.F.R. § 103.2(b)(3).[5]

In response to the Director's RFE, which specifically requested an official academic record and transcript, the Petitioner submitted a list of the courses taken and course descriptions for each course. The course descriptions note the "course hours" for each of the forty-seven courses the Petitioner claims to have taken. The course hours range from between 15 to 450 hours each, with most courses requiring either 30 or 45 hours. When totaled across the forty-seven courses, they comprise just over 2,800 course hours. The course documents do not contain any information linking the Petitioner to enrollment in the courses, as would be expected in a transcript. For instance, the records do not contain the months or years the Petitioner took each course. Further, the education documents initially provided by the Petitioner indicate multiple semesters of the same course, but the course descriptions only contain only one general description. We presume the Petitioner did not, for example, repeat the same French course for eight semesters. However, based on the documentation of record, there are no differentiating features to distinguish how one French class differed from another. Similarly, the Petitioner claims to have taken four semesters of "M.A. Thesis Classess [sic]," but the course documentation includes only one "Master Thesis Seminar" course description. As with the some of the documentation initially provided, the course list and descriptions are also in English, appear

[4] Some courses do not to have any grades associated with them and it is not apparent whether the Petitioner passed or failed these courses. The document does not contain an analysis of what the grades mean, such that it can be understood what is a passing or failing grade, or what the difference between a grade of "3,0" means in relation to a grade of "4,5" or "5,0." From the documentation, we have little insight into how a "classes" grade differs from an "examination" grade and how this forms the overall grade for course.

[5] The regulation requires, in pertinent part, that the translator certify that the translation is complete and accurate, and that he or she is competent to translate from the foreign language into English.

informally printed, and are not accompanied by copies of the original Polish documents. While the course documents bear a stamp with the university's name and address, the documents are unsigned and undated, which diminishes their value as official academic records.

Regarding his education in Sweden, the record contains a "certificate of participation" in the [redacted] Academy of [redacted] University College within [redacted] University. The certificate is accompanied by a university letter dated in 1999, which explains the content of the one-year program and confirms that the Petitioner "is attending." The record does not contain a transcript for this education, nor is there confirmation that the Petitioner finished the program and graduated.[6] Accordingly, we afford little weight to this evidence, as it lacks the required specifics to establish the Petitioner actually completed the education.

The Petitioner submitted an academic equivalency and experience evaluation from Senior Evaluator, [redacted] of [redacted] As the Director noted, the evaluation does not contain sufficient information to support its conclusions. [redacted] provides little to no independent analysis of the Petitioner's education and experience.[7] Although, [redacted] claims that general studies courses in U.S. bachelor's degree programs include numerous marketing courses, such as market research, international marketing, and sustainable marketing, among others, this conclusion is unsupported by citations or any reference to specific U.S. bachelor's degree programs. Further, [redacted] states that he based his conclusions, in part, upon the courses completed and the credit hours earned, however the evaluation does not address how the Petitioner completed over 2,800 course hours in his Polish education, how the course hours relate to credit hours, or how the foreign credit hours might equate to U.S. credit hours.[8] He provides no analysis of the Petitioner's grades, the university's grading scale, or how the grades relate to U.S. passing and failing standards. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Here, the evaluation does not offer a cogent analysis of the Petitioner's foreign academic record.[9]

Regarding the experience portion of the evaluation, [redacted] simply lists the positions the Petitioner held and the employment dates. He does not discuss any position duties or responsibilities, nor does he offer analysis into how the work experience was progressively responsible in nature.

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[6] The Petitioner claims on appeal that the Director did not recognize receipt of the official [redacted] "transcript initially submitted. While we recognize the [redacted] Academy participation certificate and letter, it is not apparent how either of these documents could be construed as a transcript of the education.

[redacted] appears to have used a template, as the content of the evaluation contains general and conclusory statements found in numerous other academic equivalency evaluations submitted by unrelated petitioners and from unrelated credential evaluation services.

[8] Most U.S. bachelor's degree programs generally require between 120-140 credit hours while most U.S. master's degree programs require between 30-40 credit hours. It is not apparent how 2,800+ course hours fit into U.S. credit hour standards, even if the Petitioner completed a bachelor's degree and master's degree simultaneously.

[9] The record contains another evaluation from [redacted] evaluator, [redacted] This evaluation reports that the Petitioner completed his education in Sweden in 2010. This claim is inconsistent with other documents in the record indicating the Petitioner studied in Sweden from 1999-2000. The evaluation lists a few courses and contains conclusions that appear to confuse the Petitioner's education in Sweden with his education in Poland. For the same reasons as discussed regarding [redacted]'s evaluation, [redacted]'s evaluation offers little probative value in this matter. Furthermore, when viewing this evaluation in conjunction with [redacted]'s evaluation, the overall credibility of [redacted], as a credential evaluation service, is called into question.

Though [redacted] concludes that the Petitioner has seventeen years of qualifying experience, we cannot find adequate support for such a conclusion in the evaluation. Once again, we may, in our discretion, use opinion statements submitted by the Petitioner as advisory. Id. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. Id. Because [redacted] did not provide independent analysis of the Petitioner's claimed work experience, we afford his opinion little weight in this matter.

The Director concluded the work experience letters originally submitted did not fully comport with the regulation at 8 C.F.R. § 204.5(g)(1), which provides in pertinent part, that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s)from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received." The Director issued a request for evidence (RFE) providing the Petitioner an opportunity to submit additional evidence to overcome the shortcomings in the employment evidence, with a specific request for detailed descriptions to establish the progressive nature of the work. Although the Petitioner submitted new employment verification letters, the Director found them inadequate to establish the requisite five years of progressively responsible post-baccalaureate experience. Specifically, the Director noted that: (1) being an owner of a business in itself is insufficient to meet the experience requirement; (2) the evidence was insufficient to show that the work was progressive; (3) the new letters identified different positions within different companies, but were all signed by the same individual;[10] (4) the record contained no independent evidence to corroborate the claims made in the employment letters; and (5) there were inconsistencies between the employment claims in the letters and the employment claims in the Petitioner's ETA 750.

In addition to the concerns outlined by the Director regarding these letters, we also observe that the claims in the letters conflict not only with the ETA 750, but with other documents in the record. For instance, some of the positions, titles, and dates vary between the employment verification letters initially submitted, the new employment letters, and the Petitioner's résumé. To illustrate, the Petitioner states on his résumé that he held the position of "director" with [redacted] from 2001 to 2008. The initial letters indicated that the Petitioner held six different positions in about seven years of employment with the company, but that he did not hold the "general director" position until 2005. By contrast, one of the new letters states that the Petitioner was "general director" from 2001 to 2008.[11]

Another example is the Petitioner's work with [redacted] an entity that appears to be different from [redacted], although the record remains unclear on the matter. The Petitioner claims on the ETA 750 and his résumé that he worked as a corporate management consultant and owner for [redacted] from 2008 to 2016. He also claims on his résumé to have worked for [redacted] as the "president" from 2007 to 2009, as well as the "president" and "independent consultant" from 2009 to 2014. The employment letters initially submitted cite no other employment with a [redacted] entity besides the Petitioner's position as "chairman of the board" for [redacted] from 2007 to 2009, whereas one of the new employment letters states that he worked as "president" from 2007 to 2014. While we acknowledge that the Petitioner could have held

[10] We acknowledge that the companies may share the same parent organization.
[11] The Petitioner has not explained whether the position of "general director" is the same as "director."

multiple positions and titles simultaneously, the record remains unclear as to whether this occurred. Based on the evidence before us, these claims appear inconsistent and contradictory.

Accordingly, without further clarification, we question the credibility and accuracy of the employment claims. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. Id. Moreover, even if these inconsistencies were resolved, the Petitioner's employment information, in the aggregate, would remain insufficiently detailed to establish the progressive nature of the work experience. As stated, the letters are not accompanied by independent evidence to corroborate the claims contained in the letters. Therefore, the record contains insufficient evidence to meet the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B).

We conclude that the evidence does not establish the Petitioner's academic record is the equivalent of at least a U.S. bachelor's degree, nor does the record support a finding that the Petitioner possesses the requisite five years of progressive post-baccalaureate experience. For the foregoing reasons, the Petitioner has not established that he is a member of the professions holding an advanced degree.

B. Evidentiary Criteria for Exceptional Ability

Although the Director concluded that the Petitioner meets three of the relevant evidentiary criteria, we conclude that the Petitioner only meets two of the required criteria.

> An official academic record showing that the alien 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)

For the same reasons explained in the prior section concerning eligibility as a member of the professions holding an advanced degree, we conclude that the evidence of the Petitioner's academic record lacks sufficient detail, aspects of it do not appear official or credible, and there is insufficient other evidence to corroborate the claimed education. Therefore, the record does not establish that the Petitioner has met 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)

For the same reasons explained in the prior section concerning eligibility as a member of the professions holding an advanced degree, we conclude that the evidence of the Petitioner's employment is inconsistent, lacks sufficient detail, and is not adequately corroborated by other evidence in the record. Accordingly, the Petitioner has not established that he meets 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)

As the Director determined, the record contains evidence that the Petitioner holds a Florida real estate license and a New York Stock Exchange stockbroker license, both of which relate to the claimed area of exceptional ability. Therefore, the Petitioner has established eligibility under this criterion.

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

The Director explained that the Petitioner submitted materials of general average salaries in Poland but did not submit evidence of average salaries for entrepreneurs. As the Petitioner receives his self-employed salary in the United States, the statistics concerning Polish salaries are irrelevant. Further, the Petitioner has not submitted evidence of average salaries for U.S. entrepreneurs or tax documents that corroborate his earnings. On appeal, the Petitioner does not specifically contest the Director's findings concerning this criterion and therefore does not overcome them. For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

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

The Petitioner submitted evidence that as of the filing of the petition, he is a member of the National Association of Realtors and the [redacted] Association of Realtors. These memberships appear relevant to the Petitioner's claimed area of ability. Therefore, the record supports a finding 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)

The Director determined that the Petitioner had not established eligibility under this criterion. The Director specifically noted that:

> The evidence is insufficient to demonstrate that the petitioner has been recognized by peers, government entities, or professional or business organizations for achievements and significant contributions to the industry or field as a whole. The authors of the letters commend the petitioner's work. However, they do not provide any specific details that explain how the petitioner's work is representative of recognition for achievements and significant contributions to the industry or field as a whole. Moreover, the petitioner has not submitted any independent objective evidence from other professionals in the field to corroborate the claims made in the letters so as to demonstrate that he has achievements and significant contributions in the field or industry as a whole.

On appeal, the Petitioner does not specifically contest the Director's conclusions as to his eligibility under this criterion and therefore does not overcome them. Moreover, in our de novo review, we examined letters from the Petitioner's professional contacts, such as those from a former employer, accountant, legal services provider, and colleague. The authors describe the Petitioner's good character, skill, work quality, experience, as well as his accomplishments within the organizations and in the business deals in which he worked, but they do not describe any impact the Petitioner made to the field or industry as a whole. Although the letters contain statements that the Petitioner has recognized achievements in his field, the

authors do not specifically state how this is so, nor do they provide examples. Further, the authors do not explain how the Petitioner's internal accomplishments have any relevance to the field or industry as a whole. For instance, while the projects the Petitioner worked on may have been large, this does not indicate he impacted the field or industry as whole. While the Petitioner may have revolutionized a particular company, this does not demonstrate that he revolutionized or affected the industry or field as a whole. Similarly, the claim that the Petitioner is known internationally appears to be a function of the mere fact that he has worked on local projects in multiple countries, rather than serving as evidence to establish a world-renowned reputation for contributions in the field. Accordingly, we agree with the Director that the Petitioner has not established eligibility under this criterion.

Summary of Exceptional Ability Determination

The record does not support the Director's finding that the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Rather, we conclude that the evidence supports a finding of eligibility under only two criteria. Therefore, the Petitioner has not established his eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As the Petitioner has satisfied only two of the criteria, a final merits determination is not required. Nevertheless, we agree with the Director's conclusion that the record does not establish that the Petitioner's experience is beyond that which is ordinarily encountered in the profession.

C. National Interest Waiver

As previously outlined, the Petitioner must show that he is either an advanced degree professional or possesses exceptional ability before we reach the question of the national interest waiver. The Petitioner has not established eligibility for the underlying immigrant classification and therefore, the issue of the national interest waiver is moot.[12] The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. Because the documentation in the record does not establish eligibility for the underlying EB-2 classification, further analysis of eligibility under the framework outlined in Dhanasar would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

[12] Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("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).