U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11991282

Date: JUNE 9, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an embroiderer, seeks second preference immigrant classification as an individual of exceptional ability, 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he is an individual of exceptional ability. The Director also concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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. 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. –
>
> > (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.

(B) Waiver of job offer –

(i) National interest waiver. . . . the 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.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(A) 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;

(B) 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) 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).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Director found that the Petitioner did not establish he is an individual of exceptional ability. The Petitioner does not assert that he qualifies for second-preference employment as a member of the professions holding an advanced degree. If the Petitioner does not establish eligibility as an individual of exceptional ability, we need not determine whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act. For the reasons discussed below, the Petitioner did not establish that he is an individual of exceptional ability.

The Director concluded that the Petitioner satisfied the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (E), but the Director found that the Petitioner did not satisfy at least one of the four other criteria. More specifically, the Director observed that "[n]o evidence has been submitted relating to this criterion" for the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(B)-(D). Similarly, in response to the Director's request for evidence (RFE), the Petitioner addressed only the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (E), and (F), and did not assert eligibility under the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(B)-(D).

On appeal, the Petitioner asserts eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(B) for the first time. However, the extent of the Petitioner's assertion is that "[t]he evidence in the record clearly establishes that the [Petitioner] has had well over 10 years of full-time experience as an embroiderer. Based on the evidence submitted, the [Petitioner] has met this criterion by the preponderance of the evidence and USCIS erred in finding otherwise."

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires "[e]vidence 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." On appeal, the Petitioner does not specify any particular letter that may establish the extent of the Petitioner's experience, instead generally referencing "[t]he evidence in the record."

The Petitioner's curriculum vitae in the record does not support the assertion that, as of the petition filing date in 2019, he "had well over 10 years of full-time experience as an embroiderer." *See* 8 C.F.R. § 103.2(b)(1) (requiring petitioners to "establish that he or she is eligible for the requested benefit at the time of filing the benefit request"). The curriculum vitae lists two positions as "work experience": "2011-Now [a]rtisan [e]mbroider" and "2011-2014 [h]ead of [e]mbroidery [w]orkshop, Old City,

[redacted]' The only date earlier than 2011 on the Petitioner's curriculum vitae is 2008, corresponding to the Petitioner's "Bachelor's Degrre [*sic*] in [t]echnological [m]achines and [e]quipment[redacted]" not full-time experience as an embroiderer.

We note that the record contains recommendation letters, but not letters from current or former employers as required by 8 C.F.R. § 204.5(k)(3)(ii)(B). Like the curriculum vitae, the recommendation letters do not support the Petitioner's assertion regarding the duration of his full-time work experience in the occupation sought. For example, a recommendation letter from a member of the [redacted] association, notes that "[the Petitioner] has been a member of the [c]raftsmen [a]ssociation of [redacted] since 2011, and has been participating in many events and exhibitions." The letter does not, however, establish that, at the time of filing, the Petitioner had at least 10 years of full-time experience in the embroiderer occupation. *See* 8 C.F.R. § 103.2(b)(1). As another example, a recommendation letter from a self-employed entrepreneur in fine art noted that "[s]ince 2011, [the Petitioner] has been recognized as an [a]rtisan in [redacted] and operated as an independent master of [redacted] embroidery . . . ." However, similarly, this recommendation letter does not establish that the Petitioner had at least 10 years of full-time experience in the embroider occupation at the time of filing. *See id.* Moreover, as of the time of adjudication, the Petitioner had not asserted eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). It is a 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). The Petitioner has not satisfied this burden, and accordingly has not satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

The only other remaining criterion under which the Petitioner asserts eligibility on appeal is 8 C.F.R. § 204.5(k)(3)(ii)(F). The Petitioner states that "nationally and internationally recognized experts in the field of [redacted] embroidery [confirm] the [Petitioner] has made a contribution of major significance to this field." The Petitioner also asserts that he was "recognized at the municipal and national level as an artisan of an exceptional artistic ability" in 2011 and 2012; however, the Petitioner also asserts that the 2011 award was for a "city-wide competition" in [redacted] and that the 2012 award was "at a fair celebrating a national [redacted] holiday," not that it satisfies the criteria for exceptional ability.

The Petitioner also states that his work has been praised by major media; however, the Petitioner does not provide any legal, regulatory, or policy support for the position that media coverage satisfies the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(F). We note that the record contains articles from four media sources: the [redacted] magazine, the [redacted] magazine, the Our Home Minnesota newspaper, and the [redacted] Link magazine. The record contains a letter from the publishing house for the [redacted] and [redacted] magazines, attesting that "our company occupies one of the leading places on the media market of [redacted] today" and that its publications are "well known to a wide audience by its popular, influential publications in the republic."

The two-page article published in the [redacted] magazine is almost entirely written in first-person by the Petitioner. The extent of the objective, third-person language in the article is as follows: "The embroidery of ancient [redacted] is a kind of national craft which is still being pursued with interest today. [The Petitioner], a master of the [redacted] embroidery school, has been admired in sacred [redacted] and then overseas by the world population." Although this article opines that the Petitioner

"has been admired," it does not establish that he has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations, as required by 8 C.F.R. § 204.5(k)(3)(ii)(F).

The one-page article published in the [redacted] magazine summarizes the Folk Embroidery 2018 contest held in [redacted] The extent of the article's reference to the Petitioner is that "[f]irst place on the most beautiful embroidery was [the Petitioner], a young embroiderer from the city of [redacted] . All three winners received cash rewards. The first-place holder also received the opportunity from August 1 to exhibit his embroidered product in the Museum of Applied Art in [redacted] along with other first place holders from 12 regions and the Republic of [redacted]" We note that, unlike the 2011 and 2012 awards, the Petitioner does not describe the 2018 award as "recogni[tion] at the municipal and national level as an artisan of an exceptional artistic ability." Considering the totality of the record, the article does not establish that the Petitioner has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations, as required by 8 C.F.R. § 204.5(k)(3)(ii)(F).

Next, although the article published in the Our Home Minnesota newspaper spans several pages, half of it describes [redacted] embroidery in general, without addressing the Petitioner or his achievements or contributions specifically. The remainder of the article summarizes the Petitioner's family tradition of embroidering, expresses well wishes toward the Petitioner, and observes that "his work was received with pleasure and surprise" at the [redacted] Art Festival in [redacted] Minnesota. Like the other articles, this article does not establish that the Petitioner has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations, as required by 8 C.F.R. § 204.5(k)(3)(ii)(F).

The fourth article, published by [redacted] Link, summarizes the author's experience at the [redacted] International Festival in 2018. The article notes that, at the festival, the author found embroideries made by the Petitioner and another individual. Similar to the Our Home Minnesota article, this article briefly summarizes the Petitioner's family tradition of embroidering, expresses well wishes toward the Petitioner, and observes that his [redacted]" As with the other articles, this article does not establish that the Petitioner has been recognized for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations, as required by 8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner also asserts that he "published scholarly articles dedicated to the [redacted] traditional embroidery, its history and importance in [redacted] culture in major media in national circulation," and that he "authored a non-fiction book titled [redacted]" The Petitioner's assertions regarding "scholarly articles dedicated to [redacted] traditional embroidery" and "a non-fiction book titled [redacted]" as applied to the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), is misplaced. That criterion addresses "[e]vidence 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). Accordingly, the focus of this criterion is not on whether the Petitioner authored an article or a book, but rather on whether the Petitioner received recognition by peers, governmental entities, or professional or business organizations for having authored those works. Accordingly,

without more, neither the referenced articles nor the non-fiction book, in and of themselves, may establish eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(F).

In summation, the Petitioner has not satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), and therefore has not established he is an individual of exceptional ability. Because the Petitioner did not establish eligibility as an individual of exceptional ability, we need not address the Petitioner's assertions on appeal regarding whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act.

III. CONCLUSION

As the Petitioner has not satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), we conclude that the Petitioner has not established that he is an individual of exceptional ability.

ORDER: The appeal is dismissed.