U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10185849

Date: MAR. 12, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a capoeira coach, 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 had not established that he was individual of exceptional ability.

On appeal, the Petitioner submits a brief asserting that he meets the requirements of the requested classification.

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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* (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 –
>
> (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.
>
> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
>
> *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)

[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) (*NYSDOT*).

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[4]

As an initial matter, the Director's decision is unclear as to whether he concluded that, in addition to meeting the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), the Petitioner met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). Therefore, we will address this criterion below, in addition to the three criteria the Petitioner asserts that he also meets.[5] We also note that the Petitioner does not request that we consider any of the submitted documentation as comparable evidence. For comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to his or her occupation and establish that the submitted evidence is "comparable" to that criterion. 8 C.F.R. § 204.5(k)(3)(iii).

> *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).

In addition to a number of certificates attesting to his attendance and participation at a variety of events, the Petitioner submitted a certificate from the International Festival of Capoeira Art, [redacted], which indicates that the Petitioner "has graduated with praise and merit from the BROWN BELT and is qualified for the role of CAPOEIRA INSTRUCTOR [*professor*] by the Brazilian Association of Support and Development of the Art – Capoeira" (ABADA-Capoeira).

The Petitioner generally claims that this certificate attests to his skill, knowledge and experience. However, without more, the Petitioner has not established that any of the issuing entities qualify as a "college, university, school or other institution of learning" or that any of the documents are "an official academic record," as required by 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 Petitioner again relies on his "Graduation Certificate as a Capoeira Brown Belt," which "qualified [him] for the role of Capoeira Instructor [*professor*]" to meet this criterion. Regardless, the Petitioner has not demonstrated that being issued a "certificate" from ABADA – Capoeira at the International Festival

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[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 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.

[4] While we may not discuss every piece of submitted evidence, we have reviewed and considered each one.

[5] As the Petitioner does not address the remaining criteria, we consider them abandoned. *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).

of Capoeira Art, [redacted] is the equivalent of "certification for a particular . . . occupation," consistent with the plain language of the regulation. For example, although we acknowledge that the Petitioner's brown belt identifies the Petitioner as a "*professor*," the Petitioner has not provided evidence to establish ABADA-Capoeira's actual requirements to receive a brown belt or *professor* status.

Notably, the author of the dissertation "Capoeira: Conceptualization and Presentation of the Body" states that "[t]he belt symbolizes the knowledge and effort that a *capoeirista* has already invested in capoeira" and "[d]ifferent capoeira schools use different labeling and different colours of belts." According to the "Cordas and Social Hierarchy" section of the submitted "Authenticity and Identity-Making in a Globalized World: Capoeira in Boston and New York" thesis, "the cords [belts] are not actually able to be quantified or systemized due to the weight of the *mestre*'s judgment in deeming his students worthy or unworthy of a specific role." The author also quotes a conversation with a *mestre* who states that "[i]n terms or rank . . . it's when students are ready, time and experience. There is no road, oh you have to know this you have to know that. There is some of that but it's not all that." Without additional evidence, the Petitioner has not sufficiently established that receipt of a brown belt from ABADA-Capoeira qualifies as certification as a capoeira coach.

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

The Petitioner asserts that his membership in ABADA – Capoeira, satisfies this criterion. The Petitioner did not, however, provide any supporting evidence, such as the membership requirements, to establish that it is a professional association. As noted above, profession is defined as "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." 8 C.F.R. § 204.5(k)(2).

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).

While we acknowledge that while the Director's request for evidence (RFE) stated that the Petitioner "met this criterion," the Director's decision does not. Therefore, we will address this criterion below.

The plain language of the regulation requires that the evidence not only be from peers, governmental entities, or professional or business organizations, but also that it demonstrates recognition for achievements and significant contributions to the industry or field. Upon review, we cannot conclude that the Petitioner meets this criterion.

The Petitioner asserts that the letter from the president of ABADA – Capoeira [redacted] is evidence of the Petitioner's "**recognition for his achievements** and **significant contributions to the field** of capoeira." (emphasis in original) The letter generally praises the Petitioner and confirms evidence in the record regarding the length of time he has been practicing and teaching capoeira, his skillset, and the

positive effect he has on his students and other coaches. The letter does not, however, establish what influence, if any, he has had on the sport of capoeira as a whole, as required by the regulation.

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification. As the Petitioner has not met the threshold requirement for this classification, further analysis of his eligibility for a national interest waiver would serve no meaningful purpose.[6]

III. CONCLUSION

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.

[6] We would also note that the Director's decision did not address the subsequent and separate requirements for a national interest waiver.