U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12010728

Date: MAY 14, 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 wrestler, 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as an individual of exception ability, but that he had not established 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 he is eligible for a national interest waiver.

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. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

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. –
>
> (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. . . . [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:

> *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, to demonstrate 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* (emphasis added), U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] grant a national interest waiver if a 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]

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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) (*NYSDOT*).

[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.

II. ANALYSIS

The Petitioner is a [redacted] wrestler and he proposes "to continue working in [his] area of expertise."[4] In this matter, the Director determined that the Petitioner qualifies as an individual of exceptional ability, but concluded that he did not meet any of three prongs set forth in the *Dhanasar* analytical framework.

A. Exceptional Ability

For the reasons discussed below, upon review of the record, we must withdraw the Director's finding that the Petitioner established that he qualifies as an individual of exceptional ability.[5]

> *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 Director determined that the Petitioner's "Master of Sports" certificates from the Committee of Physical Education and Sport Under the Government of the Republic of [redacted] satisfy this criterion. As the record does not establish that [redacted] wrestling meets the definition of profession at 8 C.F.R. § 204.5(k)(2), the Petitioner must demonstrate that these two "certificates" are certifications for his occupation.

In response to the Director's request for evidence, the Petitioner claimed that the certificates "are official titles issued by . . . the official and highest governing body for athletes in [redacted] in recognition of a substantial contribution made []to the particular athletic field." While we acknowledge that the 2019 letter from the [redacted] Wrestling Federation repeats this claim, the Petitioner has not provided any supporting evidence to establish the requirements for receiving these certificates or sufficiently explained how they are a certification for his occupation. Without more, such general assertions are not probative evidence and do not demonstrate that these certificates meet the plain language of this criterion.

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

The Director determined that the Beneficiary's membership on the [redacted] Wrestling Team satisfied this criterion.[6] However, the Petitioner did not submit any evidence to establish that it is a professional organization. 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

[4] As explained by the Director, the Petitioner provided little information regarding his specific proposed endeavor.

[5] We also note that the Petitioner does not claim that he meets any of the criteria based upon 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).

[6] As will be discussed later in this decision, the Petitioner has not established that he is a member of the team.

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).

The plain language of the criterion requires recognition for both achievements and significant contributions to the industry or field. As noted above, the Petitioner holds two "Master of Sports" certificates and the 2019 letter from the [redacted] Wrestling Federation states that the certificates are awarded for "substantial contributions." However, without additional evidence, such as objective information regarding the requirements to receive these certificates and the Petitioner's specific contributions to the sport, the Petitioner has not established that he meets this criterion.

Finally, in this matter, the Director failed to conduct a final merits determination, but concluded that the Petitioner qualified as an individual of exceptional ability. The Director should discuss the submitted evidence and, if the Petitioner establishes that he meets at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), determine whether he has also demonstrated that he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business in a final merits determination.

For all of these reasons, we withdraw the Director's finding on this threshold issue and remand the matter to the Director to determine anew whether the Petitioner qualifies for EB-2 classification.

B. Inconsistencies in the Record

In addition to the above, we must also note our concerns regarding inconsistencies in the submitted documentation. According to the record, the Petitioner was born in 1998. It is, therefore, unclear why the Petitioner submitted a number of certificates for age categories that do not accurately reflect his year of birth. For example,

- Certificate of Honor from the Management of Youth Affairs, Sports and Tourism of [redacted] for "1st place in the weight of [redacted] among youth born in 1995-1997 in the open championship of [redacted]"
- Diploma from the Committee for Youth Affairs, Sports and Tourism Under the Government of the Republic o[redacted] for "D-2 weight – [redacted] for taking the first place in the republican tournament [i]n [redacted] wrestling' among youth of 1994-1996 year of birth."
- Diploma from [redacted] "for taking the second place in the republican tournament on [redacted] wrestling' among juniors of 1995-1997 year of birth in celebration of 20th anniversary of 16th Congress of the Supreme Council of the Republic of [redacted] and Day of national flag."
- Certificate of Achievement from the Department for Youth Affairs, Sports and Tourism of [redacted] "for taking the 1st place in weight of [redacted] in the Open Championship of [redacted] [for] [redacted] wrestling among youth of 1995-1997 year of birth in weight of [redacted]"

We also have questions regarding the 2019 letter from the [redacted] Wrestling Federation, which claimed that the Petitioner had been a member of the [redacted] National Wrestling Team since 2010 and its team captain since 2012. Not only was the Petitioner fourteen years old at the time, but he was still competing in the junior and/or youth category at a mostly local and/or regional level. According to the letter, at the time of his selection, their National Team included a "silver medalist in the 2013 Asian Championship and the winner of [] 12th place [at] the 2012 Olympic games." Further, the letter indicates that the team captain is the "chief assistant to the head coach in matters of technical, tactical, and special training" and "advis[es] the coach on [the] success of his methods for improving the skills of [the] athletes." In contrast, the February 13, 2020 "reference letter," purportedly from the same author at the [redacted] Wrestling Federation, stated only that the Petitioner in "2010 became [a] member of [the] [redacted] Wrestling *Federation* (emphasis added) and has achieved a number of sporting results," but makes no mention of being either a member of the National Team or its captain.

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.*

C. *Dhanasar* Analysis

Regarding the Petitioner's claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions that the Petitioner has not meet any of the three prongs.

III. CONCLUSION

For the reasons discussed above, we are remanding the petition for the Director to consider anew whether the Petitioner qualifies for EB-2 classification, the threshold determination in national interest waiver cases. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.