U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15469849

Date: NOV. 30, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 qualify for classification as an individual of exceptional ability. On appeal, the Petitioner submits a brief asserting that the Director erred in his decision, that he is meets the EB-2 exceptional ability requirements and is also eligible for a national interest waiver. The Petitioner has the burden to establish eligibility for the requested benefit by a preponderance of the evidence. 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, 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.

(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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 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 Petitioner "seeks employment in the field of [redacted]" and asserts that he plans to compete as an athlete in international [redacted] competitions, and coach other [redacted] athletes. As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability.[4] In denying the petition, the Director determined that the Petitioner did not fulfill any of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). On appeal, the Petitioner asserts that he meets four of the regulatory criteria, specifically 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), (E), and (F).[5] We have reviewed

[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.

[4] The Petitioner does not assert nor does the record establish that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree.

[5] A petitioner must provide documentation that satisfies at least three of six regulatory criteria to meet the initial evidence requirements for this classification. 8 C.F.R. § 204.5(k)(3)(ii). The submission of sufficient initial evidence does not, however, in and of itself establish eligibility. If a petitioner satisfies these initial requirements, we then consider the entire

the evidence in the record and conclude that it does not support a finding that the Petitioner meets the requirements of at least three criteria.[6]

> *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).

The Petitioner claims his exceptional ability is in the field of [redacted] but the record contains insufficient evidence to corroborate his full-time experience as [redacted] athlete. While we acknowledge that the Petitioner has been a long-standing participant in the sport, this alone does not satisfy the requirements of this criterion. The Petitioner must clearly define how his participation, and thus the experience he gained, constituted a full-time occupation.

The evidence shows the Petitioner has participated as an athlete in [redacted] competitions. He served as a member of the [redacted] team from 2001 to 2018, and as a member of the [redacted] club team from 2003 to 2016. While the submitted letters discuss his participation in [redacted] related athletic competitions and activities for more than ten years, they do not establish any full-time experience within the [redacted] field. For instance, the letter from S-, director of the [redacted] club, states that "during the period 2015 – 2016 [the Petitioner] performed the functions of a [redacted] coach in the club," noting "the choice of the coach is informal in the team; an athlete who possesses the qualities necessary to ensure successful activity in a situation of acute [redacted] is nominated for this place." S- indicates that the Petitioner's coaching duties included acting as the "closest assistant to the head coach in solving problems of technical and tactical, special training." The Petitioner further assisted "the head coach in the prevention of various interpersonal conflicts in the team [and] in the organization of leisure activities during the sporting events." Notably, S- does not indicate the amount of time that the Petitioner devoted to coaching, nor did he sufficiently describe the Petitioner's coaching responsibilities in detail during 2015 - 2016.

We also observe that the Petitioner stated in his 2016 nonimmigrant visa application that he worked for [redacted] where his duties involved "sell[ing] glasses." He also noted that he attended training at the "Tax Institute" from September 1998 to July 2003. In contrast, the Petitioner's Form ETA-750 does not reflect his attendance at any training schools or colleges, or any work experience other than to state that he has been self-employed as an athlete.[7] This raises questions regarding the Petitioner's claim that he has at least ten-years of full-time experience in the field of [redacted] Doubt cast on any aspect of the Petitioner's [evidence] may lead to a reevaluation of the reliability and sufficiency

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record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. *See Matter of Chawathe,* 25 I&N Dec. at 376 (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality"). *See also Kazarian* v. *USCIS,* 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *See* USCIS 6 Policy Manual F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

[6] While we may not discuss every document submitted, we have reviewed and considered each one.

[7] The Petitioner annotated "please see attached" in the Form ETA-750 to describe his experience. He provided a letter outlining his activities with [redacted] teams, but he did not identify the organizations that he has worked for, and the dates and duration of his employment. He also did not provide a description of the duties that he performed during his periods of employment in his Form ETA-750. Thus, the Petitioner's Form ETA-750 lends little probative value to the matter here. *Matter of Chawathe*, 25 I&N Dec. at 376.

of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Notably, on appeal the Petitioner also asserts that "the evidence clearly establishes that [he has] well over 10 years full-time experience as an embroiderer." The record does not contain such evidence and the Petitioner does not explain how experience in embroidery is relevant to his asserted exceptional ability in [redacted]. The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Id.* We conclude that the Petitioner's documentation falls short in demonstrating that he has at least ten years of full-time experience in the [redacted] field. This criterion has not been met.

> *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 discussed, the Petitioner seeks employment in the field of [redacted] as a competitive athlete or as a coach of other [redacted] athletes. However, he did not submit evidence sufficient to show that a license or certification is required to practice his profession, or that he possesses such a license or certification.

The Director determined that the Petitioner had not established his "master of sports of Tajikistan" title constitutes a *license to practice the profession or certification for a particular profession or occupation*. On appeal, he asserts that the master of sports is "an official title issued by the Committee of Physical Education and Sport under the Government of the Republic of Tajikistan," but the Petitioner has not provided evidence to establish the basis for granting this title by the Tajikistan government, nor does he document how this title qualifies as a professional [redacted] license or certification.[8] This criterion has not been met.

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

The Director determined the Petitioner did not present evidence in support of this criterion, noting the record contained the Petitioner's membership card for his membership with the [redacted] through December 2018. The Petitioner acknowledges on appeal that the Petitioner "has been" a member of [redacted] but he has not documented that he held such membership at the time of filing the petition in November 2019.[9] The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). This criterion has not been met.

> *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).

[8] The Petitioner also asserts that he holds a "license of the [redacted]," but has not documented (1) that he holds such a license, (2) whether the [redacted] issues professional licenses, and if so, (3) its standards and procedures for issuing such licenses.

[9] On appeal, the Petitioner also states that he "has been a member of the [redacted]." The record does not establish his membership in this club at the time of filing the petition, or that membership in a sports club constitutes *membership in a professional association*.

The Director also determined that the letters and other evidence the Petitioner provided about his athletic accomplishments were insufficient to meet the initial evidence requirements for this criterion. We agree that the evidence of record is inadequate to demonstrate that he received recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The Petitioner asserts on appeal that his "activities in the field of [redacted] were recognized as a contribution of major significance by champions and leading experts in the field of [redacted]," and alludes to the submission of "additional evidence describing [the Petitioner's] past achievements in support of the appeal." While the Petitioner submitted a brief in support of the appeal, he did not supplement the record with additional evidence. Here, the Petitioner has not adequately explained or documented the significance of his competitive rankings, the manner of his selection for the [redacted] team, or his roles and responsibilities on [redacted] teams. The record reflects that he has participated in international [redacted] competitions for veteran athletes. The Petitioner maintains:

> I have won major athletic accomplishments in the field of [redacted], which have received national or international acclaim. My successful career in the sport of [redacted] has been deservedly profiled in major international media, such as "*The Gazette of Central Asia*," "*Asia-Plus*," and the "*Varish*" sports network. As such, my background and record of achievements constitute a contribution of major significance into the field of [redacted] and establish me as one of a small percentage of those who have risen to the very top of this field.

While he submitted copies of articles which appear to principally discuss [redacted]'s activities, we conclude this material does not substantiate the Petitioner's assertions. For instance, the Petitioner's competitive ranking at a May 2010 [redacted] competition is noted, along with those of other competitors in an article published about the [redacted] in *Asia-Plus*, but the author of the article does not suggest that the Petitioner's performance constitutes a "major accomplishment in the field of [redacted]" or that it was otherwise a significant contribution to the field of [redacted] Another *Asia-Plus* article discusses a commendation given by a Japanese foreign minister to the [redacted] but does not mention the Petitioner.

Notably, the Petitioner relies on phrases quoted verbatim from the regulatory requirements for another immigrant visa classification (which is reserved for individuals of extraordinary ability) in describing his athletic achievements throughout the record of proceeding.[10] Similarly, S-M-, general director of [redacted] also uses such phrases in describing his organization's standards for the selection of [redacted] team members:

> [redacted] team membership requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the field of [redacted] I hereby state and confirm that it is precisely [the Petitioner's] outstanding achievements in [redacted], as judged by nationally or internationally recognized experts in the field of [redacted] that served as the basis for granting him membership in [redacted]

[10] See section 203(b)(l)(A) of the Act, 8 U.S.C. § 1153(b)(l)(A). An individual of extraordinary ability must meet at least three of ten criteria set forth in 8 C.F.R. § 204.5(h) as opposed to three of six criteria for an individual of exceptional ability under 8 C.F.R. § 204.5(k). The Petitioner can file a petition seeking classification under this category if he so desires, but the instant petition seeks approval for the national interest waiver immigration benefit.

Importantly, S-M- did not describe the Petitioner's specific achievements or contributions to the field of [redacted] that enabled him to qualify for the team. S-M- asserts that the Petitioner "has been playing a leading and critical role in the [redacted] team as the team leader," but he did not identify the team responsibilities assigned to the Petitioner which would exemplify the "leading and critical role" that he held within the team.[11] While the record contains evidence that describes the framework for conducting [redacted] competitions within [redacted] and [redacted]'s parent organization, the evidence does not specify the requirements for [redacted] membership, and or how the Petitioner was selected for the team. Additionally, the Petitioner has not submitted contemporaneous, supporting evidence of his leadership role within the [redacted] team, if any.

Turning to the reference letters submitted by [redacted] athletes, we note that although several of the authors offer general praise concerning the Petitioner's athletic achievements and coaching abilities, none of their letters persuasively establish that the Petitioner has received recognition for his achievements or significantly contributed to the field. For instance, R-B- and M-K- each reiterate the Petitioner's competition record and discuss that he has coached other athletes, asserting: "I, as a professional [redacted] athlete and as an international recognized expert in this sport, confidently confirm [the Petitioner] as one of the few who have successfully asserted themselves at the very top of the field of [redacted]" and "request [] approval of [the Petitioner's petition] as an alien of extraordinary ability." Many of the authors generally assert that the Petitioner has risen to the very top of his field, that he has served in a leading role in organizations of distinguished reputation, and that he is unquestionably an international coach of extraordinary ability. In addition, many of the authors use identical phrases, which suggest that the letters were not independently written. Here, the letters are not probative due to the insufficient explanations and analysis to support the authors' conclusions therein, the unsupported recitation of regulations concerning a different immigrant classification, and the similarity of language used by unrelated authors.[12] For these reasons, this criterion has not been met.

As the record does not support a finding that the Petitioner has met any of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii), the Petitioner has not established eligibility as an individual of exceptional ability 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.

ORDER: The appeal is dismissed.

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[11] Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

[12] We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). 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.*