U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24527403

Date: JAN. 31, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, an electronic engineering technician, 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. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that that the Petitioner had not established eligibility as an individual of exceptional ability and that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. Section 203(b)(2)(B)(i) of the Act. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: *"[e]xceptional 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). However, meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. *See* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policymanual. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id*. The officer must determine whether or not the petitioner, by a preponderance of

the evidence, has demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

Next, a petitioner must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[1], grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

As indicated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). In denying the petition, the Director determined that the Petitioner did not fulfill any of the claimed six criteria. On appeal, the Petitioner maintains that he meets six of them. After reviewing the evidence, we conclude that the record does not support of finding of his eligibility for at least three criteria.

> *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 asserts that he "presented a statement from the company where I worked attesting to my time of experience." The record reflects that the Petitioner submitted a letter from an unidentified individual claiming to be from [redacted] who stated that the Petitioner "was our employee from 11/29/2000 to 6/19/2017 occupying the position of TEC SISTEMAS TV II."

The regulation 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."[2] Further, the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence relating to qualifying experience or training shall be in the form of letters from current or former employers or trainers and shall include a specific description of the duties performed by the individual or of the training received. Notwithstanding the lack of contact and identifying information for the letter's author, the letter does not indicate that the Petitioner has at least ten years of "full-time experience." Although the letter states that the Petitioner was employed from 2000 – 2017 at [redacted] the letter does not specify whether the Petitioner has been employed in a full-time capacity or has at least ten years of full-time experience.

Accordingly, the Petitioner did not establish that he meets this criterion.

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[2] *See also* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

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 Petitioner claims:

> I have evidence that I determined fees for services that demonstrated my exceptional ability; the document has already been attached to the file.
>
> How much does a TV Systems Technician make in Brazil? The average salary is R$ 7,000.00, which will give an average monthly salary of R$ 4,500.00, corresponding to a R$ 54,000.00 annual salary. As can be seen in the supporting documentation, when an average of my monthly earnings for the year 2017 is made, there is a total average income of R$ 6,304.89, which corresponds to R$ 75,658.72 of average annual income, which is much higher that the average salary of a professional in my field of expertise in Brazil.

Although he provides the website address, https[redacted] the Petitioner did not submit the screenshots to support his arguments. Moreover, while he claims that he has "evidence that [he] determined fees for services" and refers to "supporting documentation," the Petitioner does not specifically identify which evidence, if any, corroborates his assertions. Furthermore, the Petitioner did not sufficiently explain how he calculated or determined the figures indicated above.[3]

Notwithstanding, the record contains monthly payment statements from April and May 2017, indicating that he earned a monthly base salary of R$4,793 as a "TEC SISTEMAS TV II" from[redacted] In addition, the Petitioner offered screenshots from www.salario.com.br showing the salary range of a radio and television technicians between R$1528 and R$4,670. Although the screenshots indicate that the Petitioner's monthly salary was above the range, the screenshots combined the salary figures for level 1, 2, and 3 technicians. Here, the Petitioner did not offer the salary statistics of level 2 and level 3 technicians, showing where his salary compares to fellow level 2 technicians, as well as the salaries of higher level 3 technicians; the inclusion of level 1 wages skews the salary figures lower. Without these numbers, the Petitioner did not demonstrate that he commanded a salary commensurate with exceptional ability.

Therefore, the Petitioner did not show that he fulfills this criterion.

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

The Petitioner claims eligibility for this criterion based on union membership with[redacted] and states that "[t]his union represents all people who work in the state of Rio de Janeiro in broadcasting companies, cable broadcasting companies, MMDS, DISTV, pay TV, cable TV, etc." The record contains a copy of his membership card. Although he provides[redacted] website, the Petitioner did not offer the screenshots or other evidence relating to the organization.

[3] While R$4,500 X 12 months = R$54,000 per year and R$6,304.89 X 12 months = R$75,658.68 per year, the Petitioner did not further elaborate and explain his reference to "[t]he average salary is R$ 7,000.00."

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires "[e]vidence of membership in professional associations."[4] Here, the Petitioner did not establish that his membership with [redacted] is tantamount to his membership in a "professional" association. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "*[p]rofession* 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."[5] In this case, the Petitioner did not show how a union-affiliated association qualifies as a professional association. The record, for instance, does not reflect that [redacted] has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association consistent with this regulatory criterion.

For these reasons, the Petitioner did not demonstrate that he satisfies 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 Petitioner indicates that he provided four recommendation letters. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities or professional or business organizations."[6] While the letters praise the Petitioner for his professional abilities and personal traits, they do not indicate how he has been recognized for his achievements, nor do they explain how his contributions have risen to the level of "significant" consistent with this regulation. For instance, S-S-M-J- described the Petitioner as having a "great character" and a "very valuable person for any team" and L-A-G- indicated that the Petitioner "was responsible for the technical and moral training of several professionals who now work worldwide" and "[h]e gave the trainees all technical and more dedication."[7] Here, the letters do not show how his contributions have impacted or influenced the field or industry in a significant manner beyond his employers. Without detailed, probative information, the letters do not sufficiently demonstrate his recognition for achievements and significant contributions to the industry or field.

Accordingly, the Petitioner did not establish that he meets this criterion.

III. CONCLUSION

The Petitioner did not establish eligibility for any of the criteria discussed above. Although the Petitioner claims eligibility for two additional criteria on appeal relating to an official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A) and a license or certification at 8 C.F.R. § 204.5(k)(3)(ii)(C), we need not reach these further claims as he cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). Moreover, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification.

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[4] *See also* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

[5] Section 101(a)(32) of the Act defines "the 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."

[6] *See also* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2).

[7] Although we reference two letters, we have reviewed and considered each one.

In addition, we need not reach a decision on whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues.[8] 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.

[8] *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 alternate issues on appeal where an applicant is otherwise ineligible).