U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29344933

Date: FEB. 5, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an aircraft maintenance technician in the aviation industry, seeks second preference immigrant classification as a member of the professions holding an advanced degree or 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability. The Director further concluded that the Petitioner had not established 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. 8 C.F.R. § 103.3.

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) of the Act. 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 [noncitizen] 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 [noncitizen] 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 [noncitizen] has commanded a salary, or other renumeration [sic] 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.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

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

A. The Petitioner Is Not An Individual of Exceptional Ability

The Director concluded that the record does not satisfy at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). More specifically, the Director found that the Petitioner fulfilled the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C) and we agree with that determination. On appeal, the Petitioner asserts that the Director's decision was erroneous, and maintains that he also meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (E) and (F) pertaining to ten years of full-time experience in the occupation, membership in professional associations, and recognition for achievements and significant contributions.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the noncitizen 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 letters purporting to support the Petitioner's work experience in the specialty do not adequately reflect at least 10 years of full-time experience. The Petitioner notes on appeal he submitted letters from [redacted] that represented the employers he provided services to for an aggregate period of 10 years. However, as noted by the Director, the services provided to [redacted] commenced in July 2022 until the present, a time period after the current petition was filed in April 2021. The regulation requires the Petitioner to earn 10 years of full-time work experience at the time of filing. Since the work experience at [redacted] occurred after the time of filing, this time is not eligible to show at least 10 years of full-time experience at the time of filing. The Petitioner must establish eligibility at the time of filing the petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

Furthermore, the Petitioner's work experience at [redacted] was for a total time of 2 months and 17 days, and the total work experience at [redacted] was under 8 years. Moreover, the Petitioner spent over 11 months at [redacted] in an internship rather than a full-time professional experience as an aircraft mechanic. The Petitioner's evidence is not sufficient to establish that the Petitioner has the requisite 10 years of full-time experience in his occupation. On appeal, the Petitioner did not provide any documentation or evidence to overcome the Director's concerns. Accordingly, we conclude the evidence is insufficient to establish eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

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

The Petitioner submitted evidence that he is an active member of the [redacted] since February 2021, a date prior to the filing of the instant petition. The Petitioner submitted print-outs of order receipts of the Petitioner's regular [redacted] membership dated February 28, 2021, June 12, 2022 and July 7, 2023. The Petitioner also submitted copies of his membership cards. The documentation establishes he is an active member of [redacted]

However, the limited evidence presented is not sufficient to demonstrate 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.[1] The evidence includes a print-out of [redacted] bylaws, which states that to be eligible for a regular membership, an applicant must be certificated under Federal Aviation Administration Title 14 Code of Federal Regulations part 65, subpart D – Mechanics or Subpart E – Repairman, or foreign national aviation authority equivalent, or hold a Federal Communications Commission General Radio and Telephone certificate. This information alone is not sufficient to establish [redacted] membership body has the necessary qualifications under this criterion. Membership in this association is not sufficient to demonstrate the Petitioner's membership in a professional association as required by the regulation.

> *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 submitted several letters of recommendation to demonstrate that he has been recognized for achievements and significant contributions to their field by peers, governmental entities or professional or business organizations. But the evidence the Petitioner submitted did not meet the standard of proof because it did not satisfy the basic standards of the regulations. *See Matter of Chawathe*, 25 I&N Dec. at 374 n.7. The regulation requires evidence of recognition of achievements and significant contributions. When read together with the regulatory definition of exceptional ability, the evidence of recognition of achievement of significant contributions should show expertise significantly above that ordinarily encountered in the field.

The Petitioner's letters of recommendation are written by previous employers and colleagues. The Petitioner asks us to conclude the writers' conclusions alone constitute recognition of achievements and significant contributions. But these statements are not supported by any evidence in the record which reflects that these letters represent noteworthy achievements and significant contributions. The letters described the Petitioner's character, work ethic, and other positive qualities like he is an "asset," "conscientious," "worked well with his co-workers," and "demonstrated great commitment." In general, the letter writers indicated the Petitioner was a person of genial character and a conscientious worker. But the Petitioner's genial character and good work ethic are not achievements or significant contributions to their field of endeavor. While the letters discuss the Petitioner's professional skills and job experience, this evidence does not show that his work has been recognized beyond his employers and clients and their specific projects at a level indicative of "achievements and significant contributions to the industry or field." We therefore agree with the Director that the Petitioner has not established that he fulfills the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

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. The Petitioner, therefore, is not eligible for classification as an individual of exceptional ability in the sciences, art, or business.

---

[1] The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "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."

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. The Director determined that although the Petitioner's proposed endeavor has substantial merit, the record did not establish that the Petitioner's proposed endeavor has national importance or that it would be beneficial to the United States to waive the requirements of a job offer and, thus, of a labor certification. As the Petitioner has not established the threshold requirement of eligibility for the EB-2 classification, further analysis of his eligibility for a national interest waiver under the *Dhanasar* framework is unnecessary.

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility for a discretionary waiver under the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.