U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30002683

Date: MAR. 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification, as well as a national interest waiver of the job offer requirement attached to this 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 record did not establish that the Petitioner qualifies for EB-2 classification or that the Petitioner was eligible for the requested national interest waiver. The matter is now before us on appeal pursuant to 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.

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. On appeal, the Petitioner solely addresses his eligibility for a national interest waiver, acknowledging that "the Service agrees that the Appellant does not qualify as an alien of exceptional ability." The brief does not address or contest the Director's specific findings regarding the underlying EB-2 visa classification.[1] Accordingly, we deem this ground to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012). Therefore, the Petitioner did not demonstrate his eligibility for second preference immigrant classification.

As this issue is dispositive, we need not reach, and therefore reserve, the Petitioner's appellate arguments regarding his qualification for a national interest waiver. *See INS v. Bagamasbad*, 429 U.S.

[1] The Director discussed the deficiencies in the evidence submitted to establish the Petitioner's eligibility as an individual of exceptional ability and concluded that he only met one of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). On appeal, the Petitioner does not identify a single erroneous conclusion of law or statement of fact in the Director's decision regarding the underlying classification. *See* 8 C.F.R. § 103.3(a)(1)(v).

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 applicants do not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.