U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30354390

Date: MAR. 28, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the EB-2 classification as an individual of exceptional ability, or that he merits a national interest waiver as a matter of discretion. 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)(B)(i) of the Act.

"Profession" is defined as 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 into the occupation. 8 C.F.R. § 204.5(k)(2).

"Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-

(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates that:

- 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

As noted above, to demonstrate eligibility as an individual of exceptional ability, a petitioner must initially submit documentation that satisfies at least three of six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

> *An official academic record showing that the individual 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. 8 C.F.R. § 204.5(k)(3)(ii)(A).*

The record shows that the Petitioner has a certificate for completion of aviation programs at training schools in Colombia and several additional training certificates, including those for courses in aircraft emergency response and proficiency in English. The record also includes the Petitioner's Airline Transport Pilot certification from the U.S. Department of Transportation and the Federal Aviation Administration. The record satisfies this criterion.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the individual 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).*

On appeal, the Petitioner states he does not contest the Director's conclusion regarding his qualifications under 8 C.F.R. § 204.5(h)(3)(ii). 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-,* I&N Dec. 657, 658 n.2 (BIA 2012)).

[1] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

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 record includes documentation of several licenses demonstrating the Petitioner's authorization to pilot commercial aircraft. The record satisfies this criterion.

Evidence that the individual has commanded a salary, or other renumeration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The record includes several pay statements for the Petitioner and a letter confirming a monetary award for a change in his role with his employer. The record does not include documentation to show how the Petitioner's salary or remuneration compared to other airline pilots during that period of employment, nor does the record otherwise include evidence sufficient to demonstrate that his salary or remuneration were based on his exceptional ability as a pilot. We note that, while the Petitioner states on appeal that he is "submitting evidence to fulfill this criterion," the brief is not supplemented by additional evidence. The record does not satisfy this criterion.

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

On appeal, the Petitioner maintains that he is eligible under this criterion due to his membership with the Aircraft Owners and Pilots Association (AOPA). The record includes a letter from AOPA confirming his membership and describing the benefits associated with it, including legal and medical services, flight training and aircraft financing, and online training courses. The record also includes a webpage from the organization summarizing what it means to be an AOPA pilot. In addition, the record includes a page from the U.S. Senate Congressional Record dated May 13, 2019, which depicts a resolution acknowledging the 80th anniversary of AOPA and explaining its origins. The Petitioner has highlighted a portion of the resolution as follows:

> Whereas AOPA was formed on May 15, 1939, in Philadelphia, Pennsylvania, in the years leading up to the entry of the United States into World War II;
>
> Whereas AOPA has grown into the largest aviation association in the world;
>
> Whereas AOPA has an ongoing legacy of successfully representing the interests of general aviation pilots and private aircraft owners across the United States;
>
> Whereas general aviation plays an important role in the economic vitality of communities across the United States, creating jobs and opportunities for growth throughout the United States . . . .

The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Accordingly, a professional association is one which requires its members to be members of a profession as defined in the regulation. Neither the letter from AOPA, the AOPA webpage, nor the section cited in the Congressional Record contains information concerning the association's membership requirements, including whether or not the association requires the minimum of a bachelor's degree or its foreign equivalent for admission. Senate Resolution 203 references AOPA's advocacy for aviation safety and commitment "to growing the pilot population by introducing young

people to career opportunities and welcoming more women and minorities into aviation"; however, information about the significance of the association within the industry, the organization's mission, and its membership numbers does not speak to specific qualifications for membership, including any minimum education requirements. The record does not sufficiently demonstrate that AOPA qualifies as a professional association for EB-2 eligibility purposes. The record does not satisfy 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 maintains, on appeal, that the record demonstrates his eligibility under this criterion. The record includes a five-year recognition of service letter from his employer and several letters of support from former colleagues who commend his skills and decisiveness. One letter from a colleague speaks generally of the Petitioner's "fundamental contribution to [the airline's] reorganization" following a recent global pandemic, asserting that he "has shown a masterful commitment to executing both of his roles by leading all communications that impact company pilots and contributing ideas to improve processes." The author also states that his "redesigned operational processes . . . improved work productivity in different areas" and that he was "instrumental in developing communication campaigns such as fuel-saving initiatives, operational safety, among others, through a weekly newspaper called PilotNews."

We note that these letters, while depicting the Petitioner's value in his role amongst his peers and to his company, are not supplemented by evidence specifying any achievements or significant contributions that he has made to the aviation industry or to pilots within the field of commercial flight. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The record does not satisfy this criterion.

Because the Petitioner has not established that he meets three of the six evidentiary criteria under 8 C.F.R. 204.5(k)(3)(ii), he has not met the initial requirement to demonstrate his eligibility as an individual of exceptional ability. Therefore, we need not conduct a final merits determination of whether he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Nevertheless, we have reviewed the totality of the evidence and conclude that he does not meet the elevated standard for this classification. While the Petitioner has experience as a commercial pilot, the record does not show that his level of expertise is unusual or stands out in the field.

In sum, the Petitioner has not established eligibility for the EB-2 classification as an individual of exceptional ability. On appeal, the Petitioner does not assert nor does the record establish that he is eligible for the EB-2 classification as a professional holding an advanced degree. Therefore, he is ineligible for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* 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 Petitioner has not established that he meets the requirements of EB-2 classification. The petition will remain denied.

ORDER: The appeal is dismissed.