U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19808456

Date: JUNE 15, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a [redacted] coach, seeks second preference immigrant classification as a member of the professions holding an advanced degree or, in the alternative, 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 Texas Service Center denied the petition, concluding that the record does not establish that the Petitioner qualifies for classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director further concluded that the record does not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner reasserts eligibility as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability, and that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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. –

(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. . . . the 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) provides, in relevant part:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> 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 to the definition of "advanced degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner must present "[a]n official academic record showing that the [noncitizen] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [noncitizen] has at least five years of progressive post-baccalaureate experience in the specialty."

Further, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six evidentiary criteria, of which an individual must meet at least three in order to qualify as an individual of exceptional ability in the sciences, the arts, or business: (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 remuneration 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.

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 a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen 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.[2]

II. ANALYSIS

The Director found that the record does not establish that the Petitioner qualifies as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. On appeal, the Petitioner reasserts eligibility for second preference immigrant classification under both criteria. For the reasons discussed below, the Petitioner has not established eligibility.

A. Advanced Degree

Beginning with the advanced degree issue, the record establishes that the Petitioner received the foreign equivalent of a U.S. baccalaureate degree in "physical education and sport/[redacted] coaching" from [redacted] University, in the country of Georgia, in 2009. However, the Director found that letters in the record from two individuals, stating that the Petitioner coached them, and a letter from the president of the Georgian National [redacted] Federation did not establish the dates during which the Petitioner worked as a [redacted] coach. The Director concluded, therefore, that the record did not establish that the Petitioner has at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). Because the record does not establish that the Petitioner has at least five years of progressive experience in the specialty, the Director concluded that the record did not establish that the Petitioner qualifies as a member of the professions holding an advanced degree. *See id.*

On appeal, the Petitioner asserts that, after receiving the aforementioned "[b]achelor's [d]egree in coaching [redacted] [in 2009, the Petitioner] also has 11 years of post-baccalaureate experience in [redacted] Specifically, the Petitioner asserts that he "served as a [redacted] [c]oach at [redacted] a gym and fitness center in Georgia . . . [f]rom 2010 to 2014." The Petitioner also asserts that, "[f]rom 2014 to 2016, [he] served as a [c]oach for the Azerbaijan national [redacted] team." The Petitioner further asserts that he has coached [redacted] at [redacted] in Massachusetts since 2016, at [redacted] in New York since 2017, and at [redacted] in Massachusetts since 2018. On appeal, the Petitioner asserts

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

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

that an advisory evaluation submitted in response to the Director's request for evidence (RFE) establishes that he has at least five years of progressive experience in the specialty.

The evaluation from United States Credentials Evaluations in the RFE response indicated that it based its analysis of the Petitioner's experience in the specialty on "information . . . obtained from the [c]urriculum [v]itae to assess the above-captioned individual's 11 years of qualifying professional experience." The evaluation opined that the Petitioner's bachelor's degree "and 11 years of experience, has no less than the equivalent of a Master of Science in [s]port [c]oaching."

The record does not establish that the Petitioner has at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2). We first note that the copy of the Petitioner's degree in the record is dated January 26, 2009, and the petition filing date is August 31, 2018; therefore, the Petitioner can potentially have a maximum of nine years and seven months of "post-baccalaureate experience in [redacted] at the time of filing, not 11 years as he asserts on appeal. A petitioner must establish eligibility at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Furthermore, neither the evaluation from United States Credentials Evaluations nor letters from athletes trained by the Petitioner may establish that he has at least five years of progressive experience in the specialty. To establish eligibility as a professional holding an advanced degree, in lieu of a qualifying degree, the petition must be accompanied, in relevant part, by *evidence in the form of letters from current or former employer(s)* showing that the Petitioner has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B). Because the evaluation from United States Credentials Evaluations and the letters from athletes trained by the Petitioner are not evidence in the form of letters from current or former employers of the Petitioner, they may not establish that the Petitioner has at least five years of progressive experience in the specialty. *See id.* Additionally, to the extent that the letter from the president of the Georgian National [redacted] Federation qualifies as a letter from a current or former employer, it addresses the Petitioner's experience as a [redacted] but it does not address any experience he may have as a [redacted] coach, or the years during which he worked as a [redacted] coach. Therefore, it does not establish that the Petitioner has at least five years of progressive experience in the specialty. *See id.*

Because the record does not establish that the Petitioner has at least five years of progressive experience in the specialty in the absence of a qualifying advanced degree, the record does not establish that the Petitioner qualifies as a member of the professions holding an advanced degree. *See id.*

B. Exceptional Ability

Turning to the issue of whether the Petitioner qualifies as an individual of exceptional ability, the Director found that the record satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) but that it did not satisfy any of the other criteria at 8 C.F.R. § 204.5(k)(3)(ii), of which the record must satisfy at least three for an individual to demonstrate exceptional ability in the sciences, arts, or business. On appeal, the Petitioner asserts that, in addition to satisfying the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), the record also satisfies the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(B), (C), (E), and (F). For the reasons discussed below, the record does not satisfy the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(B), (C), (E), and (F).

The criterion 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 [beneficiary] has at least ten years of full-time experience in the occupation for which he or she is being sought." On appeal, the Petitioner reasserts that he has held the coaching positions discussed above. However, as also discussed above, the record does not contain *letters from current or former employers* that address the Petitioner's experience as a wrestling coach. *See id.* Moreover, as discussed above, the record does not address at least 10 years of experience accrued at the time of filing the petition. Accordingly, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) requires "[a] license to practice the profession or certification for a particular profession or occupation." On appeal, the Petitioner asserts that he "has licenses and coaching certificates qualifying him as a fully licensed [redacted] coach in Georgia. Also, [he] has a current [redacted] membership through [redacted] In the decision, the Director addressed the Petitioner's Georgian credentials in the record, noting that they indicate he has "successfully undergone coaching professional development training" or otherwise participated in training. However, the record does not establish that any of the Petitioner's training certificates are the type of license or certification required to practice a profession or occupation contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(C). Specifically, the record does not establish that practicing the occupation of coaching [redacted] requires a license, either in Georgia or in the United States. Furthermore, as the Director addressed, the Petitioner's [redacted] membership is dated 2021, after the petition filing date. A petitioner must establish eligibility at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). None of the training certificates or other credentials in the record establish that they are "[a] license to practice the profession or certification for a particular profession or occupation," required in order to work as a wrestling coach. *See* 8 C.F.R. § 204.5(k)(3)(ii)(C). Accordingly, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires "[e]vidence of membership in professional associations." On appeal, the Petitioner asserts that he "holds membership in [redacted] as a [redacted] as per Exhibit C-1 in RFE submission dated 01/069/2021 [*sic*]." As noted above, because the Petitioner's [redacted] membership is dated after the petition filing date, it may not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1). The record does not establish that the Petitioner's current membership is merely an extension of membership that existed at the time of filing the petition. Moreover, the record does not establish that [redacted] is the type of professional association contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(E) because the occupations of [redacted] and coaching [redacted] are not listed in section 101(a)(32) of the Act, and the record does not establish that they are occupations for which a United States bachelor's degree or its foreign equivalent is the minimum requirement for entry in the occupation. *See* 8 C.F.R. § 204.5(k)(2) (defining "profession"). Accordingly, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Finally, the criterion 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." On appeal, the Petitioner generally asserts that he "has established recognition for his achievements and significant contributions to his field of endeavor by virtue of major athletic victories of his students." However, the Petitioner does not identify on appeal any particular piece of documentary evidence in the record from peers, governmental entities, or

professional or business organizations that establish recognition for his achievements and significant contributions to the industry or field.

In response to the Director's RFE, the Petitioner asserted that various one-page letters were evidence of "recognition [he] has received for his contributions to his field of endeavor." However, as the Director addressed in the decision, none of the letters recognize "significant contributions to the industry or field." *See id.* Instead, they recognize the Petitioner's personal accomplishments. For example, a letter from the president of the Israeli [redacted] Federation opines that the Petitioner "is one of most [*sic*] exceptional [redacted] who have dominated Georgian [redacted] since the young age both nationally and internationally," but it does not recognize any significant contributions the Petitioner has made to the industry or field. *See id.* Similarly, a letter from the president of the Georgian National [redacted] Federation lists various [redacted] competitions in which the Petitioner participated, and awards he has won based on his personal performances, opining that the Petitioner "has received incomparable love and considerable respect of his country," but it does not recognize any significant contributions the Petitioner has made to the industry or field. *See id.* Likewise, a letter from the president of the Belarus [redacted] Federation asserts, "[e]ven though I have only known [the Petitioner] for a short period of time, he made a lasting impression on our athletes and staff first I [*sic*] met him at International Tournament," but it does not recognize any significant contributions the Petitioner has made to the industry or field. *See id.* The record contains similar one-page letters from the president of the Polish [redacted] Federation, the president of the [redacted] Federation of Serbia, and the president of the Spanish Federation of Olympic [redacted] and Associated Disciplines that commend the Petitioner's personal achievements but they do not recognize any significant contributions the Petitioner has made to the industry or field. *See id.* Accordingly, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

We note that the Petitioner does not assert on appeal that comparable evidence establishes that he is an individual of exceptional ability, in lieu of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). *See* 8 C.F.R. § 204.5(k)(3)(iii) (permitting petitioners to "submit comparable evidence to establish the beneficiary's eligibility" if the standards at 8 C.F.R. § 204.5(k)(3)(ii) "do not readily apply to the beneficiary's occupation"). Because the record does not satisfy at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), the Petitioner does not qualify as an individual of exceptional ability.

In summation, the record does not establish that the Petitioner qualifies for second preference immigrant classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. Therefore, further analysis of his eligibility for a national interest waiver under *Dhanasar* would serve no meaningful purpose.[3] We thus reserve our opinion regarding whether the record satisfies the *Dhanasar* prongs. *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 alternative issues on appeal where an applicant is otherwise ineligible).

[3] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion, grant a national interest waiver.

III. CONCLUSION

As the Petitioner has not established that he qualifies for second preference immigrant classification, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.