U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 23071152

Date: Apr. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial pilot, 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.[1] 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 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. 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. 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

[1] The Petitioner initially claimed eligibility as a member of the professions holding an advanced degree. As part of the Director's request for evidence (RFE), the Director informed the Petitioner that he did not provide a detailed evaluation of his education to demonstrate eligibility as a member of the professions with an advanced degree. In response, the Petitioner did not address this issue or contest the Director's specific finding. Instead, the Petitioner made claims of eligibility as an individual of exceptional ability. Therefore, the Director only considered the Petitioner's qualification for the underlying EB-2 visa classification as an individual of exceptional ability.

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[2], 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 fulfilled only two of the criteria. On appeal, the Petitioner maintains that he meets an additional two. After reviewing the evidence, we conclude that the record does not support of finding of his eligibility for at least three.

> *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 Director stated:

> The record contains experience letters from [redacted] (since April 14, 2016), [redacted] (from February 18, 2004 – March 31, 2014), and [redacted] (from July 1999 – April 2001), which reflects that the petitioner is/was employed with each as indicated. However, as noted in USCIS' [RFE], when submitting experience letters, they must contain a description of the petitioner's duties, and must state whether the positions performed by him were full time. The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought was established at the petition's filing date. See 8 C.F.R. §§ 103.2(b)(8),(12). Since the experience letters lack this specific information, then USCIS cannot determine if the petitioner has the requisite ten years of full-time experience. It is the petitioner's burden to demonstrate that he meets every element of a particular criterion.

[2] *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).

The appeal brief claims:

> [T]he Petitioner submitted a letter from [redacted] for his employment from February 18, 2004 to March 31, 2014. The airline testified truthfully of the petitioner's logged flight hours, which is amount to 5874.21 hours. It also states the specific aircrafts that the Petitioner has flown during the employment. The information provided in the employment letters is detailed and specific.

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."[3] 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. However, none of the employment letters indicate that the Petitioner has at least ten years of "full-time experience." Although the letters provide employment dates, job positions, and flight hours, they do not specify whether the Petitioner has been employed in a full-time capacity or has at least ten years of full-time experience, as well as "a specific description of the duties performed."

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

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

The Director stated:

> The petitioner submitted a one-page enlarged printout which states that he has been a valued member of AOPA since 2018. However, since the only evidence in the record is the one-page enlarged printout, then USCIS questions the existence of the association and the petitioner's membership in it. The lack of information in the record about AOPA also makes it impossible for USCIS to convert the acronym into its spelled-out form and determine if it is a professional association. It is the petitioner's burden to demonstrate that he meets every element of a particular criterion.

The appeal brief contends:

> [T]he Petitioner submitted a membership of AOPA organization since 2018. In the petitioner's initial petition, the Petitioner has submitted 1) his membership card with member service contact information; and 2) a screenshot of his account page on AOPA website which contains a website address. The Service denied the Petitioner's membership with the wrongful reasons that 1) the only evidence is the one-page enlarged printout that leads to Service questions the existence of association; 2) the Service cannot convert the acronym into its spelled-out form and determined if it is a professional association.
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> . . . .

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

> The Petitioner should not be bearing the consequences of the Service's failure to recognize the evidence in the initial petition and the failure to perform due diligence on researching the organization. In fact, the AOPA Foundation is the philanthropic arm of the Aircraft owners and Pilot association.

Even though the Petitioner did not claim eligibility as an individual of exceptional ability, including the membership criterion, at initial filing, a review of the record reflects that the Petitioner did provide a copy of his AOPA membership card and a screenshot from aopa.org reflecting his membership. However, we agree with the Director that the burden remains with the Petitioner to establish eligibility for the benefit. *See* section 291 of the Act; *Chawathe*, 25 I&N Dec. at 375-76. Although the material contains the association's website, the Director does not bear the burden to conduct an internet search of AOPA's website to research the organization and establish eligibility for the Petitioner.[4] Rather, that burden rests with the Petitioner to provide sufficient evidence to support his claims.

Notwithstanding, the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires "[e]vidence of membership in professional associations."[5] Here, the Petitioner did not establish that his membership with AOPA 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."[6] Although the Petitioner submits information about the AOPA Foundation on appeal, the material does not show the status of AOPA as a professional association. In this case, the Petitioner did not demonstrate how an aircraft owner and pilot association qualifies as a professional association. The record, for instance, does not reflect that AOPA 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.

## III. CONCLUSION

The Petitioner did not establish eligibility for any additional criteria. Accordingly, 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.[7] 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

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[4] The Petitioner references 1 *USCIS Policy Manual*, *supra*, E.6(F)(2). However, this policy guidance relates to "Considerations Before Issuing Requests for Evidence or Notice of Intent to Deny [NOID]." Here, the Petitioner claimed eligibility for this criterion in response to the RFE, and the Director made his finding in his denial of the petition. Moreover, the guidance specifically states that "[o]fficers have the *discretion* to validate assertions or corroborate evidence and information" before issuing an RFE or NOID (emphasis added). Thus, "an officer *may* assess, before issuing an RFE or a NOID, whether the information or evidence needed is available in USCIS records or systems" (emphasis added). *Id.*

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

[6] 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."

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

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).