U.S. Citizenship and Immigration Services

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

In Re: 27437379

Date: JULY 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft maintenance technician, seeks classification as an individual of exceptional ability in the sciences, arts or business. *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 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

The Director concluded that the record satisfies 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 record satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C). The Director specifically concluded that the record does not satisfy the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E)-(F), without commenting on the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D). The Director then conducted a *Kazarian* final merits determination of the record, concluding that it does not establish the Petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

For the reasons discussed below, we withdraw the Director's conclusion that the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Furthermore, we withdraw the Director's conclusion that the record satisfies at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner does not assert on appeal—and the record does not support the conclusion—that the Petitioner satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(D)-(F), in addition to the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B). Because a petitioner must first satisfy at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii) and, in this case, the Petitioner has not satisfied the requisite number of criteria, we need not address whether the record establishes the Petitioner has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

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 [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought." In this case, as noted above, the occupation the Petitioner seeks for himself as a self-petitioner is an aircraft maintenance technician. Initially, in support of the Form I-140, Immigrant Petition for Alien Workers, the Petitioner submitted four letters from current or former employers; however, only one of the letters specified whether the Petitioner had *full-time* experience during his employment, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Specifically, the record contains a one-page letter, written in English, dated March 2020, from the engineering manager of [redacted] addressed to "FAA Administrator." The letter asserts that the Petitioner has worked as an aircraft maintenance technician for [redacted], located in Venezuela, "from 01/18/2016 until the present . . . under our supervision on a full-time [sic]." Beyond the position's title, the letter describes the duties the Petitioner performs, which are consistent with the occupation for which he seeks as a self-petitioner. Therefore, the letter asserts that the Petitioner has approximately four years and one month of full-time experience in the occupation for which he seeks.

Also in support of the Form I-140, the Petitioner submitted one-page letters from [redacted], and [redacted] each written in a language other than English, and accompanying English translations. The letter from [redacted] as translated in the record, states that the Petitioner "carried out work as a technical assistant during his internship period between 01/24/97 and 03/25/97, in the different workshops and departments of the company." Next, the letter from [redacted] dated December 1996, as translated in the record, states that the Petitioner "perform[ed] the position of Trainer . . . from 01/09/1996 to the present date." We note that the letter from [redacted] does not specify when, if at all, the Petitioner's employment at [redacted] ceased. In turn, the undated letter from Aviatest states that the Petitioner "provides services . . . serving as NDT Inspector . . . [s]ince May 2, two thousand and three." However, none of the letters indicate whether the Petitioner's experience as a technical assistant,

trainer, or NDT inspector, respectively, were on a full-time basis, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Furthermore, none of the letters from [redacted] as translated in the record, describe the duties the Petitioner perform(ed), in order to establish whether his experience is *in the occupation* for which he seeks as a self-petitioner, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

In response to the Director's request for evidence (RFE), the Petitioner submitted a new employment verification letter, written in English, dated October 2022, from the co-founder and director of [redacted] The letter asserts that the Petitioner, as a co-founder and general manager, has worked for [redacted] located in Venezuela, "on a full-time basis and uninterruptedly . . . since the company was established on October 06, 2006, until the present time." Beyond the position's title, the letter describes the duties the Petitioner performs, which are consistent with the occupation for which he seeks as a self-petitioner. Therefore, the letter asserts that the Petitioner had approximately 14 years of full-time experience in the position for which he seeks as a self-petitioner as of the November 2020 petition filing date. We note that the Petitioner also asserted in response to the RFE, "In 2017, seeking to expand my work to the United States, I opened my own U.S. [c]ompany, [redacted] dedicated to being a commercial office of my Venezuelan [c]ompany and serving several airlines and FAA repair stations in the United States." Relatedly, the Petitioner submitted articles of incorporation for the U.S. company dated 2017, bearing an address in Florida.

The record contains information that is inconsistent with the relevant letters of employment, undermining their veracity. On the Form I-140, the Petitioner provided an address in the United States and he further stated that the date of his last arrival in the United States was in November 2019, prior to the dates of the letters from [redacted] discussed above. The record does not reconcile how the Petitioner could have accrued full-time experience working for [redacted] both located in Venezuela, "until the present" and "until the present time," to wit March 2020 and October 2022 respectively, when he had departed Venezuela and entered the United States in 2019. Specifically, the letter letters list duties that require physical presence and they purport that the Petitioner has performed those duties. The letter from [redacted] asserts that the Petitioner "has been performing many maintenance functions which include but are not limited to . . . removal and installation of [numerous aircraft components]," "[s]ervicing and replenishing of hydraulic and oil systems," and other duties that require physical interaction with aircraft. Similarly, the letter from [redacted] asserts that the Petitioner's duties, which he performed "on a full-time basis and uninterruptedly," include performing "non-destructive tests on aircraft structures, engines, and components," ensuring "that the precision equipment and tools are calibrated at the time of use [and] the maintenance of all equipment and tools so that they are always serviceable," maintaining "facilities in a clean and orderly condition to prevent accidents and damage by external objects," properly "handl[ing] all parts and pieces under inspection, ensuring their preservation during their stay," and other duties that require physical interaction with aircraft, equipment, and facilities located in Venezuela.

The Petitioner's stated physical presence in the United States casts doubt on the letters that purport he performed duties on a full-time basis for two companies located in Venezuela that require physical interaction with aircraft, equipment, and facilities located therein. Furthermore, we note that the record does not reconcile how the Petitioner could have performed aircraft maintenance tasks for both the

company he co-founded and another company, simultaneously, on a full-time basis, since January 2016, which casts additional doubt on the veracity of the letters' claims in general. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Because the Petitioner's physical presence in the United States undermines the veracity of the letters that purport he accrued full-time experience while working in Venezuela at the same time, the letters bear minimal probative value and they are insufficient to establish that he has at least 10 years of full-time experience in the position he seeks as a self-petitioner, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). *See id.*

In light of the foregoing, the record does not establish that the Petitioner has at least 10 years of full-time experience in the position he seeks as a self-petitioner, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Therefore, we withdraw the Director's conclusion that the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) and, because the Petitioner does not assert on appeal—and the record does not support the conclusion—that the record satisfies criteria other than 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C), we furthermore withdraw the Director's conclusion that the record satisfies at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii).

In summation, the Petitioner has not established that the record satisfies at least three of the exceptional ability criteria; therefore, we need not determine 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* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2); *Kazarian*, 596 F.3d 1115. We note, however, that if we were to conduct a final merits determination of the record, it would not support the conclusion that the Petitioner shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor. Furthermore, because the record does not establish that the Petitioner satisfies at least three of the exceptional ability criteria, it does not establish that he qualifies for second-preference classification as an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act. We reserve our opinion regarding whether the Petitioner satisfies any of the criteria set forth in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *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).

## 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.