U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26954846

Date: JUNE 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft mechanic, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he 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.

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

"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.[1] 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.

After 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

[1] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], 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.

II. ANALYSIS

A. Exceptional Ability

The Petitioner asserts that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). Upon review of the arguments presented on appeal, we conclude that the Petitioner also meets the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) and the license to practice criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). Because the Petitioner has met at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii), we will evaluate the totality of the evidence in the context of the final merits determination below.

The Petitioner provided a certificate from [redacted] Flight School indicating that he completed the program entitled "Aircraft Maintenance Mechanic - Basic Module." In addition, the Petitioner submitted completion certificates for various aircraft mechanic courses and training programs since 2006. However, the Petitioner did not demonstrate how these training certificates set him apart from other aircraft mechanics to show a degree of expertise significantly above that ordinarily encountered in his field. He did not, for example, establish how his training record compares to the overall education of other aircraft maintenance mechanics.

Further, the Petitioner offered documentation of his employment history as an aircraft mechanic: [redacted] (May 2014 – August 2020), [redacted] (November 2005 – April 2013), and [redacted] (February 2002 – May 2005). Although the evidence reflects his approximately 16 years of full-time experience, the Petitioner did not demonstrate how he has obtained a level of expertise significantly above other aircraft mechanics. For instance, the Petitioner did not show how his experience related to other maintenance mechanics, nor did he establish the significance of his employment.

In addition, the Petitioner presented his aircraft maintenance mechanic license from the National Civil Aviation Agency (NCAA) of Brazil. Again, the Petitioner did not establish how his possession of this license places him among aircraft mechanics with a degree of expertise significantly above that ordinarily encountered in his occupation. The Petitioner did not explain or show how his NCAA license differentiates him from the average licensed aircraft maintenance mechanic.

[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).

As it relates to his salary, the Petitioner submitted his fiscal years 2019 and 2020 Brazilian income tax returns reflecting his earnings from [redacted] While this evidence shows total yearly income of R$25,269.62 (2020) and R$113,634.51 (2019), the Petitioner did not demonstrate the significance of his earnings, nor did he establish that his income was commensurate with a degree of expertise significantly above that ordinarily encountered in his field.[3]

With respect to his membership in the [redacted] Civil Aviation Workers Union, the Petitioner provided general information about the organization, but he has not demonstrated that his membership in this trade union requires a degree of expertise significantly above that ordinarily encountered in his occupation or otherwise signifies exceptional ability as an aircraft maintenance mechanic.

In regard to his recognition for achievements and significant contributions to the industry or field, the Petitioner provided some letters attesting to his employment. While these letters confirm his employment and praise his skills and abilities, they do not discuss his specific achievements and significant contributions to the industry or field. Rather, the letters make broad statements and limit their discussions to his individual employers. For example, G-M-S-, an aeronautical maintenance engineer and former inspector at [redacted] who oversaw the Petitioner's work, indicated that "performing an inspection of [the Petitioner's] work was always very easy, since the procedures performed by him were always perfect and I, as an inspector, had no doubt about the excellence of his work." Likewise, W-A-M-S-, a hanger maintenance manager with [redacted] stated: "I, as manager, was confident in our projects and with the safety of the planes. Throughout our production meetings, [the Petitioner] always brought us technical solutions and helped us a lot regarding the deadlines to be met." While the aforementioned letters discuss the Petitioner's projects on behalf of his employers, the evidence does not show that his work has had an impact beyond his employers and their specific projects at a level indicative of achievements and significant contributions to the industry or field. Nor has the Petitioner demonstrated that his specific achievements and contributions signify a degree of expertise significantly above that ordinarily encountered in his field.

The Petitioner also submitted a November 2021 article about [redacted] a Brazilian aircraft manufacturer, and its utilization of composite materials to improve wing performance. The author of the article and its publication source were not identified in the English language translation. While the article quotes the Petitioner as a "specialist in aeronautical maintenance," it does not discuss his recognition and contributions to the industry or field. In a few sentences of the article, the Petitioner describes the advantages of composite materials, but the article is not about him.[4] The Petitioner has not established that this article elevates him to a level of expertise significantly above that ordinarily encountered in his occupation.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility as an individual of exceptional ability. Although the Petitioner has satisfied three of the initial categories of evidence, the record does not demonstrate that he has obtained a degree of

[3] In the appeal brief, the Petitioner acknowledges he has not established that he received a salary demonstrating his exceptional ability.

[4] Nor does the article indicate that the Petitioner has been responsible for advances in composite materials in the aircraft manufacturing industry.

expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).[5]

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that he is an advanced degree professional or that he has achieved the level of expertise required for exceptional ability classification.[6] Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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 Petitioner has not established that he has attained a level of expertise required for classification as an individual of exceptional ability. 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.

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

[6] Although the Director's request for evidence provided the Petitioner an opportunity to do so, he has not claimed or demonstrated eligibility as a member of the professions holding an advanced degree.