U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27125736

Date: JUNE 20, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or, in the alternative, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification either as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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. The regulations define an advanced degree as either "any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate" or a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2). The regulations further specify that, in order to establish the equivalent of an advanced degree by a combination of education and experience, a petition must be accompanied by an official academic record showing that the individual has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employers showing that the individual has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i).

In the alternative, 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;
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> (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;
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> (C) A license to practice the profession or certification for a particular profession or occupation;
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> (D) Evidence that the [noncitizen] has commanded a salary, or other renumeration [sic] for services, which demonstrates exceptional ability;
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> (E) Evidence of membership in professional associations; or
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> (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 found that the record does not establish that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director further found, in the alternative, that the record does not satisfy at least three of the exceptional ability criteria. 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. For the reasons discussed below, the record does not establish that the Petitioner qualifies for second-preference classification.

A. Advanced Degree

The Petitioner generally described the proposed endeavor as "being an independent business owner in the field of trucking in the United States." The Director acknowledged that the record includes a copy of a diploma from the [redacted] University, and an English translation of it, that "granted [the Petitioner] the qualification of [e]ngineer" in May 2005, "[s]pecializing in [m]etal-cutting machines and tools." The Director further acknowledged that the record contains an academic evaluation letter and two employment verification letters. However, the Director concluded that the record did not establish that the Petitioner qualifies as a member of the professions holding an advanced degree.

On appeal, the Petitioner reasserts that the academic evaluation letter indicates the Petitioner's diploma is equivalent to a U.S. master's degree and, therefore, satisfies the advance degree criterion.

We may, in our discretion, use opinion statements submitted by a petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may give less weight to that evidence. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

The academic evaluation letter in the record from Silvergate Evaluations provides inconsistent information regarding the academic level to which the Petitioner's diploma is equivalent. Although the evaluation opines that the Petitioner "has attained the equivalent of a Master's Degree in Mechanical Engineering Technology from an accredited institution of higher education in the United States," the immediately preceding paragraph states, in its entirety, the following:

> Upon reviewing [the Petitioner's] academic history, it becomes apparent that [he] has satisfied requirements substantially similar to those required toward the completion of

a four-year Bachelor's Degree program at an accredited institution of higher education in the United States.

The record does not resolve the academic evaluation's directly conflicting statements. Because the academic evaluation presents directly conflicting statements in consecutive paragraphs (and, indeed, in consecutive sentences) regarding the U.S. equivalent of the Petitioner's diploma, and because the referenced information is material to threshold eligibility criteria, the evaluation's veracity is questionable, it bears minimal probative value, and furthermore it casts doubt on the reliability and sufficiency of evidence in the record in general. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795; *see also Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (providing that unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit). Accordingly, the academic evaluation neither establishes that the Petitioner's diploma is equivalent to a U.S. master's degree nor that it is equivalent even to a U.S. bachelor's degree. We note that the English translation of the diploma in the record does not reference either a master's or bachelor's degree program in order to present prima facie presumptive equivalence to either degree level. We further note that, although the record contains additional training certificates, the Petitioner does not purport that any document other than the diploma discussed above is at least at the level of a U.S. bachelor's degree or its equivalent.

Even if the record established that the Petitioner holds the equivalent to a U.S. bachelor's degree, which it does not, because the record does not establish that the Petitioner holds the equivalent to a U.S. master's degree, the Petitioner must also establish that he has at least five years of progressive experience in the specialty to satisfy the criterion at 8 C.F.R. § 204.5(k)(2). As noted above, the Petitioner generally described the proposed endeavor as "being an independent business owner in the field of trucking in the United States." The Petitioner elaborated that he would "be responsible for developing effective strategies and tactics for continuous business growth [of his truck transportation services to construction, agribusiness, and manufacturer clients located throughout the United States], overseeing the [c]ompany's day-to-day operations, and coordinating with third parties and independent contractors." Thus, although the proposed endeavor's industry is truck transportation services, the endeavor's specialty, for the purposes of the criterion at 8 C.F.R. § 204.5(k)(2), is business management.

The English translation of the first employment confirmation letter, generally dated "2022," indicates that the Petitioner worked "as an engineer in the production and technical department" of [redacted] in Kazakhstan from April 2005 until February 2007. The letter describes the Petitioner's duties as follows:

- Developed schemes and drawings in AutoCAD and Autodesk Inventor computer programs;
- Engaged in the design, preparation of specifications, scope of work, work document packages, and specifications;
- Prepared schedules, estimates, project progress reports, and material requisitions;
- Provided on-site support to construction contractors;
- Performed complete project cycle work from concept design to commissioning and delivering a project to managers and operating organizations;

- Participated in the management of installation work of systems and equipment of the newly opened hypermarket, ensuring their uninterrupted operation;
- Performed the execution of technical assignments, project documentation, development of drawings and schemes for installing and connecting automation equipment, internet, telephony and cable TV in the building; and
- Conducted survey work to determine conditions for station equipment installation, cable routing, and wiring diagrams.

The record does not elaborate on the portion of the Petitioner's time was allocated to any given duty, nor does it establish how the Petitioner's duties as an engineer for that period of approximately 23 months relate to the proposed endeavor's specialty of business management.

In turn, the English translation of the second employment confirmation letter, which is undated, indicates that the Petitioner worked "as a regional representative" for [redacted] operating in Kazakhstan, from February 22, 2010, until August 31, 2020. The letter describes the Petitioner's duties as follows:

- Identification of potential operating industrial enterprises in the regions with the annual production of the enterprises' goods and determining the purchasing power of potential customers;
- Placement of orders for production, control of timely readiness, and shipment to warehouses of finished products;
- Timely shipment of goods to customers before turn-key delivery of equipment;
- Control over transportation of the containerized block-modular boiler house—the equipment is transported by automobile transport in special containers, which requires excellent knowledge in cargo transportation with non-standard dimensions and permits;
- Customs clearance and submission of all accompanying and permitting documents; and
- Installation and delivery of the equipment before signing the acceptance certificate.

We acknowledge that some portion of the Petitioner's experience gained during his employment by [redacted] entailed "knowledge in cargo transportation" and other duties that appear relevant to the proposed endeavor's industry of truck transportation services. However, not all experience within a broad industry necessarily applies to a particular specialty. The criterion at 8 C.F.R. § 204.5(k)(2) requires "at least five years of progressive experience in the specialty," which, in this case, is business management, distinguishable from other specialties in the truck transportation services industry, such as a commercial truck driver, commercial truck mechanic, etc. Even to the extent that the Petitioner's duties during his employment by [redacted] may relate to the specialty of business management, the employment confirmation letter does not elaborate on the portion of the Petitioner's time allocated to any particular duties he performed, nor does it specify whether [redacted] employed the Petitioner on a full-time basis.[1] Therefore, although the [redacted] employment confirmation

[1] The Petitioner submits a second undated letter from [redacted] on appeal, written in English. The appeal letter omits reference to all but two duties listed above, regarding "control over transportation . . ." and "customs clearance . . . ." The

letter references a period of at least five years, it does not establish that the Petitioner accrued "at least five years of progressive experience in the specialty," as required by the criterion at 8 C.F.R. § 204.5(k)(2).

In summation, the record does not establish that the Petitioner holds at least a U.S. bachelor's degree or its equivalent, nor does it establish that the Petitioner has at least five years of progressive experience in the specialty, both of which are required by the criterion at 8 C.F.R. § 204.5(k)(2).

B. Exceptional Ability

The Director concluded that the record does not satisfy 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 criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) but none of the other criteria at 8 C.F.R. § 204.5(k)(3)(ii). On appeal, the Petitioner reasserts that, in addition to satisfying the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), the record satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B), (D). For the reasons discussed below, the record does not satisfy at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) and, 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.

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) requires "[a]n 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." As noted above, the Director acknowledged that the record contains a copy of the Petitioner's diploma from the [redacted] University, and an English translation of it, that "granted [the Petitioner] the qualification of [e]ngineer" in May 2005, "[s]pecializing in [m]etal-cutting machines and tools." The Director further acknowledged that the record contains a copy of an academic record corresponding to the diploma, and other training certificates. However, the Director found that the Petitioner "has not submitted sufficient documentary evidence describing how the diplomas and certificates are related to the claimed area of exceptional ability."

On appeal, the Petitioner generally states that he has "exceptional ability in the . . . field of endeavor," without identifying what he is exceptionally able to do. As discussed above, the proposed endeavor's industry is truck transportation services, whereas the endeavor's specialty is business management.

Regardless of whether the Petitioner purports that his exceptional ability is in business management in general or that it is more limited to the business management of a truck transportation services company specifically, the record does not establish how the official academic record showing that the Petitioner has a diploma from an institution of learning relates to business management, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). On its face, the English translation of the Petitioner's academic record states that it is "for specialization 'metal-cutting machines and tools.'" The record

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record does not reconcile why the appeal letter omits substantially all of the duties reported in the initial letter. The inconsistent duties cast doubt on the reliability and sufficiency of the letters specifically, and on the evidence submitted in general. *See Matter of Ho*, 19 I&N Dec. at 591-92. Like the prior letter from [redacted] the appeal letter does not specify whether [redacted] employed the Petitioner on a full-time basis.

does not clarify how a specialization in metal-cutting machines and tools relates to the area of business management in general or business management of a truck transportation services company specifically. Moreover, many of the courses listed on the academic record do not appear to relate to business management, such as 450 hours allocated to "military training," 400 hours allocated to "physical culture," 170 hours allocated to "philosophy," 120 hours allocated to "history of Kazakhstan," 100 hours allocated to "cultural studies," etc. In turn, none of the other training certificates appear to relate to business management. For example, the record does not establish how the Petitioner's training certificates granting him "the qualification 'electric welder—grade 1" or certifying his completion of the "basics of corrugated manufacturing" and "2nd semester of the elementary level of Japanese language course," respectively, relate to business administration. In summation, because the record does not contain "[a]n 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," it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

Next, 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." The Director acknowledged that the record contains employment letters from two of the Petitioner's prior employer, discussed above. However, the Director found that "the letters do not specify whether the [Petitioner] was employed full- or part-time. Therefore, USCIS is unable to determine that [he] has had at least ten years of full-time experience in the occupation sought" and, thus, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

On appeal, the Petitioner reiterates his employment at [redacted] discussed above, and he asserts that he "worked as a design engineer at [redacted] in Kazakhstan "[f]rom February 2007 to January 2010." The Petitioner further states that "[f]rom February 2010 to present day, [he] has worked as regional representative at [redacted]" The Petitioner summarizes his duties at the respective employers and asserts, "[b]ased on the documentation in the record, [he] clearly established that this criterion has been met, and USCIS erred in finding otherwise."

We first note that both the prior employment letter from [redacted] and the second letter from [redacted] submitted on appeal directly contradict the Petitioner's assertion that it employed him "[f]rom February 2010 to present day." The first [redacted] letter specifically states, "On August 31, 2020, [the Petitioner] submitted his resignation based on his request." Likewise, the [redacted] letter submitted on appeal states, "On August 31, 2020, [the Petitioner] filed his resignation." Thus, [redacted] repeatedly, directly contradicts the Petitioner's statement on appeal that he has worked for that employer "[f]rom February 2010 to present day." In addition to other unresolved inconsistencies in the record discussed above, this unresolved inconsistency further reduces the reliability and sufficiency of the Petitioner's own statements regarding his employment history and of the remainder of the record in general. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Regardless of the reduced credibility of the Petitioner's own statements regarding his employment history, none of the English translations of the employment letters in the record specify whether the companies employed the Petitioner on a full-time basis, as the Director observed and as discussed above. Likewise, the second employment confirmation from [redacted] does not indicate whether

it employed the Petitioner on a full-time basis. Furthermore, the record does not establish how the Petitioner's duties, quoted in full above, for the respective employers correspond to "the occupation for which [the Petitioner] is being sought," as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). Because the record does not contain letters from current or former employers showing that he has at least 10 years of full-time experience in the occupation he seeks, managing a truck transportation services company, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

Next, the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) requires "[e]vidence that the [noncitizen] has commanded a salary, or other renumeration [sic] for services, which demonstrates exceptional ability." The Director found that "[n]o evidence has been submitted relating to this criterion. Therefore, this criterion has not been met." The extent of the Petitioner's statements on appeal regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) are, "Based on the documentation in the record, the [Petitioner] clearly established that this criterion has been met, and USCIS erred in finding otherwise."

The Petitioner does not identify any particular documentation in the record that may reference the Petitioner's salary, or other remuneration for services, and how such documentation may demonstrate the Petitioner has exceptional ability in business management in general, or in the business management of a truck transportation services company more specifically. Neither of the employment confirmation letters in the record at the time of the Director's decision provided the Petitioner's salary or other remuneration for services. Similarly, the record does not contain tax returns or pay stubs that may establish what the Petitioner's salary or other remuneration for services may have been at any given time, let alone other evidence that may indicate how that salary or other remuneration for services demonstrates exceptional ability. We note, though, that for the first time on appeal the Petitioner submits a document that references his salary. The second letter from [redacted] submitted on appeal, asserts that his "salary was above average, namely 5600 euros," while employed as a "regional representative." However, the letter does not specify the frequency of the €5,600 payments, whether they occurred daily, weekly, biweekly, monthly, annually, etc., and the duration of the payments, whether throughout his entire employment period with the company or some portion of that time. Even if the letter indicated how frequently [redacted] paid the Petitioner €5,600, it does not provide any additional contextual information to compare that compensation to other "regional representatives" or to otherwise establish how that salary or remuneration for services demonstrates exceptional ability. On the contrary, the letter states that the reason the Petitioner's salary "was above average" was "[f]or doing additional responsibilities on logistics and transportation of our equipment." Thus, although the Petitioner's prior employer asserts that it paid him an "above average" salary, the reason was because he performed responsibilities that were in addition to those required of his position, not because his ability in performing his responsibilities was exceptional. Because the record does not establish that the Petitioner commanded a salary, or other remuneration for services, which demonstrates exceptional ability, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D).

In summation, the record does not establish the Petitioner qualifies as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act. In the alternative, the Petitioner has not established 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. 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 either as a member of the professions holding an advanced degree or, in the alternative, 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.