U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26785881

Date: JUNE 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner 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 record does not establish the Petitioner qualifies for classification 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. 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 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 criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (E) but that it does not satisfy any of the other criteria at

8 C.F.R. § 204.5(k)(3)(ii). On appeal, the Petitioner references the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) and he reasserts that he "meets at least 3 of the 6 criteria to demonstrate he possesses a degree of expertise above that ordinarily encountered in his field." The Petitioner does not reference on appeal any of the other criteria at 8 C.F.R. § 204.5(k)(3)(ii), nor does he assert that the standards at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply in this matter. *See* 8 C.F.R. § 204.5(k)(3)(iii).

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." Although the Petitioner describes himself as "an [e]ntrepreneur/[i]nvestor of [e]xceptional [a]bility," the record does not elaborate on what the Petitioner may be exceptionally able to do or, as specifically contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(F), the industry or field in which the Petitioner is exceptionally able to do so. However, we note that the Petitioner describes the four current or former positions on his résumé whose duties involve investment activity as being a generalized "[w]hole sales import and export business," an "[i]nvestment on real estate business," an "[i]nvestment company focused on land, commercial and residential real estate businesses, as well as construction and trade (imports and exports)," and "in the household goods sector," respectively.

The Director acknowledged that the record contains 11 letters of recommendation; however, the Director found that "[t]he letters praise the [P]etitioner's work but they are not sufficient to show recognition of significant contributions within a profession or business organization" and, thus, do not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

On appeal and in relevant part, the Petitioner asserts that he "has achieved significant acclaim during his over thirty (30) years of experience, specifically based on his solid professional background." However, the Petitioner does not elaborate on how the Director may have erred in analyzing any particular item of evidence relevant to recognition for achievements and significant contributions to the industry or field. We note, though, that in response to the Director's prior request for evidence (RFE), the Petitioner described five of the 11 letters of recommendation in particular as "conclusive evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities or professional or business organizations," referencing the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). (The six other letters of recommendation were submitted at the time of filing rather than as a part of the RFE response.)

None of the RFE response letters of recommendation satisfy the requirements at 8 C.F.R. § 204.5(k)(3)(ii)(F). We first note that none of the RFE response letters of recommendation are from governmental entities, or professional or business organizations—they are from individuals writing in their individual capacity. Although the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) contemplates individuals writing in their individual capacity, it does so in the context of "peers." However, four of the five signatories inform that they are former clients of the Petitioner, not his peers, and the remaining signatory informs that the Petitioner was his client, again not his peer. The letter from [redacted] discusses his satisfaction with the Petitioner's renovation of a house and, later, an apartment. Likewise, the letter from [redacted] discusses his satisfaction with the Petitioner's renovation of his "preformed building" that "double[d] the storage in [his] villa." Similarly, the letter from [redacted] discusses his satisfaction with the Petitioner "supervis[ing] the final added modification to my new apartment." In turn, the letter from [redacted] discusses his

satisfaction with the Petitioner "arranging details for the move from Canada to Lebanon specifically paperwork, legal customs, and handling all our personal belongings . . . including a few vehicles."

In contrast to four of the RFE response recommendation letters from the Petitioner's former clients, the fifth RFE response recommendation letter is from a former investment advisor to the Petitioner. The letter from [redacted] relates that the Petitioner "became one of our most important clients, since . . . he always demonstrated great responsibility when it came to fulfilling his financial commitments as a bank client." Because none of the letters of recommendation the Petitioner identified in response to the RFE as "conclusive evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities or professional or business organizations" are from peers, government entities, or professional or business organizations, they do not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

We further note that, even if the letters of recommendation were from qualifying signatories, their discussions of projects that benefitted the Petitioner's clients and their individual project requirements (or that benefitted the bank of which the Petitioner was a client) are not "[e]vidence of recognition for achievements and significant contributions *to the industry or field*," as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) (emphasis added).[1] Additionally, the record does not establish how the Petitioner's prior work experience as an investor and developer in real estate relates to his proposed endeavor. Specifically, the Petitioner described his proposed endeavor in a document titled, "Definitive Statement," submitted at the time of filing, as "using [his] expertise and knowledge to work as an [e]ntreprenuer/[i]nvestor managing and operating [his] own company . . . based out of the state of Florida [that] will support U.S. and foreign companies to distribute critical medical supplies in the U.S. market and export U.S. products to foreign markets," which is unrelated to real estate investment and development.

Because the Director found that the record satisfies less than three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), and because the Petitioner does not establish that the record satisfies the only additional criterion at 8 C.F.R. § 204.5(k)(3)(ii) discussed on appeal, the record does not satisfy at least three of the exceptional ability criteria.

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. 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).

[1] Although, for brevity, we do not address the six other letters of recommendation in the record, submitted at the time of filing, we have reviewed the record in its entirety and the letters contain deficiencies similar to those described above.

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.