U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25692650

Date: MAR. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a crime and intelligence specialist, 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 the record did not establish that the Petitioner was an individual of exceptional ability. The Director also determined that the Petitioner did not demonstrate that it would be beneficial to waive the requirements of the job offer and a labor certification. 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.

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).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals 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.

in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If 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 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[3], 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.[4]

II. EXCEPTIONAL ABILITY

The Director concluded that the Petitioner met four of the six claimed categories of evidence for exceptional ability. Specifically, the Director indicated the Petitioner satisfied the following criteria: 1) official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A); 2) ten years of experience at 8 C.F.R. § 204.5(k)(3)(ii)(B); 3) a salary demonstrating exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(D); and 4) membership in a professional association at 8 C.F.R. § 204.5(k)(3)(ii)(E). Because the Petitioner fulfilled at least three criteria, the Director conducted a final merits determination, concluding that the Petitioner did not possess a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

On appeal, the Petitioner contends that the Petitioner received various promotions, medals, and titles in his field and indicates that he has been recognized for his work in the departments he has served. The Petitioner points to his receipt of two awards, specifically bronze and silver military merit medals he received while working for the Brazilian [redacted] The Petitioner states that his educational background and experience demonstrate extensive practical knowledge based on his 25 years of service in "international and multicultural contexts."

The Petitioner provided evidence reflecting that he completed a certificate of learning from the Brazilian [redacted] academy related to his appointment as a sergeant in 2010. Further, the Petitioner submitted several training certificates the Petitioner earned during his career, including several in basic computing throughout 1995 and 1996, a course in emergency rescue in 1998, [redacted] improvement cycle" in 2000, intelligence basic internship operations in 2004, first specialization in authorities security in 2007, maintaining a Microsoft windows server in 2003, training seminar of [redacted] in 2008, investigation of crimes against children in 2009, amongst several other trainings. However, the Petitioner did not demonstrate how this training sets him apart from other crime and intelligence specialists to show a degree of expertise significantly above that ordinarily

[3] *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).

[4] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

encountered in his field. The Petitioner did not sufficiently explain or establish how his completion of these trainings and courses compared to the overall education of others working in law enforcement and intelligence, where it is reasonable to conclude that continuing education and training is a typical part of the profession.[5]

Further, the Petitioner offered documentation related to his employment history as a member of the Brazilian [redacted] including him working in the following positions: 1) intelligence analyst [redacted] sergeant/teacher, Intelligence Board of Directors, Brazilian [redacted] (October 2010 – March 2018); 2) [redacted] corporal/expert analyst in cybercrimes, Brazilian [redacted] Ministry of [redacted] (September 2008 – November 2010), 3) [redacted] corporal government security analyst/instructor, [redacted] of the Governorship (November 2005 – September 2008); and 4) [redacted] corporal- police care commander/intelligence agent, [redacted] (July 1992 – November 2005). Although the evidence reflects that the Petitioner had approximately 25 years of experience as a [redacted] officer, intelligence analyst, and trainer within the Brazilian [redacted] the Petitioner did not sufficiently indicate how he has obtained a level of expertise significantly above others who work in law enforcement and intelligence. For instance, on appeal, the Petitioner only vaguely discusses his "25 years of vast experience in international and multicultural contexts," but does not describe in detail how this experience is significantly above that of other law enforcement officers or intelligence analysts.

On appeal, the Petitioner emphasizes his receipt of bronze and silver military merit awards from the Brazilian [redacted] and further emphasizes his receipt of various "promotions, medals, and titles in his field." However, again, the Petitioner does not clearly articulate how his receipt of these medals and his career promotions reflect expertise above that ordinarily encountered in the field of law enforcement and intelligence. For example, although we do not diminish the Petitioner's service, the certificates related to his bronze and silver awards indicate that they are for ten and twenty years of "good services" respectively. Therefore, it is not clear how they demonstrate significant expertise beyond others working in law enforcement and intelligence. Otherwise, on appeal, the Petitioner does not discuss any other specific "promotions, medals, and titles" which establish his expertise significantly beyond others working in the field.

Finally, the Petitioner also submitted several letters from colleagues and others discussing his career and accomplishments. However, these letters are mostly focused on the Petitioner's proposed endeavors in the United States and they provide little discussion as to how his expertise is significantly above others in the field. For instance, the Petitioner provided a letter from an experienced military police officer who worked with him and this officer explained the Petitioner's creation of several databases, his service as a coordinator and instructor "enabling dozens of [redacted] officers to secure the safety of dignitaries and their families," and his work in conducting 250 background checks for a [redacted] awards ceremony. The Petitioner's colleague further stated that he was "very competent in his field." However, this letter did not indicate how the Petitioner's expertise it significantly above that normally encountered in the law enforcement and intelligence fields. Without further explanation, it appears that a regular member of the military police could perform many of the

[5] Qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that ordinarily encountered. *See generally* 6 USCIS Policy Manual, supra, F.5(B)(2).

Petitioner's stated functions, such as creating criminal databases and performing background checks. Likewise, another letter submitted by Brazilian prosecutor discussed the Petitioner's involvement with a team "providing important information for the quality of the methodology employed in the prevention of crimes committed over the internet," including a booklet reaching "thousands of students and educators." However, again, this letter did not clearly articulate how the Petitioner's expertise was significantly developed beyond his colleagues. Therefore, although the Petitioner provided several recommendation letters from colleagues discussing his work experience and some of his accomplishments, these letters do not clearly indicate how his expertise is significantly developed beyond his colleagues in the field.

Similarly, the Petitioner also provided a letter from a U.S. Air Force lead instructor at the Junior Reserve Training Corps. However, this letter only discussed how the Petitioner's proposed endeavor could benefit the United States' national interest and listed his work experience; it did not detail how the Petitioner's expertise was significantly above that normally encountered in the field. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). 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.* Here, the letter from the U.S. Air Force instructor does not sufficiently address the Petitioner's eligibility as an individual with exceptional ability. Therefore, it has little probative value in demonstrating this requirement for eligibility.

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 Director determined that the Petitioner satisfied four of the initial categories of evidence, the Petitioner has not demonstrated by a preponderance of the evidence that he has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).[6] As such, we need not reach a decision on whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver. Accordingly, we reserve this issue.[7]

III. CONCLUSION

As the Petitioner has not established that he qualifies for the underlying EB-2 classification, he has not established that he is eligible for or otherwise merits a national interest waiver. Thus, the appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

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

[7] *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).