U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25733302

Date: MAY 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a commercial aircraft pilot, 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 satisfied the plain language of at least three of the six criteria for an individual of exceptional ability but that a final merits determination of the evidence does not support the conclusion that the Petitioner has exceptional ability. The Director further concluded that the Petitioner has 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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 alien 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 alien 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 alien has commanded a salary, or other renumeration 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.

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 satisfied the plain language of at least three of the six criteria or an individual of exceptional ability, specifically the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C), and (E). However, after a final merits determination of the record, the Director concluded that the Petitioner has not established that he is an individual of exceptional ability because the record does not contain "sufficient documentary evidence to establish that he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." The Director further found that the record does not satisfy any of the criteria set forth in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Director acknowledged that the record contains "certificates documenting [the Petitioner's] completion of various aviation-related courses as of the priority date[;] over ten (10) years of full-time experience in his field [of commercial aviation; and] a professional license authorizing him to work as a pilot." However, the Director observed:

> the act of pursuing professional development or continuing educational courses are inherent to the [P]etitioner's occupation[;] possession of these certificates does not automatically render him an individual of exceptional ability because these types of qualifications are routinely conferred to numerous individuals in a variety fields[;] simply fulfilling one's job duties for more than ten years does not automatically render one an individual of exceptional ability[; and] the possession of a license is inherent to the [P]etitioner's occupation [and he] has not established that the issuance of this document identifies a mark of distinction, setting [him] apart from what is ordinarily encountered in his field.

Considering the totality of the record, the Director concluded that the evidence does not establish the Petitioner possesses a degree of expertise as a commercial aircraft pilot significantly above that ordinarily encountered in his field; therefore, he does not qualify for second-preference classification as an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act.

On the Form I-290B, Notice of Appeal or Motion, the Petitioner indicates, "I will submit my brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." However, to date, we have not received a brief or additional evidence from the Petitioner. Instead, in the basis for appeal statement in the appeal submission, the Petitioner asserts that his proposed endeavor has national importance, he has demonstrated success in similar efforts, and that on balance, it would be beneficial to the U.S. to waive the requirements of a job offer, referencing the three prongs of a *Dhanasar* analysis. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs. The Petitioner does not address on appeal the Director's conclusion that the record does not establish he possesses a degree of expertise as a commercial aircraft pilot significantly above that ordinarily encountered in his field. We have reviewed the record in its entirety; however, it does not support the conclusion that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in his field. Therefore, the record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2); *Kazarian*, 596 F.3d 1115.

In summation, the Petitioner has not established he possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Therefore, the record does not establish that the Petitioner 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. *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.