U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26380029

Date: MAY 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a manager in the hotel and tourism industry, seeks classification as a member of the professions holding an advanced degree or an individual of exceptional ability. 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. 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 did not establish that the Petitioner is qualified for the EB-2 classification nor eligible for a national interest waiver. 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 immigrant classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither 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 USCIS may, as a matter of discretion,[1] 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

The Director found that the Petitioner did not establish that he qualifies for the EB-2 classification, either as an advanced degree professional or an individual of exceptional ability. The Director further found that the Petitioner did not establish eligibility under any of the three required prongs of the *Dhanasar* framework, and as such, that he is not eligible for a national interest waiver.

The Petitioner's proposed endeavor is to continue his career as a hospitality professional. On appeal, the Petitioner submits a legal brief, copies of evidence previously submitted, and new evidence of certificates and trainings. The Petitioner contends on appeal that he qualifies for the EB-2 classification and that he is eligible for and merits a national interest waiver. While we do not discuss each piece of evidence in the record, we have reviewed and considered each one.

A. Qualification for EB-2 classification

As discussed above, to qualify for the underlying EB-2 classification, an individual must establish eligibility as either a member of the professions holding an advanced degree, or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. The Director determined that the record did not establish the Petitioner's qualification under either basis.

The Petitioner asserts on appeal that he qualifies for the EB-2 classification as an advanced degree professional based upon his bachelor's degree in business administration from [redacted] Universitario [redacted] in Brazil. The Petitioner's appeal brief only advances the claim that he qualifies as an advanced degree professional based upon his degree. However, the record also contains an evaluation that claims that the Petitioner qualifies as an advanced degree professional based upon a combination of his education and experience. For the reasons discussed below, we conclude that neither the degree by itself nor a combination of the degree and work experience qualify the Petitioner for EB-2 classification as an advanced degree professional. The Petitioner also claims that he meets the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) used to establish exceptional ability.

1. Member of the Professions Holding an Advanced Degree

To qualify as an advanced degree professional, an individual must either possess an academic or professional degree above that of a bachelor's degree, or a bachelor's degree or the foreign equivalent degree followed by at least five years of progressive experience in their specialty. 8 C.F.R. § 204.5(k)(2).

[1] *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).

The record contains evidence that the Petitioner obtained a title of technologist degree in management processes in 2014 and bachelor of business administration degree in 2018, both from [redacted] Universitario [redacted] in Brazil. The record also contains a credential evaluation stating that the Petitioner's bachelor of business administration degree is equivalent to a United States bachelor's degree. Based upon our review of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE) and the documentation in the record related to the Petitioner's degree and years of study completed, we agree that the Petitioner's bachelor's degree represents four years of academic study and is equivalent to a United States bachelor's degree.[2] The Petitioner does not claim that his 2014 technologist degree is equivalent to a United States bachelor's degree, and we agree that it is not.

However, the Petitioner did not submit evidence that he possesses an academic or professional degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). Additionally, the record shows that the Petitioner obtained his bachelor's degree in 2018, and the petition was submitted on May 20, 2020. Therefore, the Petitioner has not established that he possessed at least five years of progressive experience in the specialty *following* the receipt of his bachelor's degree, as required by 8 C.F.R. § 204.5(k)(2), as of the date the petition was filed.[3] A petitioner must establish eligibility at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). We will not consider experience gained after the filing of the petition. A visa petition may not be approved when a beneficiary, initially ineligible at the time of filing, becomes eligible upon obtaining additional education or experience after filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Because the Petitioner does not possess at least five years of progressive experience following receipt of his bachelor's degree and prior to the filing of the petition, the Petitioner does not qualify as an advanced degree professional as defined at 8 C.F.R. § 204.5(k)(2).

2. Individual of Exceptional Ability

"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). An individual 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.[4] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. For the

[2] *See* https://www.aacrao.org/edge/country/brazil for information regarding the education system in Brazil. We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

[3] The regulation at 8 C.F.R. § 204.5(k)(2) states that the bachelor's degree must be "followed by" the requisite five years of progressive experience. As such, we will not consider experience the Petitioner obtained prior to receiving his bachelor's degree in determining whether he qualifies for the EB-2 classification.

[4] 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.

reasons provided below, we conclude that the Petitioner does not meet the initial evidentiary requirements for classification as an individual of exceptional ability. We evaluate each of the regulatory criteria in turn.

> *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.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

As stated above, the Petitioner submitted evidence that he has obtained a bachelor of business administration degree in 2018, from [redacted] Universitario [redacted] in Brazil. As such, the Petitioner has established eligibility under this criterion.[5]

> *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.* 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner submitted an employment letter from [redacted] Hotels, stating that he was employed with the company at different hotels from May 2002 until July 2015, initially as a Service and Operations Manager and then General Manager. The Petitioner also submitted an employment letter from [redacted] Hotels and Resorts, stating that he was employed with the company from July 2015 to July 2017, as a General Manager and then a Regional Manager. When considered with the other evidence in the record regarding the Petitioner's employment history in the hotel industry, the Petitioner has established that he possesses at least ten years of full-time experience in the occupation. As such, the Petitioner has established eligibility under this criterion.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner claims that he satisfies this requirement because the law of Brazil allows an individual who has completed higher education to be considered a "tourismologist" and work in the tourism industry without a license. In response to the Director's NOID, the Petitioner submitted articles in support of this claim. The Director, however, concluded that the Petitioner did not establish this requirement because he did not provide evidence that he possesses a license to practice a particular profession or a certification for the profession, nor that a license is required to practice the profession.

On appeal, the Petitioner advances the same argument that he satisfies this criterion because he does not require a license and is "recognized by law as a professional." However, the Petitioner has not provided evidence, as required by the plain language of the regulation, that he possesses a license to practice his profession or a certification for his profession. Rather, the Petitioner has shown that a

[5] The Petitioner submits on appeal additional certificates for attending corporate trainings from [redacted] Hotels, where he was previously employed, and certificates for completing online courses in hospitality from [redacted] University. Ordinarily, we apply the framework in *Matter of Soriano* and *Matter of Obaigbena* to determine whether to consider new evidence submitted for the first time on appeal. *See Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988); *Matter of Soriano*, 19 I&N Dec. 764 (1988). Because we conclude that the Petitioner has already established this criterion, we need not consider the additional new evidence here.

license is not applicable to his field. [6] As such, the Petitioner has not established eligibility under this criterion.

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner submitted a letter from [redacted] Hotels and Resorts regarding his salary while employed at the company from 2015 to 2017, first as a General Manager and then as a Regional Manager. The letter states the Petitioner received his salary plus an additional 40% bonus, but the base salary and the bonus amounts are not clearly stated on the letter, nor are the numbers that are provided internally consistent.[7] Moreover, although the letter is signed with "[redacted] Hotels and Resorts" written under the signature line, the letter is not on company letterhead, and there no individual signer's name, title, or other contact information. The Petitioner did not provide tax returns, pay records, or other documents from this period that would further clarify his salary. We further note that the Petitioner did provide his social security card with employment contract history as evidence of his work experience, and the salary information in that document, although incomplete, is not consistent with the information in this letter. As such, the Petitioner has not sufficiently established his salary for those years. And although the Petitioner did provide a copy of his 2018 Brazilian tax return, reporting taxable income of R$ 229,738.71 Brazilian Reais, and his 2019 Brazilian tax return reporting taxable income of R$ 101,180.47, the record does not clearly establish the source of this income. Both the employment letter and the salary letter from [redacted] Hotels and Resorts state that his employment with the company ended in 2017. [8]

Although the Petitioner provided a printout from salario.com stating average salary amounts for the occupation of "hotel manager" in [redacted] Brazil in 2022, the Petitioner has not sufficiently established his earnings from 2015 to 2017, his occupation in 2018 and 2019, nor the typical salary range for the occupation of "regional manager" in the hotel industry. Based upon the lack of clarity in the record regarding his salary and occupation, we conclude that the Petitioner has not sufficiently established that he has commanded a salary that demonstrates exceptional ability. As such, the Petitioner has not established eligibility under this criterion.

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[6] The Director also advised the Petitioner in the NOID and in the denial decision that if the regulatory criteria do not readily apply the Petitioner may submit comparable evidence to establish his eligibility. 8 C.F.R. § 204.5(k)(3)(iii). The Petitioner does not claim on appeal that other comparable evidence applies, nor does he submit comparable evidence to establish his eligibility.

[7] Rather than providing a monthly or annual salary amount, the letter lists specific dates and corresponding salary amounts, suggesting that the Petitioner received those specific pay amounts on those dates. There is only one date in 2015 (with a salary of R$ 18,000.50), three dates in 2016 (with a salary totaling R$ 65,562.00), and one date in 2017 (with a salary of R$ 24,612.36). Separately, the letter provides the "total bonus" amounts earned each year, but those totals do not correspond to 40% of the stated salary amounts. For example, in 2017 the only salary amount provided is R$ 24,612.36, but the letter states that his bonus that year was R$ 103,947.04. And in 2016, the letter states the Petitioner received R$ 64,118.19 in bonuses, which is not 40% of the total salary of R$ 65,562.00.

[8] The record does contain a brief statement from the President Director of "[redacted]," stating that the Petitioner was the "CEO President" of this organization in 2018 and 2019, but the record does not establish that the income reported on his tax returns is from this employment, nor whether this employment relates to his area of claimed exceptional ability.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

In an attempt to establish this criterion, the Petitioner initially provided a copy of an "International Executive Card" from [redacted] Academy. The membership card expired on April 20, 2020, prior to the filing of the petition. The Director noted in the NOID that the Petitioner did not provide further evidence to establish that this card represents membership in a professional association, nor what the requirements are to gain membership, and that additional evidence was needed to establish this regulatory criterion.

In response to the NOID, the Petitioner submitted a printout from the website of the "European Academy of Top-Level Management" [redacted] Academy), which provides some information about the organization. In the decision, the Director noted that the Petitioner's membership card is expired, and that the additional website information still did not establish that his membership was associated with a professional association nor what the requirements are to gain membership.

The Petitioner also submitted a certificate for "Recognition of Professional Membership" from the International Hospitality Institute, awarded on September 5, 2022, and a membership card from the Brazilian Association of Tourism Professionals, issued September 29, 2022. The Director found that neither of these documents established the Petitioner's membership in a professional association as of the petition's 2020 filing date, as they were both awarded in 2022.

Finally, the Petitioner submitted two news articles from www.hoteliernews.com, dated January 24 and January 27, 2017, stating that the Petitioner was appointed to the Fiscal Council of the [redacted] Bureau, which one of the articles states is responsible for the promotion of tourist activity in the city. Again, the Director noted that the Petitioner did not establish that as part of the council he obtained membership in a professional association, nor what the requirements are to gain the membership to the Council.

On appeal, the Petitioner advances the same arguments that this evidence establishes his membership in a professional association, including the claim that, although his membership card expired, he is still considered a member of the [redacted] Academy. Regardless of whether the Petitioner remains a member of [redacted] Academy, he has not established that it is a professional association. Upon de novo review, we agree with the Director that the evidence submitted does not establish that the Petitioner was a member of a professional association prior to the filing date of the petition. As such, the Petitioner has not established eligibility under this criterion.

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)(F).

The Petitioner submitted copies of awards, multiple letters of support, an "expert opinion letter," and articles in support of this criterion.

The Director noted the letters of support, while speaking highly of the Petitioner as an employee and professional, do not describe recognition for achievements or significant contributions to his industry. The same is true of the "expert opinion letter." The articles demonstrate some news coverage of the hotel where the Petitioner was employed, including the Petitioner as its general manager, but the articles do not describe the Petitioner being recognized for achievements or significant contributions to the industry. Additionally, the Director noted, most of the awards submitted were awarded to the hotel or hotel group where the Petitioner was employed. Although the Petitioner has claimed that the organizations received these awards based upon his own accomplishments, he has not submitted sufficient evidence to establish this claim. Regarding the awards in the record that were presented to the Petitioner individually, the Petitioner did not provide sufficient evidence regarding the organizations that presented these awards nor the basis for the awards. As such, we cannot determine that these awards represent recognition from his peers, governmental entities, or professional or business organizations for his achievements and significant contributions to the industry. In the Petitioner's appeal brief, he restates the same claims made in his response to the NOID, but he does not address or attempt to overcome the Director's specific findings regarding this evidence and why it does not establish this criterion. Upon de novo review, we agree with the Director that the Petitioner has not established this criterion.

Therefore, the Petitioner has established that he satisfies only two of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because the Petitioner does not satisfy at least three of the criteria, we need not conduct a final merits determination to evaluate whether he has achieved the degree of expertise required for exceptional ability classification. As such, the Petitioner does not qualify as an individual of exceptional ability.

Having determined that the Petitioner does not qualify as either an advanced degree professional or as an individual of exceptional ability, we conclude that the Petitioner has not demonstrated eligibility for the underlying EB-2 classification.

B. Eligibility for a National Interest Waiver

The next issue is whether the Petitioner has established that a waiver of the classifications' job offer requirement is in the national interest. Because the Petitioner has not established that he meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether he is eligible for, and merits as a matter of discretion, a waiver of that classification's job offer requirement. *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 alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(2), (k)(3). Because the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, we conclude that the Petitioner has not established eligibility for a

national interest waiver. We reserve our opinion regarding whether the Petitioner has satisfied any of the three prongs of the *Dhanasar* analytical framework.

ORDER: The appeal is dismissed.