U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26357800

Date: MAY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a manufacturing technician, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. 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).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish eligibility for the EB-2 classification or for a national interest waiver under the *Dhanasar* framework. 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.

On appeal, the Petitioner submits a brief referencing the same arguments and evidence previously submitted. The Petitioner does not dispute the Director's determination that he did not establish eligibility for the EB-2 classification as an advanced degree professional.

The Director also determined the Petitioner did not qualify as an individual of exceptional ability. Specifically, the Director concluded the evidence did not establish the Petitioner met at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). We adopt and affirm the Director's decision regarding the specific issue of eligibility for the EB-2 classification. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Director concluded the Petitioner did not demonstrate he has at least ten years of full-time experience in the relevant occupation pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(F). On appeal, the Petitioner

reiterates his earlier assertions that the occupation code that most closely aligns to his work is a mechanical engineering technologist and technician, and that he worked as a production operator and a warehouse manager for a combined time of over ten years. However, the Director correctly noted the Petitioner provided employment letters confirming his work experience and employment as a warehouse manager that occurred after the instant petition was filed. On appeal, the Petitioner did not provide any documentation or evidence to overcome the Director's concerns.

Further, in reviewing the employment letter from [redacted] confirming the Petitioner's employment as a production operator for seven years and six months, we note that it lacks any explanation of the duties the Petitioner performed in that position. We therefore cannot fully understand whether that position provided the Petitioner with experience in the occupation being sought by the Petitioner. Accordingly, we conclude the evidence is insufficient to establish eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Director considered the Petitioner's evidence regarding a license to practice the profession or certification for a particular profession or occupation under 8 C.F.R. § 204.5(k)(3)(ii)(C) and explained that the documentation did not establish eligibility since the date of the license was after the instant petition was filed. In addition, the Director considered the Petitioner's evidence of membership in the Federal Council of Industrial Technicians – CRT, and also explained this evidence did not establish the Petitioner's eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(E) since the date of membership occurred after filing the current petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). On appeal, the Petitioner did not provide evidence to overcome the Director's concerns.

On appeal, the Petitioner reemphasizes his career successes, skills, and professional relationships, and relies upon previously provided evidence, such as support letters and certificates, to establish his eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(F). The evidence suggests his colleagues respect and appreciate him; however, it does not indicate the Petitioner has been recognized for achievements and significant contributions to the manufacturing industry as a whole.

The evidence does not establish the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii) at the time of filing. Therefore, the Petitioner has not established eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. A final merits determination is not required. As the Petitioner has not established the threshold requirement of eligibility for the EB-2 classification, analyzing his eligibility for a national interest waiver under the *Dhanasar* framework is unnecessary. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

Nevertheless, we reviewed the evidence in its totality and agree with the Director's conclusion that the record does not establish the Petitioner's eligibility for a national interest waiver.

The Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.