



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19806114

Date: FEB. 24, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a project manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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 that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for EB-2 classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it

¹ See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). The Petitioner presented a certificate (August 2017) and academic transcript from the [REDACTED] (Brazil) stating that he received an “MBA in Project Management.” The record also contains an “Evaluation of Training, Education, and Experience” from USA Evaluations which concludes that the Petitioner holds the equivalent of an MBA in Project Management “based upon a combination of Academics and a minimum 5 years Professional experience, as per USCIS.”³ This credentials evaluation does not indicate that the Petitioner has “a foreign equivalent degree” to a United States advanced degree.⁴ Accordingly, the credentials evaluation does not establish that the Petitioner’s education alone meets the requirements of the regulation at 8 C.F.R. § 204.5(k)(3)(i)(A).

Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). The Director determined that the Petitioner’s diploma (January 31, 2014) and academic transcript from [REDACTED] University (Brazil) were sufficient to show that he received the foreign equivalent of a U.S. baccalaureate degree. Regarding the issue of whether he has accrued at least five years of progressive post-baccalaureate experience in his specialty, the Petitioner presented letters and statements from [REDACTED] Company, [REDACTED], [REDACTED] Bank, and [REDACTED]. The record indicates that the Petitioner worked at [REDACTED] Company as a product engineer from November 2013 until June 2018. However, because the Petitioner did not receive his diploma until January 31, 2014, we count only his work experience after that date. The Form I-140, Immigrant Petition for Alien Worker, in this matter was filed on October 2, 2018. With respect to the Petitioner’s five years of progressive post-baccalaureate experience in his specialty, he must demonstrate such experience at the time of filing the petition. See 8 C.F.R. § 103.2(b)(1). Here, the Petitioner has not demonstrated at least five years of progressive post-baccalaureate experience in his specialty at the time of filing.⁵ Accordingly, the record supports the Director’s determination that the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Director indicated that the credentials evaluation did not provide sufficient information regarding the United States’ equivalent of the Petitioner’s MBA certificate.

⁴ Nor does the evaluation offer a sufficient analysis of the coursework the Petitioner completed at the [REDACTED]

⁵ The Petitioner did not begin working for [REDACTED] Bank until July 2019 and therefore his experience with that company does not establish his eligibility at the time of filing the petition. See 8 C.F.R. § 103.2(b)(1). In addition, the Petitioner’s internships with [REDACTED] Company (November 2011 until October 2012) and [REDACTED] (July

B. Exceptional Ability

The Petitioner asserted that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the membership criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). In the appeal brief, the Petitioner maintains that he also meets the license to practice criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), and the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). After reviewing the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

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).

The record supports the Director's determination that the Petitioner meets this criterion.

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 presented letters and statements from [redacted] Company, [redacted] [redacted] Bank, and [redacted], but this documentation does not show that he had accrued at least ten years of full-time experience in his occupation at the time of filing the petition.⁶ The Director concluded that "the Petitioner's work experience does not show that he has at least ten years of full-time experience as a Project Manager" and the Petitioner does not contest this determination on appeal. Accordingly, the Petitioner has not established that he meets the requirements of this regulatory 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).

As evidence for this criterion, the Petitioner provided his membership certificate for the Project Management Institute, his identification card for the Federal Council of Engineering and Agronomy (Brazil), and his registration certificate for the [redacted] Regional Council of Engineering and Agronomy. The Director concluded that the Petitioner had not established that his "profession or occupation requires the above documents. In this case, the Petitioner has not provided any

2013 until November 2013) reflect pre-baccalaureate experience and not post-baccalaureate experience. Likewise, the letter from [redacted] asserts that the Petitioner has worked for his father's company since August 2009, but it does not specify his dates of employment after earning his diploma from [redacted] University in January 2014. We note that after earning his diploma, the Petitioner worked at [redacted] Company until June 2018. The Director also indicated that the Petitioner's work experience for [redacted] [redacted] is not listed on his Form ETA-750B, Statement of Qualifications of Alien, which accompanied the Form I-140 petition.

⁶ The Petitioner must demonstrate that he had at least ten years of full-time experience at the time of filing (October 2, 2018). See 8 C.F.R. § 103.2(b)(1).

documentary evidence to show that these documents authorize the Petitioner to practice his profession or occupation.” On appeal, the Petitioner asserts that the Federal Council of Engineering and Agronomy “restricts or prohibits the practice of graduates that are not registered as their members and that only registered professionals can sign, or be responsible for any projects in Brazil,” but he does not offer documentary evidence to support his claims. The Petitioner, therefore, has not established that he meets 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 his accountant listing his yearly gross income for 2013 – 2017, earnings statements from [REDACTED] Company, bank statements, and income tax returns for 2015 – 2017. He also presented information from the Salario BR website listing “Product Engineer” salaries for various levels of experience at small companies.⁷ We note that the Salario BR information excludes salaries from medium and large companies. The Director’s decision noted that “the information from the website provides the salary based upon experience (trainee to master)” and that this information was not an adequate basis for comparison in demonstrating that the Petitioner’s salary is indicative of exceptional ability.

On appeal, the Petitioner points to USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 21* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>, which states: “Aliens working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether the salary would be considered high in the United States.” The Petitioner contends that he has commanded a high salary for services in relation to others working in the same field in Brazil.

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of his claimed exceptional ability relative to others in his occupation. Here, the Petitioner has not offered documentation showing that his earnings are indicative of exceptional ability relative to other Project Managers.⁸ Instead, he presented information relating to “Product Engineer” salaries at small companies.⁹ The Director concluded that the Petitioner’s evidence was insufficient to demonstrate that he has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated that he meets this regulatory criterion.

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

The Petitioner provided his membership certificate for the Project Management Institute, his identification card for the Federal Council of Engineering and Agronomy (Brazil), and his registration certificate for the [REDACTED] Regional Council of Engineering and Agronomy. The record,

⁷ This salary survey was based on a population of 5,492 wages with a sampling of 5,281 wages.

⁸ In Parts 5 and 6 of the Form I-140, the Petitioner identified both his “Occupation” and “Job Title” as “Project Manager.”

⁹ The Salario BR information excludes salary data from medium and large companies and therefore does not offer an appropriate basis for comparison.

however, does not include information about these organizations. The evidence is not sufficient to demonstrate that they have a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organizations otherwise constitute professional associations.¹⁰ Accordingly, we withdraw the Director's determination that the Petitioner meets 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).

As evidence for this criterion, the Petitioner submitted recommendation letters from colleagues discussing his business and engineering projects at [] Company, but these letters are not sufficient to demonstrate his recognition for achievements and significant contributions to the industry or field. For example, [] the Petitioner's Program Direct Manager at [] Company, mentioned the Petitioner's work on company projects involving the [] South America and [] Russia. [] asserted that the Petitioner performed on both projects "with high level of expertise and commitment mindset, flexibility and proactivity." The record, however, does not include supporting documentation indicating that the Petitioner's projects at [] [] Company have been recognized for significantly affecting the [] industry or production engineering field. The evidence does not show that the Petitioner's work has had an impact beyond his employers and their projects at a level indicative of achievements and significant contributions to the industry or field. The Director stated:

The authors of the letters do not provide any specific details regarding why the Petitioner's work is representative of recognition for achievements and significant contributions to the industry or field Without independent objective evidence showing that the Petitioner has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field, USCIS cannot conclude that the Petitioner meets this criterion.

On appeal, the Petitioner states that he "submitted evidence of the awards and recognitions he received during his career, in appreciation of his professional achievements and significant offerings in the field."¹¹ He contends that the recommendation letters "recognize his professional achievements and significant contributions" to his industry and field, but he does not specifically identify any erroneous conclusion of law or statement of fact relating to the Director's analysis for this criterion. Nor does the appeal brief even reference the Director's discussion regarding this criterion. Accordingly, we agree with the Director that the Petitioner has not demonstrated that he fulfills this regulatory criterion.

¹⁰ The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation."

¹¹ The record includes a [] Company South America Product Development (SAPD) Vision Award in recognition of the Petitioner's "commitment and efforts in supporting" the company's SAPD process, but this award reflects internal recognition for dedication to his employer and not recognition for achievements and significant contributions to the industry or field.

For the reasons set forth above, the Petitioner has not shown that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that he is an advanced degree professional or that he has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot.

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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.