



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

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

In Re: 23077747

Date: NOV. 16, 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 wrestler, seeks second preference immigrant classification 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 Acting Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement for this classification by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). In addition, she concluded that the Petitioner had not shown that it would be in the national interest to waive the classification's requirement of a job offer, and thus of a labor certification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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.

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). This, however, is only the first step, and the successful submission of evidence meeting at least three criteria does not, in and of itself, establish eligibility for this classification.¹ When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i).

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. 884.² *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, 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 USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>

² In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.⁴

II. ANALYSIS

The Petitioner is a wrestler who has competed and placed in national and international wrestling tournaments at the level. He proposes to continue competing in Greco-Roman wrestling tournaments in the United States.

A. Individual of Exceptional Ability

In her decision, the Director concluded that the Petitioner had not established that he met the following evidentiary criteria:

³ To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

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

- (A) Official academic record showing that he has a degree, diploma, certificate, or similar award relating to the area of exceptional ability;
- (C) License to practice the profession or certification for a particular occupation; and
- (F) Evidence of recognition for achievements and significant contributions

On appeal, the Petitioner challenges the Director's conclusions regarding each of these three criteria, as well as one he initially claimed. After *de novo* review of the evidence, we conclude that the Petitioner does not meet the requirements of any of the evidentiary criteria, nor has he shown that he possesses a degree of expertise significantly above that ordinarily encountered in his field.

An official academic record showing that the individual has a degree, diploma, certificate, or other 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 Petitioner initially submitted an English translation of his Certificate of General Secondary Education from the [REDACTED] in [REDACTED] Uzbekistan, and in response to the Director's request for evidence (RFE) he added a letter from an official of that institution. In addition, he included a copy of his high school education diploma from a school in the United States. The Director determined that neither of these diplomas related to the Petitioner's area of exceptional ability, which is wrestling.

On appeal, the Petitioner asserts that the main objective of the [REDACTED] is year-round training for athletes and candidates for Uzbekistan's national athletic teams, so that this degree does relate to his area of exceptional ability. The letter from the school official indicates that during his time at the school, the Petitioner participated in wrestling training sessions and competed at national championships, and also "mastered history and selected branch sciences." The certificate from the school shows that he completed courses in a variety of academic subjects such as language, algebra, physics, and geography, and also in physical training (Greek Roman wrestling). Although this evidence shows that he participated in wrestling training and competition while at the school, the certificate he received was for general education. Similarly, the diploma he received from the high school in the United States does not indicate that it related to wrestling, and a letter from a wrestling coach at the school simply notes his participation on the wrestling team and praises his athleticism and manner. We therefore agree with the Director that this evidence does not meet the requirements of 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)

In support of this criterion, the Petitioner submitted a translated copy of his Sportman's Card issued by the General Department of Sport and Cultural Affairs of [REDACTED] which shows that he earned the title "Candidate Master of Sports" in 2014. The letter from the school official mentioned above confirms his receipt of this title, as well as his candidacy for the Uzbekistan national team, but does not explain the basis for granting this award. In her decision, the Director concluded that the record lacked evidence of the significance of this card, and that a license or certification was required for the Petitioner's occupation.

On appeal, the Petitioner asserts that the school official's letter establishes that he was awarded his title based upon his candidacy for the Uzbekistan national wrestling team. Although we disagree with this interpretation of the evidence, even if that was the case, the Petitioner still has not established that his possession of this card and title is a license or certification for his occupation. Further, there is no evidence in the record suggesting that the possession of this card or title is a requirement for participation as a wrestler. Accordingly, the Petitioner has not established that he meets the requirements for this criterion.

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

The Petitioner initially presented evidence relating to this criterion, but did not submit further evidence in responding to the Director's RFE. On appeal, he points to the letter from [redacted] Chairman of [redacted] City branch of Uzbek wrestling association, which states that he "is a member of national team of [redacted] city in Greco-Roman wrestling." However, the record contains no further evidence about the "national team of [redacted] city" or its qualification as a professional association. We note that the term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." Because the Petitioner has not demonstrated that his occupation requires a U.S. bachelor's degree or foreign equivalent, we conclude that he has not established that the national team of [redacted] city in Greco-Roman wrestling qualifies as a professional association. Therefore, the Petitioner has not established that he 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)

The Petitioner submitted several types of evidence in support of this criterion, including reference letters, copies of certificates showing that he won or placed in wrestling tournaments, and an article in what appears to be an Uzbekistan newspaper or magazine that mentions him. On appeal, he first focuses on the previously mentioned letter from his high school wrestling coach in the United States, noting that it attests to his prowess as a wrestler, his leadership of his high school team, and his participation at summer camps and tournaments. While this letter notes some of the Petitioner's personal achievements, such as placing at a tournament, it does not indicate that these were significant contributions to the sport of wrestling. The same applies to similar letters in the record regarding his wrestling experience in Uzbekistan.

Turning to the certificates showing his participation and performance in several wrestling tournaments, these also show recognition of his personal achievements at those tournaments, in some cases given by athletic associations. But they do not demonstrate that these personal achievements constitute significant contributions to wrestling as a whole.

Finally, we initially note that the evidence of the article that appears to mention the Petitioner does not meet the requirements at 8 C.F.R. § 103.2(b)(3) regarding the translation of materials in a foreign language, as it is not a complete translation of the material, nor does the translator certify that it is complete and accurate. Even if we were to consider this partial translation, the article simply mentions

him as one of the wrestlers trained by the main subject of the article, and notes that he won a tournament. Neither the writer of this article nor the publication in which it appeared are affording recognition to the Petitioner or acknowledging any significant contributions, but mention him only to add to the recognition of the main subject of the article.

For all of the reasons given above, the evidence does not establish that the Petitioner has been recognized for any achievements and significant contributions to the sport of wrestling, and therefore does not meet the requirements of this criterion.

Because the Petitioner has not established that he meets any of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that he possesses a degree of expertise significantly above that ordinarily encountered in his field. While the Petitioner has successfully competed as a wrestler at the level in his home country and at the high school level in the United States, he has not established that he has risen above the average amongst athletes in the wrestling field as a whole, including athletes at all levels.

B. National Interest Waiver

As noted above, in order to establish eligibility for a national interest waiver, a petitioner must first establish that they qualify as either a member of the professions holding an advanced degree, or as an individual of exceptional ability. Per the above analysis, here the Petitioner has not established that he qualifies as an individual of exceptional ability. In addition, he has not claimed to be a member of the professions holding an advanced degree, and the record does not support a finding that he is a member of the professions or holds an advanced degree or the equivalent of an advanced degree per 8 C.F.R. § 204.5(k)(2). The Petitioner is therefore not eligible for a national interest waiver of the EB-2 visa classification's job requirement, and any further discussion of this issue is moot. We therefore adopt and affirm the Director's decision regarding the Petitioner's request for a national interest waiver. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

ORDER: The appeal is dismissed.