



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

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

In Re: 22723185

Date: OCT. 04, 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 financial manager, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as 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 would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined the evidence of record did not establish that the Petitioner qualifies for the underlying classification, nor did the Petitioner establish eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts his eligibility, arguing that the Director did not consider the evidence under the proper standard of review and erred in the decision. 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. LEGAL FRAMEWORK

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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

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). 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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 would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director concluded the evidence did not establish that the Petitioner qualifies as a member of the professions holding an advanced degree or that he is an individual of exceptional ability. The Director also determined that the Petitioner had not established: (1) the proposed endeavor has national importance; (2) the Petitioner is well positioned to advance his proposed endeavor; or (3) that a waiver of the job offer and labor certification requirements would be in the national interest. The Director’s decision then discussed the deficiencies in the submitted evidence and provided a well-reasoned explanation as to why the evidence was insufficient to establish eligibility for a national interest waiver.

Therefore, upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director’s decision with the comments below. 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 prescinding 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). While we may not discuss every document submitted, we have reviewed and considered each one.

A. Advanced Degree

We agree with the Director that, although the Petitioner presented evidence that he earned the foreign equivalent of a U.S. bachelor’s degree in administration, the employment letters he provided do not sufficiently establish at least five years of progressive post-baccalaureate experience. To the explanation the Director provided, we add that the employment letters indicate the Petitioner held the same position with the same employer, [REDACTED] for approximately ten years.¹ Although the Petitioner may have worked on different projects for different clients during this

¹ The employment letters state that the Petitioner worked for [REDACTED]. The Petitioner stated in his résumé that he worked for [REDACTED]. He has not offered an explanation as to whether [REDACTED] [REDACTED] and [REDACTED] are the same entity or if they differ, how they differ.

time, the evidence does not establish that the Petitioner's experience was progressive in nature, particularly as he remained in the same position throughout the duration of his employment with [REDACTED]. Moreover, the Petitioner indicates that he will continue his career as a financial manager; however, the record is insufficient to establish that the Petitioner has ever worked as a financial manager. Based on the evidence provided, we question whether the Petitioner's experience relates more to performing clerical or bookkeeping tasks as an office administrator than to financial management.

B. Exceptional Ability

The Director provided analysis of the Petitioner's eligibility as an individual of exceptional ability and determined that the Petitioner established eligibility under at least three of the six categories listed at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, the Director concluded that the Petitioner had satisfied the evidentiary requirements under: (1) 8 C.F.R. § 204.5(k)(3)(ii)(A), for an official academic record relating to the area of exceptional ability; (2) 8 C.F.R. § 204.5(k)(3)(ii)(C), for a license to practice the profession or certification for a particular profession or occupation; and (3) 8 C.F.R. § 204.5(k)(3)(ii)(E), for evidence of membership in professional associations. Although the Director's decision reflected that the Petitioner had satisfied at least three of the six criteria, in a final merits analysis, the Director found that the Petitioner had not established that he qualifies as an individual of exceptional ability. While we similarly conclude the Petitioner has not established that he qualifies as an individual of exceptional ability, we reach this conclusion based on different reasoning than that upon which the Director relied.

While we recognize that the Petitioner has an official academic record, we cannot conclude his course of study as an administrator sufficiently relates to the area of claimed exceptional ability as a financial manager. The Petitioner has not offered sufficient documentation concerning how his education as an administrator is related or comparable to an education in financial management. Therefore, we conclude that the evidence does not support a finding of eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(A), regarding an official academic record related to the area of claimed exceptional ability.

The Director already determined that the Petitioner's employment letters did not sufficiently establish ten years of full-time experience in the area of claimed exceptional ability, as required under 8 C.F.R. § 204.5(k)(3)(ii)(B). However, the Director did not specifically acknowledge that in response to the request for evidence (RFE), the Petitioner provided a new letter from [REDACTED] which stated that the Petitioner "was a full-time employee of this company from September 1st., 2005 to April 13th., 2015, performing administrative work in the position of administrator" (all-capitals emphasis removed).² Like the Director, we conclude that the Petitioner has not sufficiently established that he has ten years of full-time experience in the area of claimed exceptional ability. However, to the Director's reasoning, we add that the Petitioner has not offered sufficient independent and objective evidence that he has work experience as a financial manager, as opposed to experience as an office administrator performing administrative work.

² The [REDACTED] employer letter submitted with the initial filing stated that the Petitioner worked as a "manager" during this same time period. The letter did not provide any of the Petitioner's duties. The Petitioner did not explain why the same employer stated that the Petitioner worked as a "manager" in the first letter and in a subsequent letter stated that he worked as an administrator performing administrative work.

To the Director's analysis that the Petitioner had not demonstrated eligibility under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), related to remuneration for services demonstrating exceptional ability, we add that the Petitioner provided salary data from a Brazilian website without providing an English translation of it, as required by 8 C.F.R. § 103.2(b)(3). From the document, we ascertain that the salary data relates to a one-year period from 2017 to 2018. However, the evidence the Petitioner provided to establish his salary, such as tax documents, relates to years 2012 to 2015. Therefore, even if the Petitioner had provided an English translation of the salary website, the data would not correlate to the years for which the Petitioner offered evidence of his salary. For these additional reasons, we conclude that the Petitioner has not established eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Director found the Petitioner's evidence of a professional identity card and registration certificate from the Regional Council of Administration (council) satisfied two criteria, that of evidence of a license or certification in the profession and of a membership in a professional association. However, we conclude that this evidence is insufficient to establish eligibility under these criteria. First, the professional identity card and registration certificate state that they are valid until May 2020 and March 2019, respectively. Accordingly, it cannot be concluded that the identity card and registration remained valid through the adjudication of the petition. The Petitioner must establish eligibility at the time of filing for the requested benefit and must continue to be eligible for the benefit through the adjudication of it. 8 C.F.R. § 103.2(b)(1). Similarly, we conclude that for the identity card and registration to serve as evidence of eligibility under these criteria, they must have been valid at the time of filing and continue to remain valid through the adjudication of the petition. Second, as explained previously, these documents relate to the occupation of administrator, which the Petitioner has not established is related to the occupation of financial manager.

The identity card itself does not indicate what qualified the Petitioner to obtain such a card, nor does it indicate what the card confers upon him. By itself, the identity card does not support a finding that it is a license to practice the profession, but rather, merely identifies the Petitioner as an administrator. Notably, the Petitioner registered with the council in May 2018, which indicates that he received his professional identity card after ending his employment with [REDACTED] in 2015. Based on the information provided, the Petitioner appears to have worked approximately ten years as an administrator without a professional identity card, which suggests that such a card is not required to practice his profession and cannot be considered a license or certification.

The accompanying registration document states that the Petitioner is up-to-date with his financial obligations to the council, has no disciplinary actions against him, and may exercise the occupation. However, similar to the professional identity card, the council issued the Petitioner this document in September 2018, which suggests that the Petitioner performed in his profession for approximately ten years without having registered with the council. As such, we cannot conclude that the registration certificate is a license or certification to practice the profession.

The Petitioner also provided his registration with the council as evidence of his membership in a professional association. However, as the Director already noted in the decision, the Petitioner did not provide independent and objective evidence to establish the relevance and significance of the registration document. Here, it appears that the Petitioner received the document after meeting his financial obligations and after a determination that he had not violated any ethics or received any disciplinary action. It cannot be concluded from the evidence provided that the registration document is evidence of

membership in a professional association, as the record does not demonstrate what professional qualifications, if any, the council considered for issuance of the document. Accordingly, we conclude that the Petitioner has not established that he satisfies this criterion.

Because we conclude that the evidence does not support a finding that the Petitioner met at least three of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not reach a final merits determination. Nevertheless, we agree with the Director's conclusion that the record does not establish the Petitioner's experience is beyond that which is ordinarily encountered in the profession.

III. CONCLUSION

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. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the framework outlined in *Dhanasar* would serve no useful purpose. However, we nevertheless agree with the Director's analysis of his eligibility under the *Dhanasar* framework. On appeal, the Petitioner reiterates the same eligibility claims that he had previously submitted to the Director without meaningfully addressing the evidentiary deficiencies the Director identified. Additionally, on appeal, the Petitioner offers no new evidence to support his claims of eligibility. Therefore, we conclude that the Petitioner has not overcome the reasons for the Director's denial.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning his eligibility under the *Dhanasar* framework. 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).

As the Petitioner has not met the requirements for the underlying EB-2 classification, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.