



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

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

In Re: 26374966

Date: APR. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a camera operator, 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 immigrant 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 had not established eligibility for the underlying EB-2 classification as an individual of exceptional ability. In addition, the Director concluded that the Petitioner did not establish eligibility 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 visa 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. Only those who demonstrate “a degree of expertise significantly above that ordinarily encountered” are eligible for classification as individuals of exceptional ability. 8 C.F.R. § 204.5(k)(2).

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) sets forth the following six criteria, at least three of which an individual must meet in order to qualify as an individual of exceptional ability in the sciences, the arts, or business:

- (A) An official academic record showing that the [individual] 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;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the [individual] has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the [individual] has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If a petitioner satisfies these initial requirements, we then consider the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *See USCIS 6 Policy Manual F.5(B)(2)*, <https://www.uscis.gov/policy-manual>.

II. ANALYSIS

The Director found that although the Petitioner met three of the six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii),¹ the totality of the evidence did not establish that he has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. On appeal, the Petitioner contends that he meets the remaining criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C), (D), and (F).² In addition, the Petitioner claims that the previously submitted expert opinion letter demonstrates his exceptional ability significantly above the ordinary.

As we agree with the Director that the Petitioner satisfied the requirements of at least three criteria at 8 C.F.R. § 204.5(k)(3)(ii), we need not address whether he also meets additional criteria. However, meeting the minimum requirements by providing initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. *See 6 USCIS Policy Manual, supra*, at F.5(B)(2). Therefore, we will consider this evidence together with the balance of the record to

¹ The Director indicated that the Petitioner met the criteria of having an official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A), at least ten years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B), and membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E).

² The Director found that the Petitioner did not meet the criteria of having a license to practice the profession at 8 C.F.R. § 204.5(k)(3)(ii)(C), commanding a salary or remuneration for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(D), and being recognized for achievements and significant contributions to the industry or field at 8 C.F.R. § 204.5(k)(3)(ii)(F). The Director sufficiently explained the reasons why the Petitioner does not satisfy the remaining criteria, and on appeal, the Petitioner does not assert any specific erroneous conclusion of law or statement of fact in the Director's finding in this matter.

determine whether the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field and is thus eligible for the requested classification.

In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence. *Id.* The evidence of the Petitioner's educational credentials, employment letters, and professional membership show that he possesses the minimum qualifications to perform in his field. The Petitioner has a certificate from [REDACTED] a trade school in Brazil showing that he completed 248 hours of courses in camera operation.³ The employment letters list responsibilities and duties typical of a camera operator, such as checking and maintaining equipment, operating cameras, cranes, and drones to capture images with precision, and producing high quality videos for broadcasting.⁴ Also, the evidence regarding his membership with the Society of Camera Operators does not demonstrate that the organization have any membership requirements above those commonly found in camera operators actively working in the field. Qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that ordinarily encountered. *Id.*

Now we consider the expert opinion letter from [REDACTED] an associate professor of media production at [REDACTED] University. This letter explains the value of the media and film industry based on various articles and statistics and discusses the importance of camera operators to the industry without specific reference to the Petitioner's achievements beyond his normal day-to-day duties performed for his employers and clients. The letter reiterates the Petitioner's work experience already detailed on his resume and concludes that the Petitioner's experience "stands out" because he has 14 years of experience in the field, covered major events such as a large music show [REDACTED] and the ISSF (International Shooting Sport Federation) World Cup, and has handled high quality and versatile equipment such as CamMate cranes.

Although we acknowledge that the Petitioner is an experienced camera operator who participated in some high visibility projects, the letter does not specify which skill sets or experience possessed by the Petitioner place him significantly above other camera operators or what significant impact is made on the field by his exceptional ability as a camera operator. The expert opinion letter does not establish that the Petitioner's work experience and job performance have a level of expertise significantly above that ordinarily encountered in the Petitioner's field of camera operation.

Hence, upon de novo review, we agree with the Director that the Petitioner does not qualify as an individual of exceptional ability as defined under 8 C.F.R. § 204.5(k)(2). As the Petitioner does not assert any other errors in the Director's final merits determination, we deem them to be waived. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

³ The Petitioner submitted a certified English translation of a certificate stating that he completed "the course of Camera Operator regarding the Communication area, with 248 duration, in the year of 2007, at the Polytechnical Center." The certificate bears the name of [REDACTED] on the bottom. The certificate is accompanied by an undated and unsigned document listing his courses in camera operation, but this document does not show the usual information found on a typical academic record, such as the name of the school, dates of attendance, or grades earned.

⁴ The Petitioner submitted two employment letters that demonstrate he has at least ten years of full-time work experience in response to the Director's request for evidence (RFE).

As the Petitioner did not establish eligibility as an individual of exceptional ability, we need not address the Petitioner's assertions on appeal regarding whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act. Therefore, we reserve our opinion regarding whether the Petitioner satisfies any of the criteria set forth in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

III. CONCLUSION

The Petitioner has not met the eligibility for an individual of exceptional ability at 8 C.F.R. § 204.5(k)(2). 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.