



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

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

In Re: 26481781

Date: APR. 28, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a geologist, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidentiary requirements for EB-2 classification as an individual of exceptional ability. The Director further concluded that the Petitioner did not establish his 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 as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

² U.S. Citizenship and Immigration Services (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>.

in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner completed the foreign equivalent of a U.S. bachelor’s degree in geology in Belarus in June 2017 and entered the United States in July 2017 to enroll in English language training as an F-1 nonimmigrant student.

When the Petitioner filed this petition in February 2021, he indicated that he would work as a geologist, but did not provide any further information or evidence related to his proposed endeavor. In response to a request for evidence (RFE) from the Director, the Petitioner submitted a business plan for [REDACTED] and indicated that he intends to establish a website and mobile software application under this name. He stated that the completed software product will be offered as “a digital education tool that contributes to the improvement and quality of teaching and learning of rocks and geological contents within the natural science subjects in the formal school system.”

A. Exceptional Ability

In reviewing the Petitioner’s eligibility for the underlying EB-2 visa classification, the Director concluded that the evidence did not establish that he met the requisite three of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) to demonstrate his eligibility as an individual of exceptional ability.⁴ Specifically, the Director determined that the Petitioner submitted evidence related to three of the six criteria and met only one criterion. On appeal, the Petitioner submits additional evidence related to one criterion and asserts that he is eligible for the classification sought.

³ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

⁴ The Petitioner did not initially indicate whether he was seeking EB-2 classification as a member of the professions possessing an advanced degree and/or as an individual of exceptional ability. In response to the RFE, he clarified that he was seeking classification as an individual of exceptional ability. We note that the record does not establish that he possesses an advanced degree as defined at 8 C.F.R. § 204.5(k)(2), either through attainment of a U.S. or foreign equivalent degree above that of a baccalaureate or based on a U.S. baccalaureate degree or foreign equivalent degree followed by at least five years of progressive experience in his specialty. The Petitioner does not claim any post-baccalaureate work experience.

For the reasons provided below, we conclude that the Petitioner does not meet the initial evidentiary requirements for classification as an individual of exceptional ability.

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. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The Petitioner presented a diploma and transcripts from the [] University, together with certified English translations, which establish that he earned a Diploma of Higher Education in geology and prospecting of mineral resources in June 2017 and is qualified as an “engineer-geologist.” Upon review, we agree with the Director’s conclusion that the Petitioner meets this criterion.

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

The Petitioner’s initial evidence in support of this criterion included a paid invoice from the Association of Environmental and Engineering Geologists (AEG) indicating that he submitted a fee for international membership in this association on January 11, 2021. The Petitioner also provided screenshots from the “About AEG” section of the association’s website at www.aegweb.org. According to the website, “AEG is the acknowledged international leader in environmental and engineering geology and is greatly respected for its stewardship of the profession.” The AEG website further states that the association “leads the profession in its advocacy for legislation, professional licensure, regulation and codes and standards as each affects the practice of applied geosciences.”

In the RFE, the Director acknowledged this initial evidence, and requested additional evidence that AEG is a “professional association.” The RFE provided a definition of “professional association” but did not specify or suggest what type of evidence the Petitioner should provide. In response, the Petitioner submitted a screenshot of his member profile from the AEG website identifying him as an active international member as of August 2022.

The Director concluded that the Petitioner provided evidence of his membership in AEG but “did not submit any evidence which shows that AEG is a professional association,” noting that a professional association is “a non-profit organization seeking to further a particular profession, the interests of individuals engaged in that profession, and the public interest.”

On appeal, the Petitioner submits additional evidence related to his AEG membership, including evidence that he upgraded his membership to that of a “full member” in January 2023. He also provides additional information regarding AEG from its website, including a statement identifying it as “a nonprofit organization that specializes in engineering and ground-water ecology.” The newly submitted evidence also includes the association’s “Strategic Plan,” which indicates that AEG’s objectives include advocating for the profession through public and private outreach, providing professional development opportunities, and providing “applied geology professionals a place to thrive personally and professionally.”

Upon review of the previously submitted evidence and supplemental evidence provided on appeal, we conclude that the Petitioner has established his membership in AEG and provided sufficient evidence

to establish that AEG is a professional association. Accordingly, we conclude that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

Evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F)

In support of this criterion, the Petitioner initially submitted a letter attributed to a university professor who served as his instructor for a hydrogeology class at the [REDACTED] University. The professor praised his work habits, communications skills, and desire to learn, and recommended him as an “exceptional student” likely to succeed in future studies.

In response to the RFE, the Petitioner submitted two additional reference letters and copies of certificates for training he completed with [REDACTED] in 2022, subsequent to the filing of the petition. A petitioner must establish eligibility for the requested benefit at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Further, the evidence does not establish that the Petitioner’s completion of training in subjects such as web design and software application development amount to evidence of recognition for achievements and significant contributions to his industry or field. While completion of such training is relevant to the Petitioner’s ability to carry out his plans for his proposed endeavor, it does not satisfy the plain language of this criterion.

One of the reference letters submitted in response to the RFE was attributed to the same professor who provided the initial letter discussed above, although neither letter bears the individual’s signature. In the second letter, the professor notes the Petitioner’s interest in “development of geological software,” indicates they worked on “multiple construction projects” at [REDACTED] University, and states that the Petitioner developed a computer application to automate load-bearing calculations that saved time and effort on the projects. He describes the beneficiary as “exceptionally talented in designing, building and installation of these digital apps.”

The other letter submitted in response to the RFE is attributed to “[REDACTED]” who states that he works as a software developer for a Polish company. The author indicates that he has reviewed the prototype of the Petitioner’s [REDACTED] application and states that the project “will be very beneficial for the upcoming era” and “will change the learning style of those individuals related to the geology field.”

However, none of the submitted reference letters describe achievements or significant contributions the Petitioner has already made to the field of geology or to the field of software development for geological applications. While the Petitioner’s professor claims he developed applications that facilitated projects he carried out as a student, he does not state that the Petitioner’s work had an impact that reached beyond those projects to the broader industry or field, as required by the plain language of this criterion. Although the other letter is complimentary of the Petitioner’s proposed endeavor, it is unclear whether the Petitioner had even begun work on his [REDACTED] project prior to the filing of the petition in February 2021, and the project appears to have remained at the prototype stage at the time of the RFE response. The Director concluded, and we agree, that the evidence does not demonstrate 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. The

Petitioner has not directly addressed this criterion on appeal and therefore has not overcome the Director's determination that he does not meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

Based on the above analysis, the Petitioner has not established that he meets the initial evidentiary requirements by satisfying at least three of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we need not conduct a final merits determination of whether he has demonstrated a degree of expertise significantly above that ordinarily encountered in the field. Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the expertise required for the classification sought.

B. National Interest Waiver

The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability and therefore cannot qualify for the requested national interest waiver. While he asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework and is eligible for a national interest waiver as a matter of discretion, we will reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

III. CONCLUSION

The Petitioner has not established that he meets the initial evidentiary requirements for the underlying EB-2 classification as an individual of exceptional ability. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.