



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

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

In Re: 28110925

Date: AUG. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a bodywork technician in the automotive industry, seeks classification as an individual of exceptional ability.¹ See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. See section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualifies as an individual of exceptional ability and, therefore, the issue of qualifying for a national interest waiver was moot to the petition's decisional outcome. 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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, which in this case, is claimed as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). 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). However, meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. See generally 6 USCIS Policy

¹ Although the Petitioner also claimed to seek classification as a member of the professions holding an advanced degree in response to the Director's request for evidence, the Petitioner did not further pursue this claim and focused its response primarily on the exceptional ability criteria as the basis of his EB-2 eligibility claim.

Manual F.5(B)(2), <https://www.uscis.gov/policymanual>. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id.* The officer must determine whether the petitioner, by a preponderance of the evidence, has demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion,² grant a national interest waiver if the petitioner shows:

- 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.

The Director determined that the Petitioner met at least three out of six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) and conducted a final merits determination. The Director acknowledged the Petitioner’s experience, including his acquisition of certifications and licenses that qualified him to perform automotive repair work and provided him with years of experience in his field, but determined the record lacked evidence that the Petitioner’s professional achievements set him apart from other bodywork technicians in the automotive industry to show a degree of expertise significantly above that ordinarily encountered in his field as required to establish exceptional ability. Because the Petitioner did not establish his eligibility for the underlying EB-2 classification, the Director deemed the issue of whether he qualifies for a national interest waiver moot and denied the petition, concluding that the Petitioner did not establish eligibility for the benefit sought.

On appeal, the Petitioner asserts that by satisfying three of the six criteria that are required to demonstrate exceptional ability, he met the preponderance of the evidence standard and thus qualifies for the underlying EB-2 classification. It appears, however, that the Petitioner focuses entirely on his ability to meet at least three of six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii) as the basis for claiming that he is an individual of exceptional ability. We disagree. As noted above, and as previously stated both in the Director’s request for evidence and in the denial, meeting the minimum requirements by providing at least three types of initial evidence is not sufficient to establish that the Petitioner is an individual of exceptional ability, but instead is only the first step. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.5(B)(2). Here, the second step of the process is based on a comprehensive qualitative analysis of the evidence. The Director concluded in a final merits determination that the Petitioner did not establish by a preponderance of the evidence that he has achieved a degree of expertise that is significantly above that ordinarily encountered in the sciences, arts, or business. *See id.* Although the Petitioner reemphasizes his career successes, skills, and professional relationships on appeal, he does not address the Director’s final merits determination analysis and instead continues to focus exclusively on the fact that the minimum evidentiary requirements were satisfied.

² *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).

Accordingly, we adopt and affirm the Director's decision regarding his discussion of exceptional ability and the final merits. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

As the Petitioner has not established the threshold requirement of eligibility for the EB-2 classification, analyzing his eligibility for a national interest waiver under the *Dhanasar* framework is unnecessary. Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility for a discretionary waiver of the job offer requirement under the *Dhanasar* three-prong 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).

ORDER: The appeal is dismissed.