



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

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

In Re: 27917099

Date: DEC. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. *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 Nebraska Service Center denied the petition. The Director concluded that the record does not establish the Petitioner qualifies for classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. The Director further concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2) of the Act. The regulations define an advanced degree as either “any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate” or a “United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.” 8 C.F.R. § 204.5(k)(2). The regulations further specify that, in order to establish the equivalent of an advanced degree by a combination of education and experience, a petition must be accompanied by an official academic record showing that the individual has a United

States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employers showing that the individual has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i).

In the alternative, for the purpose of determining eligibility under section 203(b)(2)(A) of the Act, “exceptional ability” is defined as “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.¹ We then conduct a final merits determination to decide whether the evidence in its totality shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. *See* 8 C.F.R. § 204.5(k)(2).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides, “If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.”

II. ANALYSIS

The Director found that the record does not establish that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director also found, in the alternative, that the record does not satisfy at least three of the exceptional ability criteria. The Director further found that the record does not satisfy any of the criteria established in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). On appeal, the Petitioner reasserts eligibility as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. For the reasons discussed below, the record does not establish that the Petitioner qualifies for second-preference classification.

A. Advanced Degree

Initially, in support of the petition filing, the Petitioner simply stated that the job title of the proposed employment would be “performer.” However, the Petitioner did not elaborate on what the proposed endeavor would entail. In response to the Director’s request for evidence (RFE), the Petitioner described the proposed endeavor as a “plan to open my own business in the US . . . in the field of performing arts.” The Petitioner also submitted a business plan in response to the RFE, stating that the Petitioner’s company “will be a [redacted]-based company that will specialize in providing

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

consultation services regarding the [p]erformance [a]rts industry, choreography assistance services, and private and group acting or dance classes.” The Petitioner did not elaborate on whether he is seeking classification as an individual of exceptional ability in the arts or business, or a combination of both.

The record contains a copy of a document written in a language other than English, and an accompanying English translation, stating that the Petitioner “[c]ompleted a Bachelor Degree program in specialization 030900 Jurisprudence” at the [redacted] Russia, in 2015. The record also contains another document written in a language other than English, and an accompanying English translation, indicating that it is an academic transcript for the Petitioner’s degree program. The document lists classes taken, but not the dates they were taken or credits awarded—if any. The Petitioner does not assert, and the record does not support the conclusion, that the Petitioner’s foreign degree is, in itself, an advanced degree. *See* 8 C.F.R. § 204.5(k)(2) (defining an “advanced degree” as “any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate”).

Moreover, although the English translation uses the phrase “Bachelor Degree program,” the record does not establish whether the foreign degree is equivalent to a U.S. bachelor’s degree. *See id.* Because the Petitioner has not met his burden of proof to demonstrate his receipt of a foreign equivalent bachelor’s degree, we need not review his asserted five years of post-baccalaureate progressive experience. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Nonetheless, even if the Petitioner had established that he has the foreign equivalent of a U.S. bachelor’s degree, which he has not, he has not demonstrated that he has the required five years of progressive, post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(2). The Petitioner submitted several reference letters, including one from himself as a self-employer, in response to the Director’s RFE.

We first note that the undated letter from [redacted], who states that the Petitioner “was an excellent teacher” of his between “May 2022-August 2022,” cannot establish eligibility. A petitioner must establish eligibility at the time of filing, which, in this case, was in 2021, before [redacted] asserts the Petitioner taught him. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971) (providing that a visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts). Because the letter from [redacted] refers to the Petitioner’s experience after the filing date, it cannot and does not establish the Petitioner’s qualifying experience. *See* 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. at 49; 8 C.F.R. § 204.5(k)(3)(i)(B).

Next, the record contains a one-page letter written in a language other than English, and an accompanying English translation. The letter is from an unnamed signatory identified only as “manager” of the [redacted] Russia, which, as such, does not satisfy regulatory requirements. *See* 8 C.F.R. § 204.5(g)(1) (providing, “Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.”). The letter states that the Petitioner “performed in the [redacted] immersive show from when it was founded in 2018 till 2020.”

The letter summarizes the Petitioner's duties as "enacting novel scenes, including plastic; assistance with choreography; [and] performing in the show." The letter does not specify the starting and ending date of the Petitioner's experience; therefore, the letter does not verify the length of the Petitioner's experience with [REDACTED]. Because it does not meet regulatory requirements, the letter does not establish the Petitioner's qualifying experience.

Another translated letter is signed by [REDACTED], who identifies himself as an accountant at the [REDACTED] Russia. The letter states that the Petitioner was the founder of [REDACTED] and its senior teacher from 2019 to 2020."² The letter summarizes the Petitioner's duties as "teaching English; scheduling classes; managing the learning process and materials; administration; coordinating teachers' work; [and] organizing the conversation club." Similar to the [REDACTED] letter, though, the English center letter does not specify the starting and ending date of the Petitioner's experience. We note, however, that it refers to "less than one year of operation," indicating that the extent of the Petitioner's experience in those capacities were minimal. Furthermore, we note that the two letters from [REDACTED] and [REDACTED] indicate overlapping periods of experience, raising questions regarding whether the Petitioner worked on a full-time basis for the respective employers.

The record also contains a one-page reference letter from the Petitioner on behalf of himself. Despite stating that he "was self-employed," he identifies several entities or events with planners that appear to be employers other than him, such as "the [REDACTED] Opening Ceremony[,] various productions of the [REDACTED] [,] the [2015] [REDACTED] opening and closing ceremonies[, and] the [2019] [REDACTED] opening and closing ceremonies." Regardless of whether the Petitioner or some number of entities actually employed him "in 2013-2014, 2015, 2017-2020," the Petitioner's letter does not specify the amount of time in which he gained experience—whether preparing for, or performing in, the particular events—during those periods, which we note includes some experience that cannot establish eligibility because it predates the date on which he completed the degree, discussed above. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. We further note that the Petitioner asserts that he "worked as an English tutor . . . [f]rom 2017 to 2020." However, because the Petitioner omits English language instruction from both his proposed endeavor and any possible area of relevant, exceptional ability, his experience as an English tutor—for any amount of time—is inapposite because it does not constitute progressive post-baccalaureate experience in the specialty, as required by the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). We further note that this period overlaps with other periods of experience discussed above, raising questions regarding whether the Petitioner worked on a full-time basis for the respective employers.

Finally, the record also contains a one-page letter, submitted before the RFE response, from [REDACTED] [REDACTED], who identifies herself as "Head of the Academic Department" at [REDACTED] Russia. As translated in the record, the letter "confirm[s]" that the Petitioner "worked at the [REDACTED] as an English language teacher from February 2017 to January 2018," and it summarizes his duties. The record does not clarify whether the "Head of the Academic Department" at [REDACTED] discussion of the Petitioner's experience "at the [REDACTED]" refers

² The letter, as translated in the record, does not reconcile whether the entity's name translates as [REDACTED] [REDACTED]."

to the same entity. Even if the [redacted] letter's discussion of the Petitioner's experience "at the [redacted]" describes the same employment experience, similar to the Petitioner's own letter regarding his self-employed English instruction, the record does not establish how the Petitioner's experience as an English language teacher qualifies as "post-baccalaureate experience in the specialty," as required by the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). We note that, like other experience discussed above, this period overlaps, raising questions regarding whether the Petitioner worked on a full-time basis for the respective employers.

In summation, the record does not establish that the Petitioner "has at least five years of progressive post-baccalaureate experience in the specialty," as required by the regulation at 8 C.F.R. § 204.5(k)(2), (k)(3)(i)(B). Because the record does not establish that the Petitioner has either a qualifying degree above that of a baccalaureate degree or a combination of a baccalaureate degree and at least five years of progressive post-baccalaureate experience in the specialty, it does not establish the Petitioner may qualify as a member of the professions holding an advanced degree. *See id.*

B. Exceptional Ability

The Director concluded that the record does not satisfy at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). More specifically, although the Petitioner asserted that he satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B), (E)-(F), the Director found that the record does not satisfy any of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). On appeal, the Petitioner reasserts that he satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B), (E)-(F).

i. Degree, Diploma, Certificate, or Similar Award

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) requires "[a]n official academic record showing that the [noncitizen] 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." The Director acknowledged that the record contains, in relevant part, "a bachelor's degree in law, conferred July 10, 2015." However, the Director observed that the Petitioner "did not provide an explanation to establish that this degree is relating to his area of exceptional ability." The Director concluded that the Petitioner's bachelor's degree in law does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) because the record does not establish it relates to the area of exceptional ability.

On appeal, the Petitioner references his bachelor's degree in law, and he also asserts that he "completed a three-year Choreography Degree from the [redacted], located in [redacted], Russia," in 2016. The Petitioner further states on appeal, "Based on the documentation in the record, [he] clearly established that this criterion has been met."

As noted above, although the Petitioner generally describes the proposed endeavor, he does not elaborate on whether he believes his special ability is in operating a business, providing performance arts industry consultation services, choreography, acting, dancing, teaching acting, teaching dancing, or some combination of those specialties.

As addressed above, the record contains an English translation of an academic transcript for the Petitioner's degree in jurisprudence from the [redacted], Russia.

However, the transcript, as translated in the record, lists many courses unrelated to any of the possible areas of exceptional ability. Examples of coursework include the following: foreign language in the sphere of jurisprudence, logic, legal statistics, theory of state and law, history of domestic state and law, history of foreign state and law, etc. Contrary to the Petitioner's assertion on appeal, the English translation of an academic transcript for his degree in jurisprudence does not establish that his degree relates to the possible areas of exceptional ability. Moreover, as noted above, the transcript lists classes taken, but not the dates they were taken or credits awarded—if any.

We note that the record contains a copy of the Petitioner's résumé, which indicates that his education includes "choreography" at the [redacted], Russia, from "07/2013 to 10/2016." Although the résumé describes the Petitioner's degree in jurisprudence as "Bachelor's," it simply refers to the Petitioner's choreography education as "other," rather than a particular degree, diploma, certificate, or similar award. Moreover, the record does not contain a copy of an academic transcript, translated into English, for the Petitioner's "other" education in choreography. Without "[a]n official academic record" that shows the Petitioner's "other" education in choreography resulted in "a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability," the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

ii. At Least Ten Years of Full-Time Experience in the Occupation

Next, the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires "[e]vidence in the form of letter(s) from current or former employer(s) showing that the [noncitizen] has at least ten years of full-time experience in the occupation for which he or she is being sought." The Director acknowledged that the record contains "a letter of support from [redacted] documenting experience between February 2017 and January 2018." However, the Director concluded that the letter does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) because it "documents less than the ten years full-time experience required in the regulation." The Director did not acknowledge any other letters in the record that may qualify the Petitioner's experience.

On appeal, the Petitioner asserts that his employment experience, including working as a "camp counselor," a "grocery clerk," a "housekeeper," an "English teacher," a "performing artist," and as an "actor" satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

For brevity, we incorporate by reference our above discussion of the extent to which the record contains letters from the Petitioner's current or former employers. We first note that the record does not establish how the Petitioner's stated employment experience in occupations such as "grocery clerk," "housekeeper," and "English teacher" are "in the occupation" the Petitioner seeks in his proposed endeavor of owning and operating a performance arts consultation company. 8 C.F.R. § 204.5(k)(3)(ii)(B). We further note that, in addition to the letters in general omitting the particular start and end dates of the Petitioner's respective employment, the letters also do not specify whether the Petitioner worked on a full-time basis for any of the employers. Accordingly, even to the extent that the letters from the Petitioner's current or former employers are "in the occupation" he seeks, the record does not establish that he has at least "ten years of full-time experience" in that occupation, as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

iii. Recognition for Achievements and Significant Contributions to the Industry

Next, the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.”

The Director acknowledged that the record contains various letters that “show appreciation from people and organizations for [him].” However, the Director observed that the letters “do not provide detailed information regarding the [P]etitioner’s specific achievements or significant contributions to the field of dance and the performing arts.” The Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) “[w]ithout documentation showing 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.”

On appeal, the extent of the Petitioner’s assertions regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) are as follows:

The educational background, professional experience, and superb skills of the [Petitioner] enabled [him] to contribute to his field and will allow him to continue to do so in the future. Based on documentation in the record, the [Petitioner] clearly established that this criterion has been met, and USCIS erred in finding otherwise.

Similarly, the extent of the Petitioner’s assertions regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) in response to the Director’s RFE are as follows:

The educational background, professional experience, and superb skills of the [Petitioner] enabled [him] to contribute to his field and will allow him to continue to do so in the future. Based on documentation previously submitted and attached hereto, the [Petitioner] clearly established that this criterion has been met.

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.” Although the Petitioner generally references “documentation in the record” and “documentation previously submitted and attached [to his RFE response],” he does not identify on appeal—or in response to the RFE—any particular document that may satisfy this criterion. As noted above, the Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Nonetheless, we have reviewed the record in its entirety, and we agree with the Director’s conclusion that the record does not contain “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations,” as required by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

iv. Comparable Evidence

Finally, we acknowledge that the Petitioner asserts on appeal that we should “find that [he] qualifies for classification as a person of exceptional ability via comparable evidence as presented in the

record,” referencing the criterion at 8 C.F.R. § 204.5(k)(3)(iii). The Petitioner also states that “the licensing requirement [of the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C)] is not applicable to the [Petitioner’s] field of endeavor as it is not subject to licensing requirements” and that, consequently, we should “accept documentation in the record in lieu of a license and should find that [he] has met [the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C)] via comparable evidence,” again referencing the criterion at 8 C.F.R. § 204.5(k)(3)(iii).

We first note that, because we conclude that the record does not satisfy at least two of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(B), (E)-(F) for the reasons addressed above, determining whether the record may satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) would serve no purpose because it nevertheless could not satisfy at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Regardless, the Petitioner does not specify on appeal what evidence in the record may be comparable to the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C). In turn, because we conclude that the record does not satisfy at least three of the four criteria at 8 C.F.R. § 204.5(k)(3)(ii) under which the Petitioner asserts he qualifies, we reserve our opinion regarding whether the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). *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).

In summation, the record does not establish the Petitioner qualifies as a member of the professions holding an advanced degree. *See* section 203(b)(2)(A) of the Act. The record also does not satisfy, in the alternative, at least three of the exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). Furthermore, the record does not establish that those criteria do not readily apply to the occupation and that comparable evidence establishes exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(iii). Therefore, we need not determine whether the record establishes the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. *See* 8 C.F.R. § 204.5(k)(2). We note, however, that if we were to conduct a final merits determination of the record, it would not support the conclusion that the Petitioner has a degree of expertise significantly above that ordinarily encountered in the field. *See id.* Furthermore, because the record does not establish that the Petitioner satisfies at least three of the exceptional ability criteria, it does not establish that he qualifies for second-preference classification as an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act. We reserve our opinion regarding whether the record satisfies 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. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

III. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification either as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.