



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

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

In Re: 28792224

Date: DEC. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a police officer, seeks classification 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. 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 record did not establish that the Petitioner qualifies for the classification sought. 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 qualify for a national interest waiver, a petitioner must first show eligibility 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)(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). To establish exceptional ability, 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). 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. USCIS will then conduct a final merits determination to decide whether the evidence as a whole shows that the individual is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates EB-2 eligibility, 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.

II. ANALYSIS

A. Initial Criteria for Exceptional Ability

The Petitioner initially claimed eligibility for classification not as an individual of exceptional ability, but as a member of the professions holding an advanced degree. In later submissions, the Petitioner has not further pursued this original claim.¹

After serving in the Brazilian [redacted] from 2009 to 2010, the Petitioner has worked in various law enforcement capacities in Brazil, including security work at the 2014 [redacted] and the 2016 [redacted]. Most recently, since 2017 the Petitioner has been a weapons instructor for the State of [redacted], which means [redacted]. The Petitioner entered the United States in June 2021 as a B-2 nonimmigrant visitor, and was still in the United States when he filed the petition in October 2021. On appeal, he states that he intends to enlist in the U.S. Army.

To establish 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), discussed further below. If an individual meets at least three of these criteria, or submits evidence comparable to criteria that do not readily apply to the individual’s occupation, we then consider the totality of the material provided in a final merits determination and assess whether the record shows a degree of expertise significantly above that ordinarily encountered in the individual’s field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). *See also, generally*, 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual>.

After the Director issued a request for evidence, the Petitioner claimed to satisfy five of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner asserted that the remaining criterion does not readily apply to his occupation.² We will discuss these claims below.

The Director concluded that the Petitioner had satisfied three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), pertaining to academic degrees, experience, and memberships in professional

¹ The Petitioner has not established that he possesses an advanced degree or its defined equivalent of a bachelor’s degree followed by five years of progressive experience in the specialty, as required by 8 C.F.R. § 204.5(k)(3)(i). The Petitioner claimed to hold a bachelor’s degree in human resources management, but the record describes a two-year training course, with no evidence that the Petitioner received a degree equivalent to a U.S. baccalaureate upon its completion.

² The relevant statute and regulations limit eligibility to “exceptional ability in the sciences, arts, or business” who seek to render “services in the sciences, arts . . . or business.” *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(1), (2). The Petitioner has not established that his intended work in law enforcement qualifies as employment in the sciences, in the arts, or in business. We will not explore this issue further here, because it was not part of the denial decision and the Petitioner did not have an opportunity to address it on appeal. But the absence of that discussion should not be construed as a stipulation that the Petitioner’s intended occupation falls within the sciences, the arts, or business.

associations. The Director also concluded, however, that a final merits determination did not establish exceptional ability. On appeal, the Petitioner contends that the Director should have considered all the claimed criteria instead of stopping after granting three.

We will discuss all six criteria below, before turning to the final merits determination.

An official academic record showing that the alien 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 documented his completion of a human resources management course at a public university in Brazil in 2013, and explained how it relates to his work in “Public Security.” We agree with the Director that this academic certificate meets the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(A).³

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Director concluded that the Petitioner satisfied this requirement by submitting a translated certification from the [redacted] attesting that the Petitioner “has 11 years, 9 months, of services provided to the [redacted] Brazil.” This document lists the length of time since the Petitioner joined the police force, but the regulation requires more information than the length of service. The regulation requires “full-time experience,” and the certification does not specify that the Petitioner’s employment was full-time. Also, employers’ letters attesting to qualifying experience must include a specific description of the duties performed by the individual. 8 C.F.R. § 204.5(g)(1). The certification does not provide that information.

We therefore withdraw the Director’s determination that the Petitioner has met the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(B).

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner asserted that he “receive[s] a higher salary than thousands of other police officers” because [redacted] comprises only 150 of [redacted] 17,000 police officers. The Petitioner submitted survey data indicating that the average police salary in [redacted], the capital of [redacted], is R\$3,930 per month. The Petitioner’s pay receipt from August 2020 shows a total payment of R\$6,921.40 before taxes and other deductions. This amount, however, includes only R\$4,150 in base salary. The remaining amount consists of a meal allowance of R\$246.40 and R\$2,525 for “GOEPM,” a term that the record does not explain or define. Because the Petitioner submitted only one monthly pay receipt, the record does not show whether the Petitioner received more than one GOEPM payment. The survey data also indicates that the monthly base salary range for officers in the area is between R\$3,000 and R\$5,000. The Petitioner’s base salary of R\$4,150 is slightly above the middle of this range.

³ The regulation does not require the academic award to be equivalent to, or higher than, a U.S. baccalaureate degree.

The Petitioner did not establish that his salary exceeded the average salary due to exceptional ability, rather than other factors that might affect remuneration. Likewise, the Petitioner implied that [redacted] officers receive higher compensation than other police officers in [redacted], but he did not establish that any such differential results from exceptional ability rather than other factors, such as, for example, hazard pay or unusual work hours.

The Petitioner has not met his burden of proof to establish that his remuneration demonstrates exceptional ability.

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

The Petitioner asserted that his membership in the [redacted] [redacted] satisfies this criterion. The Director agreed with the Petitioner, but we disagree. The Petitioner called [redacted] “a professional association representing the state military,” but the Petitioner did not establish that [redacted] members are professionals as defined at 8 C.F.R. § 204.5(k)(2).⁴ Therefore, the Petitioner has not met his burden of proof to establish that [redacted] is a professional association.

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

The Petitioner stated: “as a Security Agent for the State of [redacted] in addition to other achievements, we won an international award, because of the [redacted] Program, which . . . [resulted in] a 33.4% reduction in Intentional Lethal Violent Crimes” in [redacted]. The Petitioner has not established that he personally received recognition for the success of [redacted]. The media coverage documented in the record indicates that the governor of [redacted] received an award from the [redacted] in recognition of the program’s success. The record indicates that the program began in 2007, before the Petitioner worked for the police in [redacted], and therefore the program itself is not the Petitioner’s achievement or contribution.

The Petitioner also submitted letters from colleagues and superiors, attesting to the Petitioner’s experience, skills, and qualifications, but he did not show that these letters constitute recognition for achievements and significant contributions to the industry or field.

The remaining criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) relates to a license to practice the profession or certification for a particular profession or occupation. The Petitioner asserted that this criterion does not readily apply to his occupation, but that he “fulfilled the requested evidence” because he meets the legal requirements for eligibility to serve as a police officer in [redacted]. The Petitioner did not establish that those requirements are comparable to licensure or certification, as required by 8 C.F.R. § 204.5(k)(3)(iii).

⁴ That regulation defines a “profession” as means one of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32) (“architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries”), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The Director did not address the licensure criterion, or the claim of comparable evidence, in the denial notice, because the Director had granted three others. On appeal, the Petitioner does not further pursue this claim or specifically assert that the Director erred by not granting this regulatory criterion.

For the above reasons, we disagree with the Director's conclusion that the Petitioner has satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). Nevertheless, because the Director proceeded to a final merits determination, we will address that issue below.

B. Final Merits Determination

Meeting the minimum requirement by providing at least three types of initial evidence does not, in itself, establish that the beneficiary in fact meets the requirements for exceptional ability classification. A petitioner must establish, by a preponderance of the evidence, that the beneficiary has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The petitioner must demonstrate that the beneficiary is above others in the field; qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that ordinarily encountered. *See generally 6 USCIS Policy Manual, supra*, at F.5(B)(2).

The Director denied the petition, stating that, while the Beneficiary had documented his training, experience, and salary, he had not shown that these factors demonstrated a degree of expertise significantly above that ordinarily encountered in his field.

On appeal, the Petitioner argues that the Director erred by proceeding to a final merits determination after discussing only three of the regulatory criteria, because "it is simply implausible to establish a final merits analysis without first determining how many of the six criteria the Petitioner actually successfully met."

The final merits determination, however, does not hinge on the number of criteria that a petitioner has satisfied. Rather, a final merits determination involves "considering the petition in its entirety." *See generally 6 USCIS Policy Manual, supra*, at F.5(B)(2). The Director's discussion in the final merits determination included factors other than the three basic criteria that the Director had granted.

Also on appeal, the Petitioner repeats prior assertions, some of which we have addressed above. Beyond the assertions already discussed, the Petitioner states that the Director should have given more weight to the Petitioner's membership in [redacted]. The Petitioner, however, does not show that [redacted] requires exceptional ability as a condition of membership. Rather, he cites bylaws indicating that membership is open to current and retired members of Brazil's military, including police officers. Therefore, [redacted] membership does not distinguish between exceptional police officers and those with lesser degrees of achievement.

The Petitioner again cites statistics indicating that [redacted] significantly reduced violent crime in [redacted]. The Petitioner does not explain how these statewide statistics, relating to an initiative that was already underway before he became a police officer, attest to his personal exceptional ability.

Regarding his membership in [redacted], the Petitioner states:

[T]he State of [redacted] has around 17,000 active police officers. [Among] this total, only 150 . . . police officers serve in the [redacted] Police Unit – [redacted] [redacted], which means that only 0.88% of all police personnel in the state are qualified . . . and able to work in the main [redacted] State Police Elite Unit.

The Petitioner, however, cites no evidence in the record to support his claim that [redacted] officers, by definition, have a greater degree of expertise than other police officers in [redacted]. The Petitioner did not document how [redacted] selects its officers.

The record establishes that the Petitioner is a qualified law enforcement officer who has served with well-regarded units and earned the respect of his colleagues and superiors, but the Petitioner has not overcome the Director's determination that the Petitioner has not established a degree of expertise significantly above that ordinarily encountered in his occupation.

For the above reasons, we agree with the Director that the Petitioner has not met his burden of proof to establish that he is an individual of exceptional ability. In light of this conclusion, discussion of the Petitioner's national interest waiver claim change the outcome of this appeal. Therefore, we reserve argument on the issue of the national interest waiver. *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

We will dismiss the appeal because the Petitioner has not established eligibility for classification as an individual of exceptional ability in the sciences, the arts, or business.

ORDER: The appeal is dismissed.