



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

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

In Re: 27992012

Date: JULY 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not established 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.

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

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.* In addition, "profession" is defined as one of the occupations listed in section 101(a)(32) of the Act, 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.<sup>1</sup> 8 C.F.R. § 204.5(k)(3).

Furthermore, "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.

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<sup>1</sup> Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

§ 204.5(k)(3)(ii)(A)-(F).<sup>2</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>3</sup> If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence 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 discretion<sup>4</sup>, 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

### A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). While the Petitioner presented his Bachelor of Arts degree in Criminal Justice from [REDACTED] University (2006), the Director determined that the Petitioner had not provided evidence in the form of letters from current or former employer(s) showing that he has at least five years of progressive post-baccalaureate experience in his specialty. With respect to the Petitioner’s five years of progressive post-baccalaureate experience, his appellate submission does not include evidence from employers to overcome the Director’s determination. Accordingly, the record supports the Director’s finding that the Petitioner has not established he qualifies as a member of the professions holding an advanced degree under 8 C.F.R. § 204.5(k)(3)(i)(B).

Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). With the appeal, the Petitioner provides a January 2023 letter from the registrar at [REDACTED] indicating that he “was previously enrolled in the four-year Juris Doctor Attorney-Track Program” at the school. The registrar’s letter also lists “the California Bar Guidelines for Unaccredited Law School Rules” and states that the Petitioner “has met the minimum requirements and is eligible to take the

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<sup>2</sup> 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).

<sup>3</sup> 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>.

<sup>4</sup> 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).

California bar examination.”<sup>5</sup> The aforementioned letter does not provide the dates of his enrollment or graduation from [REDACTED]. Nor has the Petitioner offered his official academic record from the school showing his coursework and graduation date. Further, the Petitioner has not demonstrated that [REDACTED] is accredited by an organization listed by the U.S. Department of Education as a recognized accrediting agency. *See Yau v. INS*, 13 I&N Dec. 75 (Reg’l Comm’r 1968) (a degree issued by an unaccredited institution does not allow the degree holder to qualify as a professional within the statute granting preference classification.). For these reasons, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree under 8 C.F.R. § 204.5(k)(3)(i)(A).

## B. Exceptional Ability

In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). On appeal, the Petitioner contends that he qualifies as an individual of exceptional ability, but he does not offer arguments or evidence demonstrating that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. Specifically, the Petitioner has not submitted letters from employers showing that he has at least ten years of full-time experience in his occupation; a license to practice his profession or a certification for his occupation; evidence that he has commanded a salary, or other remuneration for services, which demonstrates exceptional ability; documentation of his membership in professional associations; or evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. *See* 8 C.F.R. § 204.5(k)(3)(ii)(B)-(F).

The Petitioner states:

I am a pioneer in the area of crime victim research and advocacy for international student in USA and for USC and LPR abroad. It is a field that I am the first in, and have been doing for over 13 years with no one else in the field. There were no trainers or teachers in a new field, I am the pioneer of this field, that is why it is called new and undeveloped when it was taken up by me. You cannot demand a pioneer to provide you with a letter from a teacher or trainer in a field that is new and never had a trainer or teacher because it is brand new. . . . USCIS must understand exceptional ability in some fields are shown by the applicant time into the field in which he pioneered.

If the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) do not readily apply to an individual’s occupation, a petitioner may submit comparable evidence to establish their eligibility. *See* 8 C.F.R. § 204.5(k)(3)(iii). A petitioner should explain why the regulatory criteria do not readily apply to his occupation, as well as why the evidence he has submitted is “comparable” to that required under 8 C.F.R. 204.5(k)(3)(ii).<sup>6</sup> With respect to the Petitioner’s claimed “13 years” of experience and “time into the field,” his inability to provide letters from employers showing that he has at least ten years of full-time experience in his occupation is not evidence that the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B)

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<sup>5</sup> The record does not indicate that the Petitioner has passed the bar examination in California or any other U.S. jurisdiction.

<sup>6</sup> When evaluating such comparable evidence, officers consider whether the criteria are readily applicable to a petitioner’s occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in the regulation. *See generally* 6 USCIS Policy Manual F.5(B), *supra*.

does not apply to his occupation. In addition, the Petitioner does not identify specific evidence in the record that is truly comparable to the aforementioned criterion.

The Petitioner also contends that “USCIS failed to appreciate” his “degrees, credit, classes, courses,” and other academic programs. However, as discussed, the Director’s decision stated that the Petitioner had fulfilled the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) based on his Bachelor of Arts degree in Criminal Justice from [REDACTED] University.

For the above reasons, the Petitioner’s appellate submission does not establish that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) or the comparable evidence requirements at 8 C.F.R. § 204.5(k)(3)(iii) and has achieved the level of expertise required for exceptional ability classification.

### C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest.<sup>7</sup> As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that he is an advanced degree professional or that he has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Since this issue is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical 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).

## III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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.

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<sup>7</sup> The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.” Alternatively, U.S. Citizenship and Immigration Services will accept parts J, K, and L of Form ETA 9089, Application for Permanent Employment Certification. See 6 *USCIS Policy Manual* F.5(D), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>. Because the Petitioner has not submitted either of these forms, he has not properly applied for a national interest waiver.