



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 26378701

Date: JULY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a self-enrichment teacher, seeks classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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. The Director concluded that although the Petitioner established eligibility for EB-2 classification as a member of the professions holding an advanced degree, the record did not demonstrate her eligibility for the requested 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 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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. 8 C.F.R. § 204.5(k)(2). The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" 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 in the occupation.”¹

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).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ 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.⁴

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* 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 USCIS may, as matter of discretion⁵, 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 proposes to work in the United States as a self-enrichment teacher by starting a business teaching taekwondo and self-defense to women. The Petitioner earned a bachelor of law from [REDACTED] University in Brazil in July 2009, and has worked as a taekwondo instructor.

We note that the Petitioner consistently asserted that she is eligible for the EB-2 classification as an individual of exceptional ability and did not claim eligibility as a member of the professions holding an advanced degree. For the reasons discussed below, we conclude that the Petitioner has not established her eligibility for either EB-2 classification.

¹ Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

² If these types of evidence do not readily apply to the individual’s occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

³ 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>.

⁴ See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); see generally 6 USCIS Policy Manual, *supra* at F.5(B)(2).

⁵ 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).

A. Member of Professions Holding an Advanced Degree

The Director concluded that the Petitioner qualifies for classification as a professional holding an advanced degree based on her diploma and academic transcript having the foreign equivalent of a U.S. bachelor's degree, and letters from her former employers showing she has more than five years of progressive post-baccalaureate experience in the specialty. See 8 C.F.R. § 204.5(k)(3)(i)(B). However, upon de novo review, we find the record does not establish that the Petitioner is member of the professions holding an advanced degree.

To qualify as a member of the professions, an individual must meet "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." 8 C.F.R. 204.5(k)(2). The record does not establish that the Petitioner's occupation, a taekwondo instructor, requires the minimum of a bachelor's degree or its foreign equivalent for entry into the occupation. Therefore, the Petitioner has not established that she qualifies as a member of the professions. 8 C.F.R. 204.5(k)(2).

Furthermore, although the Petitioner submitted letters from her previous employers stating she accrued experience as a taekwondo teacher after receiving her bachelor in law degree, she did not demonstrate that her experience was at least five years of full-time post-baccalaureate experience in her specialty. As noted, the record reflects that the Petitioner completed her degree in July 2009. The work experience letters from three employers indicate she worked as a taekwondo teacher for [redacted] [redacted] from 2004 to 2017, for [redacted] Association from 2007 to 2011, and for [redacted] from 2011 to 2014. While the letters indicate her years of employment and her main responsibilities as a taekwondo instructor, they do not indicate her work was full-time to demonstrate at least five years of experience. Therefore, the Petitioner has not demonstrated at least five years of post-baccalaureate employment experience.

As the Petitioner did not establish that she is a member of the professions or that she has five years of post-baccalaureate experience in her specialty, the Director's determination that she is eligible to be classified as a member of the professions possessing an advanced degree is withdrawn.

B. Individual of Exceptional Ability

Because the Director determined that the Petitioner established her eligibility as a member of the professions possessing an advanced degree, the Director did not evaluate her claim that she qualifies as an individual of exceptional ability.

The Petitioner claimed that she meets five of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii) and otherwise qualifies for the requested classification with comparable evidence under 8 C.F.R. § 204.5(k)(3)(iii). 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 submitted a copy of her diploma and transcripts for her bachelor of law from [redacted] University in Brazil in July 2009. Since the Petitioner's degree is in law and does not relate to her area of exceptional ability, she has not established that she meets the plain language of the criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the individual 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 Petitioner emphasizes that she has more than ten years of experience as a taekwondo teacher with three employers from 2004 to 2017. As previously noted, the Petitioner submitted letters from three employers detailing the years she worked for each employer and her duties as a taekwondo teacher. The letters indicate she worked as a taekwondo teacher for [redacted] from 2004 to 2017, [redacted] Association from 2007 to 2011, and [redacted] from 2011 to 2014. However, the letters do not indicate she worked full-time, as required under the criterion. Therefore, the evidence does not demonstrate the Petitioner meets the plain language of the criterion.

A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C).

In support of this criterion, the Petitioner submitted two cards from the National Taekwondo League indicating that the Petitioner is a black belt with the entity [redacted] Federation. One card was issued November 13, 2008, with validity to November 12, 2010, and the other card was issued November 12, 2016, with validity to November 11, 2018. The cards were not accompanied by additional evidence or an explanation of how it qualifies as a license to practice her profession as a taekwondo and self-defense instructor, or as a certification for her profession.

The Petitioner did not submit sufficient evidence to satisfy the plain language of the criterion.

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

The Petitioner indicates she meets the criterion through her membership with the American Management Association and her membership with RCRA. For American Management Association, the Petitioner submitted a statement including her membership number and a printout of payment information. However, the Petitioner did not submit evidence documenting her membership with American Management Association. For RCRA, the Petitioner submitted a printout of her profile information indicating she was an active emerging member since August 23, 2021, with expiration August 22, 2022.

The record does not include an explanation or information about the American Management Association or RCRA, including the meaning of the acronym RCRA, or how each of them are professional associations. The record does not demonstrate that the Petitioner is a member of the

American Management Association, or that the American Management Association or RCRA are professional associations, as required under the criterion.

Therefore, the Petitioner has not submitted sufficient evidence demonstrating her membership in a professional association under the criterion.

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 indicates she meets this criterion by gaining recognition for significant contributions to communities for which she provided taekwondo and self-defense services. She submitted letters of recommendation from individuals in the field to support her claim. The letters are from her previous coaches and taekwondo athletes who met the Petitioner while she was training for belt exams and teaching. The individuals attest to the Petitioner training, competing, and taking exams as a taekwondo athlete, and generally recommend the Petitioner as a martial arts teacher due to her taekwondo competencies, her teaching capabilities, and her dedication to teaching self-defense to women. While the letters attest to the Petitioner being a competent taekwondo athlete and teacher, they do not demonstrate that the Petitioner has been recognized for achievements and significant contributions to the industry or field, as required under the criterion.

Therefore, the Petitioner has not submitted sufficient evidence under this criterion.

The Petitioner also submitted documentation as comparable evidence under 8 C.F.R. § 204.5(k)(3)(iii). According to 8 C.F.R. § 204.5(k)(3)(iii), if the regulatory criteria standards under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) do not readily apply to a petitioner's occupation, comparable evidence may be submitted to establish the eligibility for exceptional ability. When evaluating such comparable evidence, USCIS considers 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.⁶ The Petitioner should explain why the evidence it has submitted is comparable. General assertions that any of the six objective criteria do not readily apply to the Petitioner's occupation are not acceptable.⁷

Here, the Petitioner submitted documentation described as "other comparable evidence of eligibility." However, she does not explain why the evidence is comparable or why any of the regulatory criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) do not apply to her occupation. The Petitioner provided an article on self-defense, two certificates recognizing her service to women, photographs depicting the Petitioner teaching taekwondo and taking her belt exam, letters from the [redacted] [redacted] Brazil and from the [redacted] recognizing the Petitioner for teaching taekwondo and self-defense to women, and a list of her medals⁸.

Without further information how this evidence is comparable to the regulatory criteria, we are unable to determine that it is comparable evidence pursuant to 8 C.F.R. § 204.5(k)(3)(iii). Instead, the

⁶ See generally 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

⁷ See generally 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

⁸ While the Petitioner submitted a list of her awards and medals, the record does not include independent evidence supporting her claims that she received the awards and medals.

evidence appears to be general additional evidence to be considered in assessment of exceptional ability. If the Petitioner had met three of the regulatory criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), this evidence would be considered in the final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.⁹

The Petitioner has not established that she meets any of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F) or that the indicated comparable evidence meet any of the criteria under 8 C.F.R. § 204.5(k)(3)(iii). Since the Petitioner did not satisfy the initial evidence requirements, we need not conduct a final merits analysis to determine whether the evidence in its totality shows that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). 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 recognition required for classification as an individual of exceptional ability.

C. National Interest Waiver

Although the Petitioner has not established her eligibility for the underlying EB-2 visa classification and is therefore not eligible for a national interest waiver, we will address the Director's determination that she did not establish her eligibility under the Dhanasar analytical framework. The Director found substantial merit in the proposed endeavor but concluded that the record did not establish that the Petitioner's endeavor has national importance and therefore did not meet the first Dhanasar prong. Upon de novo review, we agree with the Director's determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.¹⁰

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889. If the Petitioner does not meet the first prong, the evidence is dispositive in finding the Petitioner ineligible for the national interest waiver, and we need not address the second and third prongs.

In her personal statement, the Petitioner indicates she intends to start a business teaching taekwondo and self-defense. She plans to open a gym in the [REDACTED] Florida "intending to reach a part of society that suffers from prejudice and is located in an area of economic depression" and "that also has high rates of domestic violence." The Petitioner would teach taekwondo and self-defense classes to women, "mainly because of the large number of obese people" in the United States and to help women defend themselves in high violent crime areas of Florida. We agree with the Director that the Petitioner's endeavor has substantial merit.

⁹ See *Kazarian v. USCIS*, 596 F.3d at 1119-20; see generally 6 USCIS Policy Manual, *supra* at F.5(B)(2).

¹⁰ While we may not discuss every document submitted, we have reviewed and considered each one.

To show the Petitioner's endeavor has national importance, her business plan describes its economic and social benefits. The business plan emphasizes her establishing the business in the [redacted] area because the crime rate is high relative to other communities in the [redacted] Florida area and entrepreneurs are not inclined to open businesses. Providing martial arts classes to low-income individuals in a community having higher crime rates would help women "who are victims of domestic violence and street violence defend themselves and gain respect within society." The business plan also outlines the economic benefits of the business by providing the Petitioner's projections for hiring staff and generating business revenue. Further illustrating her eligibility for the national interest waiver based on her proposed endeavor, the Petitioner provided her personal statement and resume, recommendation letters from individuals in the field, and an expert opinion letter.

The Director found that the Petitioner did not sufficiently establish the importance of the endeavor on a national scale or in her field. While the Petitioner provided claims of social and economic benefits on a national scale, the Director concluded that the evidence showed the impact of her proposed endeavor would be limited to her company and students, instead of having a broader impact on a national scale or in her field.

On appeal, the Petitioner highlights assertions in her business plan and argues that her proposed endeavor will have "significant potential for impact and consequently, national importance" by generating jobs at the business and training qualified professionals who will take her technique in the taekwondo field "to the entire American territory." She also contends that after five years, the business will expand "to different regions of the United States," thereby having national implications. The Petitioner also argues that since her headquarters will be in the [redacted] region of Florida, she "will be contributing directly to an American economically depressed region." (emphasis in original). The Petitioner relies on data in her business plan to show that the [redacted] area has lower income compared to other areas of Florida. The Petitioner also relies on her business plan to demonstrate the growth of taekwondo within the martial arts industry and the intended growth of employment opportunities for self-enrichment teachers in Florida. Upon de novo review, we find the Petitioner did not demonstrate by a preponderance of the evidence that her endeavor satisfies the national importance element of Dhanasar's first prong, as discussed below.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work. Matter of Dhanasar, 26 I&N Dec. at 889-890. Dhanasar provided examples of endeavors that may have national importance, as required by the first prong, having "national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances" and endeavors that have broader implications, such as "significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." Id.; see generally 6 USCIS Policy Manual, supra at F.5(D)(I).

The Petitioner's business plan expresses her desire to contribute to the United States and an economically depressed area. However, she has not established with specific, probative evidence that her endeavor will have broader implications in her field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in an economically depressed area. The Petitioner's business plan provides an analysis of the self-enrichment and taekwondo teaching industries, the potential growth and popularity of taekwondo, the impacts of offering her services to

women, and demographic data for the [] area. The business plan further describes the business's marketing strategies; use of virtual teaching tools; operational plans for staffing, salaries, and business space; plans for obtaining investments for working capital; and financial projections for revenue and costs.

The business plan includes proposals for obtaining investments for the business's working capital and projections for its staffing and finances. However, the record does not adequately explain the basis for the investment proposals, staff projections, and financial forecasts, or how these will be realized. The business plan indicates the new business will require working capital to maintain its operations and proposes to "hold investment rounds aimed at three specific types of investors: []

[] Without credible plans for funding the operational expenses of her business, the potential prospects of starting the Petitioner's business appears to be in doubt. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

The Petitioner also has not provided corroborating evidence, aside from claims in her business plan, that her business' future staffing levels and business activities stand to provide substantial economic benefits to depressed areas of Florida and the United States. While the business plan provides data on the [] area, the record does not include independent, probative evidence of it being an economically depressed area or that the Petitioner's business will have positive economic effects. Even if we were to assume everything the Petitioner claims will happen, the record lacks sufficient evidence showing that creation of jobs and paying wages for her business rises to the level of national importance. Also, the economic and societal welfare benefits that the Petitioner claimed depend on numerous factors and the Petitioner did not offer a sufficiently direct evidentiary tie between her taekwondo teaching and the claimed economic and societal welfare results.

To further support the national importance of her endeavor, the Petitioner submitted an expert opinion from [] adjunct professor of business, entrepreneurship, and sports management at [] College. While the opinion states the Petitioner's proposed endeavor "will broadly enhance societal welfare or cultural enrichment", it focuses on the Petitioner's work being in an area of substantial merit and national importance. It describes how employment for fitness instructors and trainers is projected to increase faster than other occupations due to a continuing emphasis on combating obesity and the health benefits of physical activity. The opinion provides data stating the economic benefits of increased physical activity through savings in healthcare expenses. The opinion generally states that the Petitioner's "expertise in martial arts validate her capacity to implement her knowledge to the United States" and "could highly benefit the American population." The opinion focuses on the need for physical fitness trainers and instructors and how the Petitioner's experience in taekwondo makes her well positioned to train taekwondo students and having them compete on a national level, instead of the Petitioner's specific endeavor having a prospective impact in her field.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. Matter of Caron Int'l, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Id., see also Matter of D-R-, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (discussing the varying weight that may be given expert testimony based on

relevance, reliability, and the overall probative value). Here, as noted, much of the content of the opinion is lacking relevance because it discusses the importance of the physical fitness industry and the Petitioner's occupation rather than addressing how the specific proposed endeavor would satisfy the national importance element of the first prong of the Dhanasar framework. Simply stating that her work would support an important industry is not sufficient to meet the "national importance" requirement under the Dhanasar framework.

In her personal statement, the Petitioner describes her training as a taekwondo athlete, competing with her university and the Brazil taekwondo team, and teaching taekwondo and self-defense. On appeal, the Petitioner once again highlights the importance of the taekwondo industry and her relevant training, skills, experience, and accomplishments. While important, the Petitioner's expertise acquired as an athlete and through her employment relates to the second prong of the Dhanasar framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor the Petitioner proposes to undertake has national importance under Dhanasar's first prong.

Similarly, the Petitioner's resume and recommendation letters only address her past accomplishments as a taekwondo athlete and teacher which impact her workplaces and students, and do not address the national importance of her endeavor's "potential prospective impact." Letters from her previous coaches highlight her taekwondo competencies and accomplishments as an athlete, and letters from other individuals in the field who have observed her taekwondo teaching highlight the Petitioner's work contributions to her students. We acknowledge that the letters demonstrate the Petitioner having been a taekwondo athlete and praise her dedication and competencies teaching taekwondo and self-defense to women in the past. However, the Petitioner has not offered sufficient information and evidence based on these recommendation letters to demonstrate the prospective impact of her proposed endeavor will rise to the level of national importance, rather than only impacting her students. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The letters do not indicate that the Petitioner's work will have national or global implications in the field of taekwondo or self-defense.

As discussed above, the Petitioner has not met her burden to establish that her proposed endeavor would operate on such a scale as to rise to the level of national importance. It is insufficient to claim an endeavor has national importance or will create a broad impact without providing evidence to corroborate such claims. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

For these reasons, the Petitioner's proposed endeavor does not meet the first prong of the Dhanasar framework. Since 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 her eligibility under the second and third prongs.¹¹

¹¹ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues in 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 alternate issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that she is eligible for EB-2 classification as a member of the professions possessing an advanced degree or as an individual of exceptional ability under section 203(b)(2) of the Act. In addition, as the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not demonstrated her eligibility for or otherwise merits a national interest waiver as a matter of discretion. 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.