



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

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

In Re: 27362018

Date: JUN. 20, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an elementary school teacher and entrepreneur, seeks employment-based second preference (EB-2) immigrant 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). She also seeks a national interest waiver of the job offer requirement attached to this classification under section 203(b)(2)(1)(B) of the Act.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner is eligible for EB-2 classification as an individual of exceptional ability. The Director further determined that the Petitioner did not establish that it would be in the national interest to grant a discretionary waiver of the job offer requirement. 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 an advanced degree professional 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). 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).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If

¹ 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).

² U.S. Citizenship and Immigration Services (USCIS) has previously confirmed the applicability of this two-part

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 USCIS may, as matter of discretion³, 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. EXCEPTIONAL ABILITY

The Petitioner holds a Brazilian licentiate degree in Portuguese language and a post-graduate specialization in pedagogical management and early childhood education. The record reflects that she has over 20 years of experience as a teacher and school-based recreation specialist, focused on early childhood and elementary education. She has established a Florida limited liability company and intends to operate a childcare center offering an early childhood education program, before and after school enrichment education, summer school programs, and services for children with diagnosed special needs.

The Director denied the petition, in part, based on a conclusion that the Petitioner did not establish her eligibility for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business. The Director determined that although she satisfied the initial evidence requirements by meeting three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), the record did not establish that she possesses a degree of expertise significantly above that ordinarily encountered in her field. On appeal, the Petitioner asserts that she submitted sufficient evidence to establish that she meets a fourth criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) and that she is otherwise eligible to be classified as an individual of exceptional ability.

For the reasons provided below, we agree with the Director’s conclusion that, although the Petitioner met the requisite three criteria under 8 C.F.R. § 204.5(k)(3)(ii), the record does not establish that she qualifies for the requested EB-2 classification.

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)

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>.

³ 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).

As noted above, the Petitioner provided official academic records demonstrating that she holds a three-year licentiate degree from a Brazilian university and a post-graduate specialization in early childhood education from an institute of higher education. Based on the evidence provided, her educational credentials relate to her claimed area of exceptional ability as an early childhood educator. Accordingly, the record supports the Director's conclusion that she meets this 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)

This criterion focuses on evidence of experience in the occupation which a petitioner intends to pursue in the United States. The Petitioner submitted a letter from an administrative manager at [REDACTED] in Brazil confirming her continuous full-time employment and job duties as a "teacher of early childhood education" from January 2008 until June 2019. She also submitted a letter documenting her employment as an elementary school teacher at [REDACTED] between February 2005 and December 2007. Accordingly, we agree with the Director's conclusion that the submitted evidence satisfies the plain language of this criterion.

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

The Petitioner submitted evidence of her current membership in [REDACTED] (CPP) along with evidence that CPP is an association representing "teaching professionals, active and retired, in the state of [REDACTED] aiming to guarantee the rights of teachers and quality public schools." Section 101(a)(32) of the Act defines "profession" as including, in part, "teachers in elementary or secondary schools." Therefore, the Petitioner established that she meets this 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).

As evidence for this criterion, the Petitioner initially submitted four letters from former supervisors and colleagues at [REDACTED] who attested to her professionalism, work ethic and dedication to teaching, her knowledge and skills in the field, and her rapport with students, parents, and other teachers. While the letters speak positively of the Petitioner as a valued member of the teaching staff who contributed to the school's successful operation, they did not provide evidence that she has been recognized for her achievements and significant contributions to the broader industry or field of education. The Director informed the Petitioner of this deficiency in a request for evidence (RFE) and allowed her an opportunity to submit additional evidence in support of this criterion.

The Petitioner's response to the RFE included additional letters of support from personal and professional acquaintances and former colleagues at [REDACTED]. Like the letters submitted as initial evidence, these letters do not indicate that she has received recognition from her peers, governmental entities, or professional or business organizations for her achievements and significant contributions to the industry. For example, several of the letters are from parents and school-based therapists. The authors describe the Petitioner's social and classroom-based interactions with individual children with autism and other diagnoses, and her ability to understand and adapt to their social and academic needs. While these letters

indicate that she had a positive impact on these students, the authors do not assert that she has made contributions with broader implications for the special education field or the education industry in general. The Petitioner, who is currently enrolled in an English language program in the United States, also provided a letter from an instructor in the program, who praises her for her focus, empathy, and reliability and notes that she “shows all the important qualities of an effective teacher.”

In concluding the Petitioner did not meet this criterion, the Director emphasized that the authors of the letters did not speak to the Petitioner’s significant contributions to her field and that the record lacked any additional evidence that would support a finding that she meets the plain language of this criterion.⁴

On appeal, counsel asserts that the Petitioner’s RFE response included “letters written from [the Petitioner’s] senior officers and managers, peers and professional organizations in Brazil and the U.S. who recognize her professional achievements and significant contributions to the field of information technology” and contends that the Director did not consider such evidence. However, the record does not reflect that the Director failed to consider the evidence submitted in response to the RFE, which included the letters described above, attesting to the Petitioner’s work in the field of education. The Petitioner did not submit evidence from professional organizations attesting to significant contributions in the field of information technology and does not claim to have exceptional ability in that field.

Overall, the submitted recommendation letters praise the Petitioner’s teaching methods and performance, her commitment to the profession and students, and her successful inclusion of children with special needs in her classroom. However, the evidence does not show how the Petitioner’s activities had an impact beyond her students and employers at a level indicative of achievements and significant contributions to the industry or field. We therefore agree with the Director’s determination that she did not meet this criterion.

B. Final Merits Determination

As discussed, the Petitioner established that she meets three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we will consider this evidence together with the balance of the record to determine whether the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field, consistent with the definition of exceptional ability.

In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence.⁵ While the Petitioner submitted evidence of her educational credentials, the mere possession of a degree or diploma from a college or university is not by itself considered sufficient evidence of exceptional ability. The record includes a letter from the pedagogical manager at [REDACTED] who states that the Petitioner’s “post-graduate specialization has made her significantly different from other professionals in her field.” However, the author of the letter does not elaborate on what qualifications are typically possessed among early childhood and elementary educators in Brazil or otherwise explain her conclusion that the Petitioner’s educational background sets her apart from similarly employed workers. The record does not provide sufficient support for a determination that the Petitioner’s

⁴ Formal recognition in the form of certificates and other documentation that are contemporaneous with the individual’s claimed contributions and achievements may have more weight than letters prepared for the petition recognizing the individual’s achievements. *See generally* 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

⁵ *Id.*

completion of a three-semester post-graduation specialization in pedagogical management and training in early childhood education signifies her possession of expertise that is significantly above that ordinarily encountered in her field.

Further, the Petitioner offered documentation of her employment as a school-based recreation specialist and as a teacher in early childhood and elementary education settings since 1995. Although the evidence indicates that she has more than 20 years of work experience in the field, the Petitioner did not demonstrate how her experience relates to other teachers or how it is indicative of a heightened degree of expertise that sets her apart from others. One of the letters from an administrative manager at [redacted] states that “[o]n completing ten years of our institution, [the Petitioner] received a compensation amount significantly higher than the other teachers of her grade due to her vast professional experience, educational and pedagogical skills, and excellent performance with the students.” However, a comparison between the Petitioner’s salary and that of other teachers “of her grade” within the same school does not support a determination that her salary is indicative that she has a degree of expertise significantly above that ordinarily encountered in the broader field. In this regard, we observe that the Petitioner did not claim that she was submitting evidence that she has commanded a salary, or other remuneration for services, that demonstrates exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(E). While she may have commanded higher earnings than less experienced teachers in her school after 10 years of employment, it is unclear how this limited comparison establishes her exceptional ability in the field.

As noted, the Petitioner provided evidence of her membership CPP, an organization for teachers in the State of [redacted]. However, the evidence does not demonstrate, for example, that CCP limits its membership to teaching professionals that possess credentials, experience or some other qualifications that would differentiate them as having expertise significantly above that of other teachers. Rather, the evidence suggests that CPP is an inclusive association with 120,000 members that is open to active and retired teachers who are located within specific geographic region and who pay the required membership dues. Therefore, the record does not show that the Petitioner’s membership in this association is indicative of her exceptional ability in the field of education.

Finally, although the Petitioner has submitted more than ten reference letters, this evidence does not establish that she possesses expertise that places her significantly above other teachers working in her field. As discussed, many of the letters praise the Petitioner for her personal qualities and professional capabilities and address her contributions to her employer and her impact on individual students. Although one former co-worker indicates that the Petitioner “is exceptional in her field” and another states that she is “at the top of her field,” they do not specify how the Petitioner’s skills, education, experience or work-related achievements and contributions demonstrate her exceptional ability. Another individual who provided a “declaration” in support of the petition identifies herself as a special education teacher at a Pennsylvania public school district. She states that the Petitioner “has attributes and qualities that set her apart from other professionals” and that she reached this conclusion after “analyzing” the Petitioner. However, the author of this declaration offers no additional information about her method of analysis or the basis for her conclusion; she does not indicate that she is personally acquainted with the Petitioner or explain whether she conducted some form of independent review of her qualifications and experience.

After review of the totality of the record, we agree with the Director's conclusion that the Petitioner has not established that she possesses a degree of expertise significantly above that ordinarily encountered in the field of education. She has therefore not shown that she is eligible for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

III. ADVANCED DEGREE PROFESSIONAL

We have also considered whether the Petitioner established that she qualifies, in the alternative, as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 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. 8 C.F.R. § 204.5(k)(2).

As noted, the Petitioner holds a Brazilian licentiate degree in Portuguese language and a post-graduate specialization in pedagogical management and early childhood education. The Petitioner has not claimed that she qualifies for EB-2 classification as an advanced degree professional under section 203(b)(2) of the Act, however, she has referred to her licentiate degree as a "bachelor of arts" degree.

The Petitioner's academic records reflect her completion of three years of postsecondary education to obtain her licentiate degree and one and one-half years of postgraduate coursework to complete her specialization. We have consulted the Electronic Database for Global Education (EDGE),⁶ created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁷ EDGE includes a list of credentials from Brazil. The list includes the following credentials that represent attainment of a level of education comparable to a bachelor's or master's degree, respectively, in the United States:

- *Titulo de bacharel* (title of bachelor);
- *Titulo de mestre* (master's degree program); and
- *Mestrado profissional* (professional master's degree program).

Here, the Petitioner did not provide an official academic record demonstrating that she possesses any of these credentials. EDGE indicates that a "licentiate" is "a teaching qualification" that "varies in length of study from 2 to 4 years," while a "specialist" title is awarded "following programs of various lengths; most are at least 1 year long."⁸ This information is consistent with the academic transcripts provided for the Petitioner's respective postsecondary programs.

To demonstrate education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R.

⁶ EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>.

⁷ AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." <http://www.aacrao.org/who-we-are>.

⁸ *See* Brazil Credentials, <https://www.aacrao.org/edge/country/credentials/brazil>.

§ 204.5(k)(2). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). The record does not establish that the Petitioner possesses a single degree that is the foreign equivalent of a U.S. bachelor's degree.

Accordingly, we conclude that the Petitioner does not qualify for EB-2 classification as a member of the professions possessing an advanced degree.

IV. NATIONAL INTEREST WAIVER

As noted, the Director made a separate determination that the Petitioner did not establish her eligibility for a national interest waiver under the *Dhanasar* framework. However, because the Petitioner has not established her qualification for the underlying EB-2 classification, she is not eligible for a national interest waiver. We will therefore reserve this issue and the Petitioner's appellate arguments related to her request for a national interest waiver of the job offer requirement. *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).

V. CONCLUSION

For the reasons discussed, the Petitioner has not established that she is eligible for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business or as a member of the professions holding an advanced degree. 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.