



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

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

In Re: 26957673

Date: JUNE 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner 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, 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, concluding that the record does not establish the Petitioner qualifies for classification as an individual of exceptional ability. 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) of the Act. 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:

- (A) An 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;

- (B) Evidence 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;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the [noncitizen] has commanded a salary, or other remuneration [sic] for services, which demonstrates exceptional ability;
- (E) Evidence of membership in professional associations; or
- (F) 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).

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.”

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *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 Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Director concluded that the record satisfies three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). More specifically, the Director found that the record satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E), the only three criteria for which evidence was submitted. However,

the Director concluded that the record does not show sustained national or international acclaim and demonstrate that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1119-20. The Director further concluded that, although the record satisfies the first of three prongs set forth in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), it does not satisfy the latter two. *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs. On appeal, the Petitioner reasserts that he has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business, and furthermore that the record satisfies all three *Dhanasar* prongs.

For the reasons discussed below, we withdraw the Director's conclusion that the record satisfies at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). More specifically, we withdraw the Director's statement that the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

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 observed: "In response to the [request for evidence (RFE)], the [P]etitioner submitted a copy of his certificate of completion of Motor Vehicle Dealer Training Seminar issued by [redacted]. As such, [the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A)] has been met." In response to the Director's RFE, the Petitioner submitted, in relevant part, a photocopy of a document issued by the [redacted] located in [redacted] Florida, that certifies the Petitioner "successfully completed the two days Motor Vehicle Dealer Training Seminar in accordance with State of Florida Statutes Section 320.27(4)(b)." The Petitioner also submitted a printout of section 320.27 of the Florida Statutes in response to the RFE.

Regardless of whether "a licensed motor vehicle dealer training school" as contemplated in section 320.27 of the Florida Statutes is the type of "college, university, school, or other institution of learning" contemplated by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), the record does not establish that the Petitioner's certificate of completion is the type of "degree, diploma, certificate, or similar award" contemplated by the regulation. The Petitioner's certificate of completion specifies that the duration of the training he completed was two days. Although the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) includes awards titled "certificate," it nevertheless requires such awards to be similar to "a degree, diploma, [or] certificate . . . from a college, university, school, or other institution of learning," typically following thorough instruction spanning more than two days. Therefore, recognizing a certificate for completing a two-day training seminar as an award similar to "a degree, diploma, [or] certificate . . . from a college, university, school, or other institution of learning" contemplated by the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) strains plausibility. Moreover, as noted above, 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 shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

Regardless of whether the issuing motor vehicle dealer training school is the type of "college, university, school, or other institution of learning" contemplated by the criterion 8 C.F.R. § 204.5(k)(3)(ii)(A) and, furthermore, regardless of whether the certificate of completion of a two-day

training course is the type of award similar to “a degree, diploma, [or] certificate” contemplated therein, the plain language of the regulation requires evidence in the form of “[a]n *official academic record* showing that the [noncitizen] has a degree, diploma, certificate, or similar award” (emphasis added). Neither the photocopy of the Petitioner’s certificate of completion nor the printout of section 320.27 of the Florida Statutes, submitted in response to the Director’s RFE, is an official academic record. Because the record does not contain an official academic record showing that the Petitioner 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, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).¹ The Director erred in concluding otherwise, and we withdraw the Director’s conclusion that the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) has been met. Because the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), and because the Petitioner asserted only that the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E) were satisfied, the record does not satisfy at least three of the six exceptional ability criteria.

In summation, the Petitioner has not established that the record satisfies at least three of the exceptional ability criteria; therefore, we need not determine whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2); *Kazarian*, 596 F.3d 1115. 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 Petitioner satisfies any of the criteria set forth in *Matter of Dhanasar*, 26 I&N Dec. 884. *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 record does not establish that the Petitioner qualifies for second-preference classification 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.

¹ We acknowledge that the record contains other documents that the Petitioner asserted satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A); however, the Director discussed those documents in the decision and explained why they do not satisfy the criterion. The Petitioner does not address those documents on appeal and we omit a discussion of them at length for brevity; however, we note that, ultimately, they do not satisfy the requirement of an official academic record, similar to the analysis above.