



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

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

In Re: 24808895

Date: MAR. 14, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (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. 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 underlying visa classification. 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.

To qualify for a national interest waiver, a petitioner must first show eligibility 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.¹ If a petitioner satisfies the initial criteria, 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.

¹ 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/volume-6-part-f-chapter-5>.

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.

As described, the Petitioner “seeks employment in the field of the trucking industry, eventually owning and operating his own trucking company, which will be engaged in interstate transportation and will benefit interstate commerce.”²

Initially, the Petitioner did not indicate whether he qualified for the underlying classification as a member of the professions with an advanced degree or as an individual of exceptional ability. After the Director issued a notice of intent to deny (NOID), the Petitioner limited his response to that of an individual of exceptional ability. On appeal, we will address whether he has established he is an individual of exceptional ability based upon the four criteria claimed.³

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 provided a transcript and diploma in “maintenance and repair of office and computer equipment” and a certificate in “computer skills.” Although the Director determined that the Petitioner satisfied this criterion, the plain language of the criterion requires the education to be related to the area of exceptional ability. While we acknowledge the Petitioner’s general statement that he “studied various business-related disciplines . . . and attained sufficient knowledge to establish and operate a business,” the provided transcript does not support this claim. As a result, he has not established how his diploma and/or certificate relate to his stated area of exceptional ability as the owner and operator of a trucking company. Therefore, we cannot conclude that he meets this criterion and must withdraw the Director’s determination.

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

A petitioner must meet all eligibility requirements at the time of filing the petition, which in this matter was October 28, 2019. 8 C.F.R. § 103.2(b)(1). As the Petitioner’s Pennsylvania commercial driver’s license indicates that it was issued on April 21, 2021, we cannot consider it here.

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

The Petitioner relies on his membership in the Information System Security Association (ISSA) to establish that he meets this criterion. The Petitioner has not, however, shown that ISSA qualifies as a professional association. Profession is defined as one of the occupations listed in section 101(a)(32)

² The Petitioner opened a trucking company in 2021.

³ When an appellant does not offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998). See also *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (holding that the plaintiff abandoned his claims as he failed to raise them on appeal to the Administrative Appeals Office).

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.⁴ 8 C.F.R. § 204.5(k)(3).

Without evidence which establishes that the ISSA requires a U.S. bachelor's degree or its foreign equivalent as the minimum education required for membership, we cannot conclude that the ISSA is a professional association.

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 record contains information regarding the Petitioner's earnings, including several tax documents. However, the plain language of the criterion requires that it also demonstrates exceptional ability. Without more, the Petitioner has not met this criterion.

For the above reasons, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Because he has not demonstrated that he qualifies for the underlying EB-2 classification as an individual of exceptional ability, we decline to reach and hereby reserve remaining arguments concerning his national interest waiver claim. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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).

ORDER: The appeal is dismissed.

⁴ 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.