



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

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

In Re: 25516518

Date: MAY 05, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a logistics analyst, seeks classification as an individual of exceptional ability in the sciences, arts, or business. 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. 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner has exceptional ability in business, that he is well-positioned to advance his proposed endeavor, or that it is in the interests of the United States to waive 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 classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. Section 203(b)(2) of the Act.¹

¹ *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that USCIS may, as matter of discretion, grant a national interest waiver if the petitioner shows:

- 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.

A petitioner seeking to be classified as an individual of exceptional ability in the sciences, arts, or business must submit evidence that meets at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) and establish that they have a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

II. ANALYSIS

The Petitioner seeks to establish a logistics company in the United States as an individual of exceptional ability in business.² The Director concluded that the Petitioner submitted evidence that met three of the six exceptional ability criteria³ at 8 C.F.R. § 204.5(k)(3)(ii):

- (A), an official academic record showing the Petitioner has an academic degree related to the area of exceptional ability;
- (D), evidence the Petitioner has commanded a salary or other remuneration demonstrating exceptional ability; and
- (E), evidence of membership in professional associations.

Accordingly, the Director proceeded to a final merits determination, and determined that because the Petitioner does not have a degree of expertise significantly above that ordinarily encountered in the field, he not qualify for the exceptional ability classification. 8 C.F.R. § 204.5(k)(2). On appeal, the Petitioner contends that the Director used an incorrect standard of proof and failed to consider the evidence in its totality.

The Petitioner's appeal brief emphasizes the fact that he submitted sufficient evidence to meet the three required evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), stating that this should establish eligibility. However, the evidentiary criteria only describe the minimum level of documentation that must be provided to establish eligibility for the exceptional ability classification. The fact that the Petitioner meets these minimum requirements does not, in and of itself, establish that he has a degree of expertise significantly above that ordinarily encountered in the field of logistics. *See generally* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual> ("Objectively meeting the criteria alone does not establish that the beneficiary in fact meets the requirements for exceptional ability classification.") In the final merits analysis, the quality of the evidence must be evaluated, including its relevance, probative value, and credibility, in order to determine whether the Petitioner qualifies as an individual of exceptional ability. *See Matter of Chawathe*, 25 I&N Dec. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Petitioner met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) by establishing that he earned a bachelor's degree in business administration in 2018, and he states on appeal that "academic training is a benchmark that, according to the regulations, reflects a superior level of knowledge that has been attained, which can distinguish one caliber of professional from another." First, as noted above, meeting an evidentiary criterion does not, in and of itself, establish eligibility. *See generally* 6 *USCIS*

² The record does not establish, and the Petitioner does not claim, that he qualifies as an advanced degree professional.

³ The Director also found that the Petitioner did not meet the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), or (F).

Policy Manual, supra at F.5(B)(2). “[P]ossession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution or learning . . . shall not by itself be considered sufficient evidence of . . . exceptional ability.” Section 203(b)(2)(C) of the Act. Second, as the Petitioner notes in another part of his brief, the Department of Labor’s Occupational Outlook Handbook states that the position of logistician generally requires a bachelor’s degree for entry.⁴ This indicates that a bachelor’s degree is ordinary in the Petitioner’s field, rather than representing a level of expertise significantly above that ordinarily encountered.

The Petitioner contends that his membership in Council of Supply Chain Management Professionals (CSCMP), which met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), has afforded him networking opportunities that distinguish him from others in his field, and that the organization has a “commitment to continuous professional development and quality control of its members.” However, the screen capture of the membership website shows that the Petitioner’s “engagement score” is zero and that he is not registered for any of the association’s events. The Petitioner has also not provided any examples of networking opportunities he has taken or how they contributed to his expertise in his field. Finally, the Petitioner does not provide any documentation of CSCMP membership requirements apart from paying dues. This does not establish that the Petitioner’s membership in CSCMP distinguishes him from others in his field.

Regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), recognition of achievements or contributions to the industry or field, the Petitioner claims that the Director erred by not analyzing the support letter from [REDACTED], one of the Petitioner’s past employers, and that his recognition from this letter demonstrates his eligibility. As noted above, meeting the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii) does not establish that the Petitioner is an individual of exceptional ability. The letter can be considered in the final merits determination of whether or not the Petitioner, by a preponderance of the evidence, has demonstrated that he has a degree of expertise significantly above that ordinarily encountered in business.

Upon review, the letter from [REDACTED] does not establish the Petitioner’s eligibility. The letter describes the Petitioner’s duties of monitoring, organizing, and scheduling the loading, unloading, and transportation of cargo between a port and multiple construction plants, and states that the Petitioner performed these duties very well. We acknowledge that the Petitioner was a highly capable employee in his time with [REDACTED]. However, being recognized by one’s employer for doing good work does not demonstrate a degree of expertise significantly above that ordinarily encountered in the field of logistics.

Finally, the Petitioner submits two of our non-precedent decisions in support of his appeal. These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. In this instance, we note that the

⁴ Bureau of Lab. Stat., Occupational Outlook Handbook: Logisticians, <https://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4>.

submitted decisions concern the extraordinary ability classification,⁵ not the exceptional ability classification. Furthermore, these cases examine in detail how their petitioners contributed to their fields by impacting the work of others in those fields. The Petitioner's letter and supporting evidence here do not specify how the Petitioner's accomplishments at [] impacted anyone beyond [] itself. It is not apparent from the record that the Petitioner has been recognized for his achievements or significant contributions to his industry or field.⁶

Upon a review of the totality of the evidence, the Petitioner has not established by a preponderance of the evidence that he has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).

III. CONCLUSION

The Petitioner has not demonstrated his eligibility for the exceptional ability classification. Because this issue is dispositive of the petition, we need not address the Petitioner's qualifications for a national interest waiver and hereby reserve the issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). The petition will remain denied.

ORDER: The appeal is dismissed.

⁵ Extraordinary ability is a first preference visa classification that requires a different evidentiary showing than exceptional ability, which is a second preference classification. *See, e.g., Kazarian v. USCIS*, 596 F.3d 1115, 1120 (9th Cir. 2010) (explaining the differences between the extraordinary and exceptional ability classifications).

⁶ As previously noted, the Director found that the Petitioner did not meet the evidentiary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). The letter from [] does not establish the Petitioner's qualifications under that criterion because it does not indicate recognition for his achievements and significant contributions to the industry or field.