



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

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

In Re: 26408486

Date: MAY 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a security consultant, 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. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested EB-2 classification or that he merits a 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 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 We will then conduct a final merits determination to decide whether the evidence in its totality shows

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 adjudicative approach in the context of aliens 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>.

that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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.” 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 primary issue to be addressed is whether the Petitioner established his eligibility for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

A. Nature of Occupation and Proposed Endeavor

To qualify for the EB-2 classification as an individual of exceptional ability, the Petitioner must submit evidence within the context of his profession or occupation to show that he satisfies at least three of six regulatory criteria to meet the initial evidence requirement, and ultimately to demonstrate that he has a degree of expertise significantly above that ordinarily encountered in his field. Section 203(b)(2) of the Act and 8 C.F.R. § 204.5(k).

The record reflects that the Petitioner served in the Military Police of [REDACTED] in Brazil from 1988 until his retirement from active service in 2018. He indicated on the Form I-140, Immigrant Petition for Alien Worker, that he proposes to work as a “security consultant” in the United States and he later stated that his occupation will be that of a “security management specialist.” The record indicates that he intends to work as an entrepreneur. He submitted a business plan for “Specialized Memorable Security,” and stated that he will establish a limited liability company under this name using his personal funds if the petition is approved. The business plan indicates that the company will operate a shooting range in Florida with indoor and outdoor ranges to be managed by the company’s co-owners and would offer firearm rentals, ammunition sales, and classroom-based training courses on firearm safety and use, non-lethal weapons, and self-defense.⁴

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).

⁴ The business plan states that the new company would also provide security services for the protection of individuals and property, but these plans are not further detailed, and the financial projections included in the business plan’s appendix indicate that all income in the first three years would be derived from products and services offered by the shooting range.

B. Evidentiary Criteria

In evaluating the Petitioner's eligibility as an individual of exceptional ability, the Director concluded that he satisfied three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii), by providing evidence of official academic records confirming his receipt of certificates, evidence of his ten years of full-time experience in the occupation sought; and by documenting his membership in a professional association. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (E). After determining that the Petitioner met three criteria, the Director conducted a final merits determination, and concluded that the Petitioner did not establish a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. On appeal, the Petitioner maintains that he submitted evidence satisfying all six criteria at 8 C.F.R. § 204.5(k)(3)(ii).

The record supports the Director's determination that the Petitioner submitted evidence to meet the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B). However, for the reasons discussed below, we conclude that the Petitioner has not satisfied at least three of the initial evidentiary criteria for EB-2 classification as an individual of exceptional ability.

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

As evidence of his license to practice his profession or occupation, the Petitioner presented a copy of his Brazilian military police identification card and a firearm registration card for his military-issued firearm. The Director determined that the Petitioner did not meet this criterion because he did not establish that his profession or occupation as a security consultant and CEO/founder of his own company requires such licenses or certifications.

On appeal, the Petitioner refers to the previously submitted evidence and asserts that "there is no particular license or even a specific certification for the exercise of the military function in Brazil," noting that "[o]nce a police officer joins the police, he is already licensed." He does not acknowledge or contest the Director's basis for determining that he did not meet this criterion. Further, he appears to concede that the two documents he submitted in support of this criterion are not in fact licenses or certifications for the practice of a particular professional or occupation. We agree with the Director's determination that the Petitioner has not submitted evidence that meets this criterion.

Evidence that the individual has commanded a salary, or other remuneration for services, which demonstrates exceptional ability 8 C.F.R. § 204.5(k)(3)(ii)(D)

In support of this criterion, the Petitioner initially submitted copies of his Brazilian individual income tax returns for the calendar years 2017, 2018 and 2019, which show that he earned taxable income of R\$199,494, R\$157,604, and R\$144,937, respectively. The Director advised the Petitioner in a request for evidence (RFE) that proof of his prior income alone is not sufficient to demonstrate that he satisfies this criterion.

In response to the RFE, the Petitioner provided his updated income information for 2021 and 2022, stated that the average annual salary of military police officer in Brazil is R\$48,696, and emphasized that his salary is 334% higher than that average. In his response, he also explained that a military

police officer's remuneration increases according to military rank and length of service and stated that he has achieved "exceptional remuneration compared to a Military Police Officer at the beginning of his career, who gross remuneration is R\$5,606.82." The Petitioner repeats these assertions on appeal but does not directly address the Director's determination that he provided insufficient evidence to establish how his past earnings as a military police officer demonstrate exceptional ability.

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of their claimed exceptional ability relative to others working in the field.⁵ The Petitioner indicates that salaries in the Brazilian military police are based on military rank and years of service; the record does not support a determination that a given officer's salary is based on or indicative of his or her exceptional ability in the profession. Similarly, he has neither claimed nor provided evidence that his rank and length of service alone (which determine his salary) are indicative of his exceptional ability in his field. Rather, based on the Petitioner's statements regarding the salary scale governing pay for Brazilian military police, it is reasonable to conclude that his salary is comparable to other persons with the same rank of first sergeant who have a similar length of service. The Petitioner's comparison of his salary to that of early career military police officers or to an average salary for all officers of any rank or length of service is not persuasive. Accordingly, we agree with the Director and find that this evidence does not establish that he commanded a salary which demonstrates exceptional ability.

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

In support of this criterion, the Petitioner submitted a copy of a card bearing his name and photograph which indicates his registration in the [redacted] Association of Military Police and Firefighters. He did not submit any additional information or evidence regarding this association, its purpose, or its membership requirements in support of his claim that he is a member of a professional association. The Director nevertheless determined that the Petitioner satisfied this criterion. We will withdraw the Director's determination because the evidence presented is not sufficient to demonstrate that this association has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association.⁶

Evidence of recognition for achievements and significant contributions to the industry or field by peers, government entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F).

The Petitioner indicates that he meets this criterion based on his receipt of 39 "awards, commendations and praises" from the [redacted] during his 30-year career with that organization, as well as reference letters from his superiors attesting to his work with the Brazilian military police. He provided a statement from a state military official indicating that he "has achieved maximum grading in his personal file" and confirming he received "thirty-nine rewards for relevant services rendered to the institution." The Petitioner did not provide evidence of all his employment-related awards, but

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

⁶ The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "Profession means 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."

provided a lengthy narrative description of the commendations, many of which were given as a result of his successful resolution of specific criminal cases. For example, he indicates that he received commendations and “merit notes” for actions such as making arrests, seizing illegal drugs and unregistered firearms, recovering stolen property, shutting down an un-licensed poultry slaughterhouse, providing intelligence that resulted in arrests, and other policing activities. The Petitioner also provided evidence that he received a “Bronze Military Merit Medal” in 2011, as “recognition, award, praise and distinction for 10 years of good services,” and a letter of thanks for participating in operations that led to the arrest of an organized group targeting rental and trade companies in the state of [REDACTED]

This evidence supports a finding that he has been recognized by his employer for specific services rendered as a military police officer and for his commitment to that profession. However, the personal recognitions described and documented in the record do not demonstrate that he has been recognized for “achievements and significant contributions” to the broader security, military or law enforcement field or a field that encompasses his proposed endeavor to serve as the director and owner of a shooting range and security services business.

In addition, the Petitioner provided letters from his former colleagues and superior officers within the [REDACTED]. As noted by the Director, these letters attested to his skills, competence, dedication, and professionalism as a military police officer and described some of his job-related accomplishments and how they impacted his employer. However, the letters did not discuss his achievements and significant contributions to the industry or field in which he intends to work in the United States. On appeal, the Petitioner emphasizes that the previously submitted reference letters demonstrate “recognition for the achievements and contribution to the work of the [REDACTED] Military Police” but he does not address the Director’s determination that such letters did not demonstrate “achievements and significant contributions to the industry or field,” which requires evidence of recognition for contributions that extend beyond his specific employer.

To the extent that the submitted letters recognize the Petitioner for broader contributions beyond carrying out his duties as a police officer, they are lacking detail. For example, a letter from a [REDACTED] lieutenant colonel who served as the Petitioner’s commander between 2013 and 2016 praises a unit led by the Petitioner for having “the most carried out seizures of firearms in an irregular situation and of arrests of lawbreakers.” The author indicates that the Petitioner “performed relevant works for the military institution as well as society as a whole,” but does not elaborate as to how his work had such wide-ranging impacts that it constituted a “significant contribution to the industry or field.” Another letter from a superior officer who worked with the Petitioner in the [REDACTED] Intelligence Section, praises his production of “various important pieces of public intelligence as well as in the field of State intelligence” and praises his work as “precise, wide-reaching and timely.” However, the author does not elaborate on this “wide-reaching” work or identify specific achievements and significant contributions that had an impact in the field or industry that reached beyond the activities of the [REDACTED]

Per the analysis above, we agree with the Director and conclude that the Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F).

C. Final Merits Determination

The Petitioner has not submitted the required initial evidence demonstrating that he meets at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), and we therefore need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2). Nevertheless, because the Director's decision included a final merits determination, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the recognition for the level of expertise required for classification as an individual of exceptional ability. Further, we note that although the Petitioner claims on appeal that he meets all six initial evidentiary criteria for this classification, he does not specifically address the Director's final merits determination.

III. NATIONAL INTEREST WAIVER

The Petitioner has not established his qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts or business, and is therefore ineligible for a national interest waiver. Therefore, while the Petitioner asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework and that the Director erred in concluding otherwise, we will reserve these issues. See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).

IV. CONCLUSION

The Petitioner has not established that he is eligible to be classification as an individual of exceptional ability or that he is otherwise eligible for EB-2 classification. Accordingly, the petition will remain denied and 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.