



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

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

In Re: 26609775

Date: MAY 16, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal.

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

“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 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.

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 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>.

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 U.S. Citizenship and Immigration Services (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. ANALYSIS

A. Exceptional Ability

The Petitioner asserted that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the membership criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

In the appeal brief, the Petitioner maintains that he also meets the license to practice criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) and the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). After reviewing the evidence, we agree with the Director that the Petitioner has not demonstrated he satisfies the requirements of at least three criteria.

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

The Petitioner indicates on appeal that he has offered comparable evidence for this criterion pursuant to the regulation at 8 C.F.R. § 204.5(k)(3)(iii). This regulation allows for the submission of “comparable evidence” if the standards at 8 C.F.R. § 204.5(k)(3)(ii) “do not readily apply to the beneficiary’s occupation.” *See* 8 C.F.R. § 204.5(k)(3)(iii). A petitioner should explain why the regulatory criteria do not readily apply to his occupation, as well as why the evidence he has submitted is “comparable” to that required under 8 C.F.R. 204.5(k)(3)(ii).⁴

The Petitioner states that because “the licensing requirement is not applicable to the [Petitioner’s] field of endeavor as it is not subject to licensing requirements, comparable evidence submitted herewith ... should be considered by USCIS.” The Petitioner, however, did not support his assertion that entrepreneurs in the field of information technology are “not subject to licensing requirements” with corroborating documentation. The fact that the Petitioner did not receive a licensure or certification

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 When evaluating such comparable evidence, officers consider whether the criteria are readily applicable to a petitioner’s occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in the regulation. *See generally* 6 USCIS Policy Manual F.5(B), *supra*.

in his profession is not evidence that the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) does not apply to his occupation. In addition, the Petitioner does not identify the “comparable evidence submitted herewith” in support of the appeal.⁵

In addition, the Petitioner contends that “USCIS should accept documentation presented in the previously submitted and/or attached exhibits in lieu of a license and should find that [the Petitioner] has met this criterion via comparable evidence.” Again, the Petitioner does not identify the specific documents or exhibits he requests to be considered as comparable evidence of a professional licensure or certification. Nor has he demonstrated that any of his documents reflect the same caliber of expertise as receiving a license to practice the profession or a certification for a particular profession. Here, the Petitioner has not established that this criterion does not apply to his occupation and that his evidence is truly comparable to receiving a license to practice or a professional certification. Accordingly, he has not demonstrated that he meets this criterion through the submission of comparable evidence.

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).

The Petitioner states on appeal that his “educational background, professional experience, and superb skills . . . enabled [him] to contribute to his field and will allow him to continue to do so in the future. Based on the documentation previously submitted and attached hereto, [the Petitioner] clearly established that this criterion has been met.”⁶ The Petitioner does not identify the specific documents or exhibits he requests to be considered as evidence of his recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. While the Petitioner provided letters of support from both his former employer and [redacted] University, this evidence does not show that his work has been recognized at a level indicative of achievements and significant contributions to the industry or field.⁷ The Petitioner therefore has not established that he fulfills this criterion.

For the reasons set forth above, the Petitioner has not shown that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that he is an advanced degree professional or that he has satisfied the regulatory criteria

⁵ The Petitioner’s appellate submission was unaccompanied by any documentary evidence relating to his exceptional ability.

⁶ The Petitioner’s appellate submission did not include evidence relating to this criterion.

⁷ The letter from his former employer discusses only his job responsibilities and the letter from his alma mater focuses on his dedication as a student.

and achieved the level of expertise required for exceptional ability classification.⁸ Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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 Petitioner has not established that he satisfies the regulatory requirements for classification as an individual of exceptional ability. 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.

⁸ Although the Director's request for evidence provided the Petitioner an opportunity to do so, he has not claimed or demonstrated eligibility as a member of the professions holding an advanced degree.