



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

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

In Re: 26357077

Date: AUG. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft mechanic, seeks employment-based second preference (EB-2) immigrant 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 did not establish that the Petitioner qualifies for the underlying visa classification, or 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. 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. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent

¹ 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.

degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

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:

- (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 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).²

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.”

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ We then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.⁴ 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

² 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.

³ See generally 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual>.

⁴ 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, *supra* at F.5(B)(2).

fulfilling the required number of criteria, considered in the context of a final merits determination). 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. at 376.

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 eligibility for 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 discretion⁵, 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

The Petitioner proposes to work in the United States as an aircraft mechanic. The Director found that the Petitioner did not establish eligibility for the underlying EB-2 classification as an individual of exceptional ability. The Director further found that the record did not demonstrate the Petitioner met any of the three prongs of the *Dhanasar* framework, and thus he did not merit a discretionary waiver of the job offer requirement “in the national interest”.

On appeal, the Petitioner argues that the Director’s decision had “numerous errors in law and fact”. He further argues that the evidence he submitted with the petition and in the reply to a request for evidence demonstrated by a preponderance of the evidence his exceptional ability and that he merits a national interest waiver.

A. Individual of Exceptional Ability

With respect to the underlying EB-2 classification, the Petitioner submitted evidence to meet all six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). The Director concluded that although the Petitioner met three criteria, the record did not establish that he possessed a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Director found that the Petitioner met the criteria for academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A), license to practice the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(C), and membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E). However, as discussed below, we find the record does not support the conclusion that the Petitioner meets the criterion for membership in professional associations, and otherwise does not meet three of the six criteria.

⁵ 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).

On appeal, the Petitioner generally argues that the supporting documentation submitted with the petition and with the reply to the request for evidence establishes by a preponderance of the evidence that the Petitioner is an individual of exceptional ability. The Petitioner argues that his meeting three criteria “must lead to considering [the Petitioner’s] exceptional ability” The Petitioner did not provide any specific arguments relating to the criteria the Director found he did not meet, or to the Director’s final merits determination that the record did not establish that he possessed a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

After reviewing the evidence in the record, we find that the Petitioner does not meet at least three of the regulatory criteria required for classification as an individual of exceptional ability.

An official academic record showing that the individual 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 submitted a copy of a certificate of academic knowledge as an airplane line technician and his academic transcripts from [redacted] in Colombia. Based on these documents, the Petitioner has established that he meets the criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the individual has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner submitted letters from his previous and current employers to show his work experience in his occupation. However, as explained in the Director’s decision, the letters do not demonstrate the Petitioner has at least ten years of full-time experience in his occupation.

The Petitioner submitted a letter from [redacted] indicating his full-time work experience as a technician II from February 22, 2016, to October 23, 2020. He also submitted a letter from [redacted] indicating his full-time work experience as a technician from July 16, 2013, to January 15, 2015. Although the letters indicate the Petitioner’s work duty experience was in his occupation, the letters only demonstrate six years and two months of experience, therefore is less than the at least ten years of experience required under the plain language of the criterion.

Although the Petitioner provided an employment certificate from [redacted] indicating he worked as a 4th technician in transition from May 5, 2015, to February 17, 2016, it does not indicate the Petitioner’s work duties in order determine whether his work was in his occupation. Also, the letter does not indicate that his work was full-time, as required by the plain language of the regulations.

With the reply to the request for evidence, the Petitioner submitted a letter dated September 2, 2022, from [redacted] explaining that since August 8, 2022, the Petitioner has been working for its company as a lead aircraft maintenance technician employee. However, this work experience started over a year after the Petitioner filed this petition. Therefore, this experience does not establish his eligibility for this criterion at the time of filing the petition. 8 C.F.R. § 103.2(b)(I).

Therefore, the record does not demonstrate the Petitioner has at least ten years of full-time experience in the relevant occupation.

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 submitted two licenses issued to him from the civil aeronautics special administrative unit of the Republic of Colombia. The first license issued on October 7, 2020, states he qualifies to exercise the privileges as an aircraft maintenance technician; and the other license issued on December 16, 2014, states he qualifies to exercise the privileges as an airplane line technician.

Based on these documents, the Petitioner has established that he meets this criterion.

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 Petitioner submitted his tax documents for the years 2018 and 2019 indicating his salary with [REDACTED] [REDACTED] The record also includes a letter from [REDACTED] indicating the Petitioner was a line maintenance technician for the company from February 2016 to October 2020. However, while the record shows his income as a line maintenance technician for the years 2018 and 2019, the Petitioner did not submit evidence that his salary shows his exceptional ability.⁶

Upon our de novo review, the record does not establish that the Petitioner's salary shows his exceptional ability, and therefore he has not satisfied the criterion.

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

This criterion requires evidence of membership in a professional association. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a United States bachelor's degree or foreign equivalent for entry into the occupation.

To meet this criterion, the Petitioner submitted documentation relating to his associate membership with the professional aviation maintenance association (PAPA). The evidence provided does not show that PAPA requires at a minimum a United States bachelor's degree or its foreign equivalent for entry into the Petitioner's occupation, or that PAPA otherwise qualifies as a professional association as contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(E). Since the Petitioner did not provide evidence indicating that PAPA requires its members be professionals as defined in the regulations, he did not meet his burden to establish that it qualifies as a professional association.

Accordingly, we conclude that the Petitioner has not provided sufficient documentary evidence to establish this criterion. We therefore withdraw the Director's finding that the Petitioner has met this criterion.

⁶ For this criterion, the record indicates that the Director issued a request for evidence stating, "You provided a copy of your 2019 Certificate of Income Tax Withholdings on Work and Pensions Income. This criterion has been met." However, the Director did not grant the criterion in the final decision. On appeal, the Petitioner did not raise a specific concern or argument disputing the Director's final decision not granting the criterion.

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).

To meet this criterion, the Petitioner submitted letters of recommendation from his former employers and co-workers, and certificates of his completion of training courses. The letters of recommendation and certificates of his trainings show that the Petitioner received training and experience related to his field. The letters from his former employers and co-workers confirm his work experience and praise the Petitioner's work ethic and knowledge of his work. The record shows the Petitioner has continued his training in his field, and that his employers and co-workers value his knowledge and his dedication to his work, his employers, and his field. However, it does not demonstrate that the Petitioner has been recognized for achievements and significant contributions to the industry or field, as required under the criterion.

Therefore, the Petitioner has not demonstrated he meets this criterion.

The Petitioner has not established that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F). Since the Petitioner did not satisfy the initial evidence requirements, we 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 sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

B. Substantial Merit and National Importance

As explained in the legal framework above, 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. Because the Petitioner has not established this threshold issue, the remainder of the Petitioner's arguments need not be addressed. It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach whether he meets the three prongs under the Dhanasar framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); 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

As the record does not establish that the Petitioner qualifies for the underlying EB -2 classification as an individual of exception ability, we find that the Petitioner is not eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.