



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

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

In Re: 23372937

Date: MAR. 06, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an education administrator, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish eligibility for a national interest waiver under the Dhanasar framework. 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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

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

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).

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 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 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

The Director issued a request for evidence (RFE) containing conflicting and confusing statements about whether the Petitioner had established eligibility as an advanced degree professional. In addition, the Director did not provide analysis of the Petitioner’s eligibility for the underlying EB-2 classification when issuing the decision. In our de novo review, we conclude that the Petitioner has not established he is a member of the professions holding an advanced degree or an individual of exceptional ability. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The record reflects that in February 2019, the Petitioner earned a Brazilian *Título de Licenciado* in pedagogy. Although the Petitioner provided an academic equivalency evaluation which states that the Petitioner’s degree is the foreign equivalent of a four-year U.S. bachelor’s degree in early childhood education, the record does not support this conclusion. Rather, the academic records accompanying

² 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>.

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).

the Petitioner's certificate state that he began his studies in 2017, which indicates that his *Título de Licenciado* is a two-year credential. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Here, the Petitioner's academic record indicates that he earned a *Título de Licenciado* after only two years of study. Therefore, we question the accuracy of the academic evaluation and conclude that it holds little probative value in this matter.

We reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. For more information, visit <https://www.aacrao.org/edge>. According to the database, a *Título de Licenciado* is a teaching qualification awarded after two to four years of academic study. The database does not indicate that a "teaching qualification" is the equivalent of a bachelor's degree. Moreover, as the *Título de Licenciado* may be awarded after only two years of study, we conclude that it is not the foreign equivalent of a U.S. bachelor's degree, which is typically awarded after four years of study.⁴ For this additional reason, the evidence does not demonstrate that the Petitioner's has the equivalent of a U.S. bachelor's degree.

Without a minimum of a U.S. bachelor's degree or foreign equivalent, the Petitioner cannot qualify as an advanced degree professional, regardless of whether he has at least five years of experience. The Petitioner earned his degree in 2019; therefore, even if we determined that his degree is the equivalent of a U.S. bachelor's degree, he would not be able to establish that he has at least five years of post-baccalaureate experience. Accordingly, the Petitioner has not established that he qualifies as an advanced degree professional.

B. Evidentiary Criteria for Exceptional Ability

As the Petitioner has not established his eligibility as an advanced degree professional, we provide the following analysis of his eligibility under the evidentiary criteria for exceptional ability.

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 record demonstrates that the Petitioner earned a two-year teaching qualification in pedagogy. Therefore, the Petitioner meets this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien 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 signed under penalty of perjury a Form ETA 750 Part B (ETA) that lists his education and work experience. According to the ETA, the Petitioner concurrently works four full-time (40 hours per

⁴ Because the evidence does not indicate that the Petitioner earned a *Título de Licenciado* after four years of study, we need not analyze whether a four-year *Título de Licenciado* would be the equivalent of a U.S. bachelor's degree.

week) jobs and has done so since 2017. The Petitioner's résumé also states that he concurrently works four jobs. His employment letters do not state whether he works full-time or part-time and therefore, they do not comply with the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B).⁵ Working four 40-hour-per-week jobs amounts to 160 hours of work per week. As there are 168 hours in one week, working 160 of them appears to be physically impossible. Without further evidence or explanation concerning the Petitioner's work hours, we conclude that this evidence is not credible.

We acknowledge the Petitioner's assertion that he began working in 1999 when he founded his own company, "[redacted]" and that he has continued to work through the founding of additional companies. However, his business ownership documents do not necessarily serve as evidence of work experience in education administration. Although a self-employed petitioner may need to demonstrate his work experience through additional documentation, such petitioners must still establish by a preponderance of the evidence that they have at least ten years of full-time experience in the occupation. As stated, the employment letters appear to be signed by the Petitioner's relative and they do not state whether the Petitioner worked full-time or part-time. Accordingly, the evidence does not sufficiently demonstrate that the Petitioner meets this criterion.

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

In support of his eligibility under this criterion, the Petitioner provided a Brazilian civil identity card from the Federal Board of Educators and Pedagogues (CFEP). The certificate of registration document states that the Petitioner, "a [p]edagogue, has been registered with [CFEP] . . . since 8-19-2019 . . . [T]his registration is active and there are no financial debts." On its website, CFEP describes itself as a non-profit institution "which aims to regulate and recognize professionals in the area of Education . . . Its main objective is the recognition of the professional educator and associated pedagogue" The evidence does not suggest that this identity card and registration is a license or certification to practice the teaching profession or that Brazilian state or national law requires a license or certification to teach. In addition, the Petitioner registered his identity with CFEP in 2019, which suggests that prior to 2019, the Petitioner performed his employment duties without this identity card. Accordingly, the evidence does not establish the Petitioner has a license or certification to practice his occupation.

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 has not submitted evidence for our consideration under this criterion. Therefore, the Petitioner has not established eligibility under this criterion.

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

The Petitioner submitted his CFEP civil identity card, registration document, and information about CFEP as evidence for our consideration under this criterion. The Petitioner did not provide independent and

⁵ In addition, the Petitioner and the author of the letters share an identical last name. As such, the employment letters appear to be signed by a relative of the Petitioner. While this does not necessarily diminish the credibility of the letters, without further explanation, the apparent familial relationship is a relevant consideration in the totality of circumstances.

objective evidence to establish the relevance and significance of registering his identity with CFEP. Here, it appears the Petitioner received the document after registering and meeting his financial obligations. It cannot be concluded from the documents provided that the registration document is evidence of membership in a professional association, as the record does not demonstrate what professional qualifications, if any, the CFEP considers prior to issuance of the document. Accordingly, we conclude that the Petitioner has not established that he satisfies this 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)

The Petitioner provided numerous letters of recommendation in support of his eligibility under this criterion. The authors of the letters praise the Petitioner's personal and professional qualifications, but do not sufficiently describe any recognition for achievements and significant contributions to the industry or field. For instance, [redacted] mentioned that the Petitioner increased revenue and student enrollment for his organizations, but her letter does not describe how these achievements affected the field of education. Likewise, [redacted] describe the results the Petitioner achieved for individual students, but do not provide detail suggesting that he achieved or contributed anything to the field of education as a whole. [redacted] writes that the Petitioner:

[P]romoted the fusion and integration with the colleges existing portfolio of courses to train students for the job market as a whole, and not just for the Metropolitan Hospital. Those students who graduated from the Metropolitan Education Center are prominent professionals renowned for the excellence in learning and training offered by his college.

While this statement supports a finding that the Petitioner impacted his students and that they became productive members of society, it does not provide sufficient detail concerning the Petitioner's impact to the field of education. Further, the record contains little independent, objective, and corroborating evidence to substantiate her claims that the Petitioner's graduates are "are prominent professionals renowned for the excellence in learning and training." Similarly, [redacted] attests to the quality of the Petitioner's private teaching institutions and their positive reputation, as well as how the Petitioner positively impacts his institutions; however, the author does not describe how these constitute achievements and significant contributions to the industry or field.

The Petitioner provided numerous articles and industry reports concerning education administration and the importance of education. However, none of these materials recognize the Petitioner for achievements and significant contributions to the industry or field.

Accordingly, the evidence does not establish the Petitioner qualifies under this criterion.

Summary of Exceptional Ability Determination

The record does not support a finding that the Petitioner meets at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). Rather, we conclude that the evidence supports a finding of eligibility under only one criterion. Therefore, the Petitioner has not established his eligibility

as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As the Petitioner has satisfied only one criterion, a final merits determination is not required. Nevertheless, we conclude that the record does not establish the Petitioner's experience is beyond that which is ordinarily encountered in the profession.

III. CONCLUSION

The Petitioner has not sufficiently demonstrated that he qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. See section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Because qualification for the underlying EB-2 classification is a threshold issue and dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the Dhanasar 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).

ORDER: The appeal is dismissed.