



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

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

In Re: 28580873

Date: NOV. 16, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a security consultant and chief executive officer of his own business, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or 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 the record did not establish that his eligibility under for a national interest waiver under the framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). 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 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,” Dhanasar, 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

Although the Petitioner submitted evidence that he completed a two-year course on management of small and medium enterprises, he does not assert that he earned the foreign equivalent of a U.S. bachelor’s degree or higher. As such, the record does not support a finding that the Petitioner is eligible for the underlying classification as an advanced degree professional. Regarding his eligibility as an individual of exceptional ability, the Director concluded the Petitioner met two of the six criteria listed at 8 C.F.R. § 204.5(k)(3)(ii). Upon de novo review, we conclude the Petitioner meets only one of the required criteria. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

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 evidence indicates the Petitioner completed a two-year course on the management of small and medium sized enterprises. Therefore, he established his eligibility under 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)

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 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).

Although the Director determined the Petitioner established eligibility under this criterion, we withdraw that finding and conclude the evidence is insufficient to satisfy this criterion. We reviewed the letters from former employers and understand the Petitioner has served as a public civil servant for most of his career. In 2017, the Petitioner also formed his own business while still maintaining his employment as a public servant. The record does not include a clear indication of the area in which the Petitioner claims exceptional ability; however, the Petitioner asserts he has experience in security, administration and management, as well as entrepreneurship, among other areas.

The employer letters do not meet the plain language of this criterion for several reasons. Most letters do not state whether the Petitioner worked full-time, part-time. Some letters do not provide specific employment start and end dates. Moreover, many of the letters do not provide sufficient details on the experience the Petitioner gained. Some letters contain no indication of the Petitioner's duties while other letters list a few duties. None of the letters discuss the Petitioner's work experience, nor does the Petitioner explain how his duties in these positions are relevant to the particular area or occupation for which the Petitioner claims exceptional ability. Other employment evidence includes ordinances and public notices published in local gazettes. The Petitioner has not explained how the public notification of his various civil service appointments constitutes evidence of work experience in a particular occupation. The public notices announce his appointment rather than evidence his actual work experience in the appointed capacity. The Petitioner gained very varied experience as a public civil servant, including in forensic investigations, driving vehicles, administrative assistance, installation and maintenance of equipment, addressing public health crises, and community advocacy. It is not apparent from this conglomeration of work experience whether the Petitioner has experience in the occupation in which he intends to work.

The Petitioner submitted client letters to demonstrate the work he performs within his own business and on behalf of his own clients. Although some of the client letters contain a description of the duties the Petitioner performed, none demonstrate how the work experience the Petitioner gained was full-time. Rather, the experience gained while serving clients such as [REDACTED] appears to be for services that are provided on a discrete or "as needed" basis, such as equipment installation and maintenance. While contracts with these clients may be ongoing, the evidence does not suggest the actual work performed for these clients is full-time. Moreover, it is not apparent what work experience the Petitioner purports to have gained as a result of serving these clients. For instance, we cannot determine whether these letters demonstrate the Petitioner's experience in equipment installation and maintenance, security, consulting, or entrepreneurship.

For the foregoing reasons, the Petitioner has not established that he 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)

As the Director determined, the record does not contain evidence that the Petitioner's occupation requires a license or certification. We recognize the Petitioner's military training, including that of shooting and ammunition reloading; however, the Petitioner has not explained how this is relevant to his claimed area of exceptional ability or how it demonstrates ability to perform or access the practice of a particular occupation. Therefore, the Petitioner has established eligibility under 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 provided evidence from his accountant to demonstrate the income he earned from his business. He provided paystub and tax related documents to evidence his income as a public civil servant. He requests that we combine these two income streams to form one total income. For comparison, the Petitioner provided screenshots, purportedly from vagas.com, showing a single line graph listing a high, medium, and low salary for entrepreneurs.

This evidence is insufficient for numerous reasons. First, the income statements his accountant provided are not substantiated with independent and objective evidence, such as invoices, bank statements, and tax returns. The vagas.com website screenshots do not offer sufficient information or details to verify the applicability and accuracy of the salary claims. For instance, the screenshots do not contain which year or date range the data refers, how vagas.com compiled or selected its data, the statistical significance of the data, the geographic location to which the data pertains, or any other indication of the reliability and comparability of this data to the Petitioner's occupation. Although the Petitioner states the vagas.com information refers to salaries in year 2022-2023, the screenshots themselves do not state this. Additionally, the Petitioner has not explained how 2022-2023 date is comparable to his salary statements for years 2018 to 2020.

Even if the Petitioner had provided such evidence, it would not be sufficient to establish eligibility under this criterion. The Petitioner requests us to compare the vagas.com figures for entrepreneurial earnings with his combined income from business ownership and civil service. In other words, the Petitioner provided salary data for a single occupation, that of entrepreneur, but requests that we consider income from two jobs, business ownership and public service, when comparing his salary to the salary data. As such, the Petitioner has not provided us with a proper basis for comparison. Moreover, the Petitioner has not explained how any of his income demonstrates exceptional ability.

For the foregoing reasons, 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 Director determined the Petitioner had not provided evidence sufficient to establish eligibility under this criterion. The Petitioner does not challenge that determination on appeal or provide any additional evidence of his eligibility under this criterion. Accordingly, the Petitioner has not overcome the Director's determination of ineligibility under this criterion.⁴

⁴ The issue of his eligibility under this criterion has been abandoned and waived. See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

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 Director explained why the evidence did not establish the Petitioner's eligibility under this criterion. On appeal, the Petitioner does not offer new evidence or arguments addressing the deficiencies the Director identified, but rather requests that we review the evidence again and arrive at a more favorable conclusion.

The evidence demonstrates the Petitioner's colleagues, friends, and clients recognize him for his achievements and contributions; however, the evidence does not indicate that these achievements and contributions were to the industry or field. The recommendation letters and certificates demonstrate the Petitioner's commendable personal achievements and the individual contributions he made to his employer, client, or local community. For instance, his volunteer work for retail shopkeepers may have affected individual shopkeepers and thereby improved local community security, but this does not demonstrate how his contribution impacted the field or industry of retail shopkeeping or security overall. Likewise, even if the record substantiated the claim that the Petitioner balanced the water and sewage service's budget, improved water quality, and reestablished communication and confidence within local society, this would not demonstrate how the Petitioner contributed to the overall civil service industry or even more specifically to the water and sewage treatment field. These examples are illustrative of the evidence as a whole. The record reflects the Petitioner has performed well in his past employment positions, served many people, and that he is a respected member of his community. Nevertheless, the Petitioner has not explained how this constitutes recognition for achievements and significant contributions to the industry or field of his proposed endeavor. Accordingly, we agree with the Director that the Petitioner has not established eligibility under this criterion.

Summary of Exceptional Ability Determination

The record does not support a finding that the Petitioner met at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). 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 of the criteria, a final merits determination is not required. Nevertheless, we conclude the record does not establish that the Petitioner's experience is beyond that which is ordinarily encountered in the profession.

III. CONCLUSION

The Petitioner has not 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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Because the identified reasons for dismissal are 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.