



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

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

In Re: 28467062

Date: NOV. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a production supervisor in the automotive industry, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability. *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 Petitioner had not established eligibility for either the EB-2 classification or 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.

Profession is defined as 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 into the occupation.¹ 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

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.

that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ 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.

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 USCIS may, as matter of discretion⁴, 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.⁵

II. ANALYSIS

The Petitioner intends to work in the field of industrial production management as a supervisor of mechanics, installers, and repairers in the United States. As noted above, to demonstrate eligibility as an individual of exceptional ability, a petitioner must initially submit documentation that satisfies at least three of six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). As discussed below, upon review of the record, we have determined that the Petitioner has not established that he qualifies for the EB-2 classification as an individual of 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 Petitioner submitted documentation of his college diploma and his academic transcript from the [REDACTED] University Center in Brazil. The Director determined that the Petitioner “did not submit evidence demonstrating that he possesses the degree of expertise, and training certificates significantly above that ordinarily encountered in the sciences, arts, or business.” However, this assessment is misplaced in evaluating whether the Petitioner has met this criterion; such an analysis would be appropriate when conducting a final merits determination, which this is not. Therefore, we withdraw the Director’s conclusion regarding this criterion. As the Petitioner has submitted an official academic record showing that he has a diploma from an institution of learning relating to the area in which he claims to have exceptional ability, we conclude that the record satisfies this criterion.

² 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).

³ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

⁴ 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).

⁵ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

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 Director found that the Petitioner satisfied this criterion. The record includes a regulatory-prescribed letter from his former employer, an automotive manufacturer, attesting to the Petitioner's ten years of full-time employment experience with the company in several industrial operator and management positions. The record satisfies 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).

The Petitioner does not claim to meet this criterion, and the record does not include any licenses or certifications related to his proposed occupation. Therefore, we deem this issue to be waived, and we will not address this criterion further.⁶

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 initially submitted tax documents showing incomes from 2017 to 2020 ranging between R\$112,220.95 and R\$131,450.58. The Director determined that the record lacked comparable evidence showing the salaries or remuneration for other supervisors of exceptional ability within the Petitioner's field. The Director also determined that the Petitioner did not provide evidence to demonstrate that his basic salary compensation was due to exceptional ability in his field. On appeal, the Petitioner resubmits his tax documents, as well as a brief in which he provides a portion of an undated webpage⁷ that states, "Today, those who work as Production Managers earn an average salary of R\$2,739.33." The Petitioner states that this is a monthly salary equivalent to R\$32,868.00 annually in 2021 and that his tax returns "show my remuneration superiority when I worked in Brazil." The Petitioner, however, has not provided the source for the salary information depicted on the webpage, nor is it clear whether "Production Manager"—a term that might apply to a position with any number of industries or fields—represents the Petitioner's occupation during the years for which he has submitted tax information. The record does not include evidence showing that the Petitioner's salaries were indicative of his claimed exceptional ability relative to others working in the field.⁸ The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The record does not satisfy this criterion.

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

The Petitioner submitted evidence to demonstrate that he is a member of the American Management Association (AMA). The Director determined that the Petitioner did not meet this eligibility category

⁶ An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, I&N Dec. 657, 658 n.2 (BIA 2012)).

⁷ The webpage is cited in the brief as <https://www.vagas.com.br/cargo/encarregado-de-producao>.

⁸ *See generally* 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

because he did not submit evidence that would allow for USCIS to determine whether the association is professional in nature. On appeal, the Petitioner states that “USCIS required supporting documentation beyond that required by the association itself when admitting a member” and requests that the criterion be reexamined. The regulation at 8 C.F.R. § 204.5(k)(2) defines “profession” as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. Accordingly, a professional association is one which requires its members to be members of a profession as defined in the regulation. There is no information in the record to indicate that AMA membership requires the attainment of, at minimum, a baccalaureate degree to establish that it qualifies as a professional association for EB-2 eligibility purposes. The record does not satisfy 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 Director determined that the Petitioner did not meet this criterion. On appeal, the Petitioner emphasizes that reference letters initially included in the record are not merely opinion letters from colleagues, but from individuals above him in the employment hierarchy. Upon review, the record includes several letters from managers at the Petitioner’s previous place of employment, a major automotive company in Brazil. These letters highlight the Petitioner’s professionalism, his technical skills, and his successful management of various projects during his employment. While these letters discuss the Petitioner’s qualifications as an industrial production manager, they do not reference any recognition of achievements within, or contributions to, either the automotive industry or the industrial management field. These letters do not reference recognition from peers, government entities, or professional or business organizations that the Petitioner has received for achievements or significant contributions to his field. The record does not otherwise contain documentation related to any impact of the Petitioner’s work in the automotive industry or in the field of industrial management. The record does not satisfy this criterion.

The Petitioner has not established that he meets three of the six evidentiary criteria under 8 C.F.R. 204.5(k)(3)(ii), and so he has not met the initial requirement to demonstrate his eligibility as an individual of exceptional ability. Therefore, we need not conduct a final merits determination of whether he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Nevertheless, we have reviewed the totality of the evidence and conclude that he does not meet the elevated standard for this classification. While the Petitioner has mechanical knowledge and experience in the field of management in the automotive industry, the record does not show that his level of expertise is unusual or stands out in the field.

In sum, the Petitioner has not established eligibility for the EB-2 classification as a member of the professions holding an advanced degree or, alternatively, as an individual with exceptional ability. Therefore, he is ineligible for a national interest waiver. 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) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); 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 his eligibility for the EB-2 classification. The petition will remain denied.

ORDER: The appeal is dismissed.