



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

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

In Re: 28580406

Date: OCT. 26, 2023

Appeal of Texas Service Center Decision

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

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

The Director of the Texas Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or 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

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. 8 C.F.R. § 204.5(k)(2). In addition, "profession" is defined as 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)(3).

Furthermore, "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). Meeting at least three criteria, however, does not, in and of itself, establish

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.

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.

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. 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 alien 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 alien 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 alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner presented his “Course Conclusion Certificate” in “Technology in Data Processing” (1998) and corresponding academic record from [redacted] in Brazil. In denying the petition, the Director explained that the Petitioner’s evidence did not show “the level of education (e.g., Bachelor’s) for the Technology in Data Processing course completed by the [Petitioner]. The Petitioner did not submit an acceptable academic equivalency evaluation in support of the petition.” The Director also stated that the Petitioner did not provide letters from current or former employer(s) showing that he has at least five years of progressive post-baccalaureate experience in the specialty.

With the appeal, the Petitioner submits “School Records” from [redacted] University of [redacted] indicating that he completed ten classes from 2005-2006, but the information does not indicate that he received a degree from the university. He also provides an “Expert Opinion Evaluation of Work Experience” from A-C-M- stating: “On the basis of the credibility of at least twenty-one years of progressively responsible work experience and professional training in Marketing and Sales and related areas, [the Petitioner] has attained the equivalent of a Bachelor’s Degree in Marketing and

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 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).

Sales from an accredited institution of higher education in the United States.” This credential evaluation does not indicate that the Petitioner has “a foreign equivalent degree” to either a U.S. advanced degree or a U.S. baccalaureate degree. The regulatory language at 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B) does not state that occupational experience and job training is acceptable in lieu of a U.S. baccalaureate degree or a foreign equivalent degree. In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the “foreign equivalent degree” to a U.S. baccalaureate degree (plus five years of progressive experience in the specialty). See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). A United States baccalaureate degree is generally found to require four years of education. See *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg’l Comm’r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). Accordingly, the Petitioner has not demonstrated that he has “a foreign equivalent degree” to either a U.S. advanced degree or a U.S. baccalaureate degree.

Furthermore, even if we were to conclude that the Petitioner has “a foreign equivalent degree” to a U.S. baccalaureate degree, which we do not, the Petitioner has not shown that he has at least five years of progressive post-baccalaureate experience in his specialty. See 8 C.F.R. § 204.5(k)(3)(i)(B). The regulation at 8 C.F.R. § 204.5(g) provides, in pertinent part: “Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien’s experience or training will be considered.”

The Petitioner submitted a letter from A-F-A-, District Manager for [REDACTED] stating: “I have known [the Petitioner] for over 15 years, and I witnessed some projects he worked on, always with extreme competence and surprising results. From February 2017 to January 2021, we were in partner companies when I managed, after several attempts in these 15 years to bring him to work in my company, which gave me great joy, in addition to the excellent results in the business entrusted to him.” This letter indicates that the Petitioner and A-F-A- “were in partner companies” from February 2017 until January 2021, but it does not provide the dates when the Petitioner worked for [REDACTED] or a specific description of the duties he performed.⁴ The letter from A-F-A- does not offer sufficient information to demonstrate that the Petitioner has at least five years of progressive post-baccalaureate experience in his specialty.

Likewise, the record includes a letter from D-A-B-, Human Resources Manager at [REDACTED] [REDACTED], indicating that he “had the pleasure of meeting and attesting to the professional excellence of [the Petitioner] in 2018, when we jointly implemented the project to found a branch in [REDACTED] focusing on opening up to the pharmaceutical market.” In addition, a letter from R-M-C-, Owner/Director of [REDACTED] stated that he “met the professional [the Petitioner] in 2002 when I was the owner of a drug store in the city of [REDACTED]” Another letter from M-A-B-A-, CEO of [REDACTED] asserted: “In 2013, I had the opportunity to hire [the Petitioner] to work as a project director at my company.” Similarly, a letter from R-B-N-, Owner/Director of

⁴ In the appeal brief, the Petitioner states that he began working for [REDACTED] in May 2021.

[redacted], stated that he “met the excellent professional [the Petitioner] in 2000 when I was a sales manager at [redacted] and that they worked “on expanding the company in the state of [redacted]. None of the aforementioned letters, however, indicates the specific period of the Petitioner’s employment with their companies or explains how his experience was progressive in his specialty.

The Petitioner contends on appeal that the “Expert Opinion Evaluation of Work Experience” from A-C-M- shows that he has “at least twenty-one years of progressively responsible work experience and professional training in Marketing and Sales and related areas.” This advisory evaluation, however, does not identify the specific documents that A-C-M- relied upon in reaching his conclusion. Without further documentary evidence to corroborate the advisory opinion of A-C-M-, the Petitioner has not demonstrated that he has at least five years of progressive post-baccalaureate experience in his specialty.

In addition, the Petitioner submitted two company contracts dated July 2021, Articles of Incorporation dated [redacted] 2021, a bank statement dated November 2021, an undated list of clients, and company invoices dated 2021. This evidence, however, does not cover a time period indicating that the Petitioner has accrued at least five years of progressive post-baccalaureate experience in his specialty.

For the reasons set forth above, the Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree.

B. 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).⁵ In the appeal brief, the Petitioner maintains that he also meets the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). After reviewing the evidence, we agree with the Director that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

The regulatory criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires letter(s) from current or former employer(s) showing that the individual “has at least ten years of full-time experience in the occupation” sought. As evidence of his ten years of full-time experience in sales and marketing, the Petitioner submitted the aforementioned letters from A-F-A-, D-A-B-, R-M-C-, M-A-B-A-, and R-B-N-. None of their letters, however, states that the Petitioner’s experience was “full-time” or provides the specific period of the Petitioner’s employment.

In the appeal brief, the Petitioner lists his “work history and professional experience” for six different companies, but he has not offered sufficient evidence to corroborate the dates of his claimed employment. Without evidence demonstrating that he has at least ten years of “full-time” experience

⁵ Because the Petitioner did not meet at least three criteria at 8 C.F.R. § 204.5(k)(3)(ii), it was unnecessary for the Director to conduct a final merits determination to decide whether the evidence in its totality shows that the Petitioner is recognized as having “a degree of expertise significantly above that ordinarily encountered” in the field. *See* 8 C.F.R. § 204.5(k)(2).

in the occupation sought, the Petitioner has not shown that he meets the requirements of this regulatory criterion. We therefore agree with the Director that the Petitioner has not established he fulfills the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

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

C. 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. As previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for EB-2 classification 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 and achieved the level of expertise required for exceptional ability classification. Because the Petitioner has not established eligibility for the underlying immigrant classification and this issue is dispositive of his appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the three prongs outlined in *Dhanasar*. 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 a member of the professions holding an advanced degree or 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.