



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

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

In Re: 10297297

Date: FEB. 17, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actor and model, seeks second preference immigrant classification 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not established that she was individual of exceptional ability.

On appeal, the Petitioner submits a brief asserting that she meets the requirements of the requested classification.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. 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.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means 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 in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

In denying the petition, the Director determined that the Petitioner had not met any of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). On appeal, the Petitioner asserts that she meets the four criteria addressed below.⁴

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 a certificate of completion from [redacted] a modeling agency, along with a letter from the University [redacted] confirming enrollment in one class, [redacted] [redacted] in 2013. The certificate, which provides the date of issue⁵, but not the dates attended or the length of the program, lists the following:

- Fashion show 5
- Aerobics 4
- Modern choreography 5
- Manicure 5
- Stylistics 5
- Makeup 5
- Photo training – credited
- Hair Styling 4
- Theory – credited

The record does not demonstrate that the certificate meets the plain language of the regulation. Without additional evidence, the Petitioner has not sufficiently established that [redacted] qualifies as a “college, university, school or other institution of learning” or that the certificate is “an official academic record.” Regarding the letter, enrollment in one class does not establish that the Petitioner “has a degree, diploma, certificate or similar award,” as required by the plain language of the regulation.

We also note that, even if the Petitioner were to establish that the certificate from [redacted] meets this evidentiary criterion, she must still satisfy an additional two criteria. In addition, section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner does not address the remaining criteria, we consider them abandoned. 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).

⁵ The Petitioner was fourteen years old as of the date the certificate was issued.

from a college, university, school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability.

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 regulation requires that letter(s) 1) be from current or former employers and 2) establish ten years of *full-time* experience in the occupation (emphasis added). The Petitioner asserts that two letters of recommendation satisfy this requirement. First, the letters do not demonstrate that either author qualifies as the Petitioner's employer. Instead, the letters indicate that the authors cast the Petitioner in a project that is currently on hold. Second, while we acknowledge that the authors provide general statements such as "she has acted in various performances in different countries," and "has over 10 years of experience in character acting including practice in other countries," the record does not contain evidence, such as promotional materials or playbills, to establish that the Petitioner has at least ten years of full-time experience as an actor/model.⁶ For example, according to the submitted IMDBPro profile, in addition to the above-mentioned project on hold, she has appeared in one video in 2000 and one episode of a TV show in 2018.⁷

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

On appeal, the Petitioner states that there are no licenses or certifications available for actors and would "prefer[] to provide comparable evidence that has the same connotation in [the] screen acting world as [a] license," which is "having an agent." The Petitioner generally claims that it is difficult for actors to obtain an agent and asserts "big production companies only work with actors that are signed with an agent." For comparable evidence to be considered, however, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to his or her occupation and establish that the submitted evidence is "comparable" to that criterion. 8 C.F.R. § 204.5(k)(3)(iii).

Licensure to practice a profession and certification for a profession or occupation generally demonstrate a level of knowledge or skill associated with the related occupation. Here, the Petitioner has not provided any supporting evidence to establish the requirements, if any, for obtaining an agent. The Petitioner's general assertions, without more, are not probative evidence and do not demonstrate that having an agent is comparable to obtaining a license or certification commensurate with the criterion.

⁶ We also note that the [redacted] 2019 letter purported to be from [redacted] does not contain a signature and is not on any form of letterhead. Regardless, the letter claims that the Petitioner "is also advanced in educational level" and "holds a BA degree." The record, however, contradicts this claim. For example, the Form ETA-9089, Application for Permanent Employment Certification, which the Petitioner signed under penalty of perjury, lists "High School" as the highest level of education. In addition, the record contains no evidence of a bachelor's degree. The Petitioner must resolve this inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

⁷ See also [https://www.imdb.com/name/\[redacted\]](https://www.imdb.com/name/[redacted]) (last accessed Feb. 16, 2021).

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

The Petitioner submitted a photocopy of a badge from the Motion Picture and Television Fund (MPTF) which lists her name, photograph, and the word “Volunteers.” First, the badge does not indicate that the Petitioner is, in fact, a member of MPTF. Second, the Petitioner did not provide any supporting evidence, such as the membership requirements, regarding MPTF to establish that it is a professional organization. As noted above, 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 in the occupation.” 8 C.F.R. § 204.5(k)(2).

For the reasons set forth above, the evidence does not establish 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. As the Petitioner has not met the threshold requirement for this classification, further analysis of her eligibility for a national interest waiver would serve no meaningful purpose.

III. CONCLUSION

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.