



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

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

In Re: 12283136

Date: JULY 14, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot, 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as either a member of the professions holding an advanced degree or an individual of exceptional ability.¹ The Director further concluded that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. As presently constituted, the record does not establish whether the Petitioner qualifies as an individual of exceptional ability. *See* section 203(b)(2) of the Act. Specifically, the Director's conclusions regarding the criteria for exceptional ability are inconsistent. The Director stated that "evidence meets the plain language requirement" for the criteria at 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (C), and (D). However, the Director also stated that "the [P]etitioner has not provided documentary evidence which shows that [a statement in the record regarding the Petitioner's salary] demonstrates the amount of wages or remuneration that he has received is based on exceptional ability." That observation directly conflicts with the statement that the record meets the regulation's plain language requirement for that criterion. The Director further concluded that "the [P]etitioner has not met at least three of the six criteria" at 8 C.F.R. §§ 204.5(k)(3)(ii), despite having stated that the record met the regulatory requirements for three of the six criteria.

¹ The Director addressed whether the Petitioner qualified as a member of the professions holding an advanced degree. In a request for evidence (RFE), in relevant part, the Director informed the Petitioner that he "has not established that he has an academic record which shows that he has an advanced degree" However, in response to the RFE, the Petitioner specifically stated that, although the Director requested additional evidence to establish that qualification, "because [the Petitioner] meets the [e]xceptional [a]bility classification, [I am] not providing additional evidence to show [a]dvanced [d]egree." Therefore, whether the Petitioner qualifies as a member of the professions holding an advanced degree is not an issue on appeal.

Accordingly, the matter will be remanded to the Director to conduct a final merits determination of the exceptional ability issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.