



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 15799052

Date: JUL. 21, 2021

Appeal of Nebraska Service Center Decision

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

A self-petitioning carpet weaver seeks second preference immigrant classification as an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that 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. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Nebraska Service Center Director denied the petition, concluding that although the Petitioner qualified for classification as an individual of exceptional ability, he had not established that his proposed endeavor is of national interest, that he is well positioned to advance the proposed endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits a brief and asserts that the Director erred in the decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), 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, USCIS may, as matter of discretion,² grant a national interest waiver if the petitioner demonstrates: (1) that 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

The Petitioner does not assert that he is a member of the professions holding an advanced degree. Based on the Petitioner’s initial filing, the Director determined that the Petitioner qualified as an individual with exceptional ability. Upon our de novo review, we question the evidence concerning the Petitioner’s eligibility for the underlying classification as an individual of exceptional ability. We conclude that the evidence does not in fact support eligibility for the underlying classification and therefore withdraw the Director’s statements concluding otherwise.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 provided an ETA 750 Part B which stated that in 1992, he earned an associate’s degree in electromechanics from a professional technical college in Uzbekistan. The Petitioner also stated on the form that he attended [redacted] University in Uzbekistan from 1992 to 1997 and received a diploma in the art of carpet making. In his personal statement, he claimed to have attended the [redacted] [redacted] but he did not provide information on where this college is, when he attended, what he studied, or whether he completed an academic program. The Petitioner did not provide an official academic record evidencing study at any of the institutions he claimed to have attended. The record does not show he 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.⁵ Accordingly, the Petitioner has not satisfied 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 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).

² See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

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

⁴ The Director’s request for evidence (RFE) contains the determination that the Petitioner qualifies for the underlying classification as an individual of exceptional ability. However, the Director did not provide any analysis to explain that finding. Moreover, we observe the Director did not undertake a final merits analysis subsequent to determining that the Petitioner satisfied at least three of the six criteria.

⁵ The record contains a certificate labeled “diploma,” however this document was issued by a crafts fair organization and is not an official academic record.

On the ETA 750 Part B and within other biographical documentation contained in the record, the Petitioner claimed to have worked as a carpet weaver at [redacted] in [redacted] Uzbekistan from July 2001 to April 2016 and that he has been self-employed since 2017. The Petitioner did not provide any letters from current or former employers evidencing that he has at least ten years of full-time experience in his occupation. The record, as it currently stands, is not sufficient to satisfy 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 did not submit evidence indicating that a license is required to practice the profession or occupation of carpet weaving. We acknowledge a document issued by the “Republic of Uzbekistan association of master craftsmen and folk artists” (formatting errors in original) which granted the Petitioner a license valid from June 2015 to June 2016. However, in examining the record as a whole and placing this document in context, it appears that although the document was translated as a “license,” it is actually a type of membership registration with the [redacted]. This conclusion is supported by letters from the [redacted] welcoming the Petitioner as a member, along with letters from other artists who recommended the Petitioner for membership, and counsel’s index label of the document as evidence of membership. As such, we conclude that although translated as a “license,” such documentation is actually evidence of membership in a craft association. Accordingly, the evidence of record does not establish that the Petitioner has satisfied 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 did not submit evidence of his salary or other remuneration for services. Therefore, he has not satisfied this criterion.

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

As stated, the record contains evidence of the Petitioner’s membership in [redacted] from June 2015 to June 2016.⁶ In addition, the record contains a 2018 letter from the “[redacted] of Folk Artists, Craftsmen and Artists of the Republic of Uzbekistan” in which the CEO stated that the Petitioner was accepted as a member in 2004 and that he is a current and full member of the association. The Petitioner also submitted copies of letters from other artists who recommended him for membership based upon his achievements and skill in [redacted] artisanal carpet weaving. Accordingly, the evidence of record is sufficient to establish that the Petitioner meets this criterion.

⁶ In response to the Director’s RFE, the Petitioner submitted a certificate of his registration in the [redacted] which is valid from January 2020 to December 2023, however this document was issued after the filing of the petition and therefore cannot be considered as evidence of membership in the association at the time of filing.

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 Petitioner presented numerous certificates of participation in, and attendance at, various craft fairs and folk artist exhibitions. These certificates do not establish achievement or contribution in the field of carpet weaving as much as they establish participation in craft fairs and a willingness to display and sell his crafts. There is little evidence that the Petitioner had to qualify to participate in these events, nor is there sufficient evidence to establish that these craft fairs and exhibitions are exclusive such that acceptance into them would signify a level of achievement or contribution in the field. While we acknowledge one 2017 letter from the [redacted] which stated that the Petitioner was one of 162 master artists selected to participate from among 640 applicants, this does not establish that the Petitioner has achieved recognition for achievements and significant contributions in the field of carpet weaving. We do not know why or how the Petitioner was selected to participate in the [redacted] exhibition. For instance, the Petitioner could have been selected to participate in the event because [redacted] wanted to feature a variety of craft types and artists from diverse countries of origin. Alternatively, he could have been selected merely because the selecting official liked his work. It is not apparent from the current record that the Petitioner's participation in any of the craft fairs and art exhibitions was due to any contribution or achievement in the field.

Similarly, although the [redacted] claims that membership in its organization is "open only to highly skilled masters who are among the few on top of their fields," and that [redacted] "requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the respective field of folk art," these claims have not been substantiated in the record, nor have the Petitioner's achievements been adequately documented. The [redacted] [redacted] did not sufficiently describe the Petitioner's specific achievements or contributions that enabled him to qualify for membership such that we may determine that he has received recognition in his field, nor did the Petitioner supplement the record with sufficient evidence of how he was selected in comparison to other carpet weavers.

In his RFE response, the Petitioner submitted an award "certificate" but offered little information on what the certificate meant or why he received it. We acknowledge that the certificate was established by decree of the President of the Republic of Uzbekistan, but this does not explain whether such an award is evidence of contributions or achievements in field of carpet weaving. Neither the Petitioner nor the award itself identifies any specific details about what made the Petitioner's work award-worthy. Finally, the Petitioner presented little evidence showing that this award is recognized beyond the presenting institution or indicative of influence on the field as a whole.

Turning to the letters submitted by other artists and art critics, we note that although many authors offer general praise concerning the Petitioner's creativity, dedication, and unique abilities, none of their letters persuasively establish that the Petitioner received recognition for achievements or significantly contributed to the field. For instance, some authors claimed that the Petitioner's contributions and achievement in the field of carpet weaving arose from his creative rethinking, modifications to the art, revival of traditional techniques, and his study of ancient masters' works. However, it is not apparent how studying an art form is an achievement or contribution to the industry, nor can we ascertain what specific creative rethinking the Petitioner offered or why reviving

techniques that were already previously developed would constitute an achievement or contribution to the field.

While some of the authors explained that the Petitioner uses [redacted] along with [redacted] themes in his carpet weaving, this does not evidence a modification of the field or establish that other carpet weavers do not also perform this type of work. The simple recreation of techniques and revival of the use of materials previously used in the [redacted] [redacted] does not necessarily establish that the Petitioner's methods and techniques are different from other [redacted] artisanal carpet weavers. The authors have not explained why reviving old methods constitutes challenging work such that it is significant to the field, and it is not apparent what is unique about the Petitioner's work relative to the work of other artisanal carpet weavers. Further, while several art scholars offer biographical information about the Petitioner and a history of the carpet weaving art form, none of the art scholars indicate that the Petitioner has gained recognition for achievements and significant contributions in the field. Moreover, the art scholars have not signed or dated their letters, which diminishes the credibility of the letters.

Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters so as to determine whether they support the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

In addition, many of the authors use regulatory language setting forth eligibility criteria for individuals of extraordinary ability, which involves a different analysis from that which is used for individuals of exceptional ability,⁷ and which is not the classification under which this petition was filed.⁸ For instance, many of the authors write that the Petitioner has risen to the very top of his field, that his achievements have been judged by nationally and internationally recognized experts, and that material has been published about the Petitioner in professional or major trade publications or other major media. The letters do not appear to contain the independent opinions of the authors, but instead recite the criteria for another immigrant classification. In addition, many of the authors use identical phrases, which further supports a conclusion that the letters were not independently written. In fact, counsel's statements in support of the Petitioner appear to mirror language in many of the letters and it is not apparent whether counsel's statements were based on the letters or whether the authors of the letters used language offered to them by counsel. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* Here, the letters are of diminished probative value due to insufficient explanations and analysis to support the authors' conclusions, the unsupported recitation of regulations concerning a different immigrant classification, and the similarity of language used by unrelated authors.

⁷ An individual of extraordinary ability must meet at least three of ten criteria set forth in 8 C.F.R. § 204.5(h) as opposed to three of six criteria for an individual of exceptional ability under 8 C.F.R. § 204.5(k).

⁸ The Petitioner can file a petition seeking classification under that category if he so desires.

The Petitioner also submitted evidence of publications written about him and the field of carpet weaving. The record contains an article written by the Petitioner about himself and which appears akin to a classified advertisement in a newspaper. As a classified advertisement is self-produced recognition, it does not evidence actual recognition for achievement or contributions in the field. We also examined the article appearing in the [redacted] newspaper. While it contains information about the Petitioner and his carpet weaving, we have insufficient information with which to conclude that this article represents evidence of recognition for achievements and significant contributions to the industry of carpet weaving. The newspaper that published the article claims to print 500 copies of its newspaper weekly and that an electronic version of the newspaper is available, but it is not apparent that the Petitioner is recognized for achievements or contributions in his industry as a result of this publication.

We also acknowledge the Petitioner's written material on the history and craftsmanship of ancient [redacted] carpets. Although the works have been published, the record does not contain sufficient information to conclude that anyone has read the Petitioner's publications or that these written works constitute achievements or contributions in the field. As noted by the Director, the record does not contain evidence of the significance or importance of these publications. Although the record contains a document entitled "review," which the Petitioner characterized as a review of his book, the document appears to be nothing more than a letter from the publishing company who published the Petitioner's book. In the letter, the publishing company's CEO offered an overview of the book and his opinion that it constitutes a significant event in the field of carpet weaving, in addition to speculating that the book will favor the development of the industry. However, the author has not provided a sufficient basis for how he arrived at these conclusions, nor has the Petitioner provided evidence to suggest that the CEO of a publishing company is knowledgeable or qualified to opine on matters concerning the carpet weaving industry. Finally, even if the CEO's opinions are accurate, a letter from a publisher would still be insufficient evidence for us to conclude that the Petitioner has received recognition for achievements and significant contributions to the industry.

For all these reasons, the evidence of record does not establish that the Petitioner has satisfied this criterion.

Summary

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).⁹ Therefore, the Petitioner has not established eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As previously outlined, the Petitioner must show that he is either an advanced degree professional or possesses exceptional ability before we reach the question of the national interest waiver. The Petitioner has not shown that he meets the regulatory criteria for classification as an individual of exceptional ability and he has not asserted that he is an advanced degree professional. Accordingly, the issue of the national interest

⁹ When a petitioner has satisfied at least three of the six criteria, a final merits determination concerning the Petitioner's eligibility is still required per the two-part adjudication framework established in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). In the final merits analysis, the quality of the evidence must be evaluated. Here, a final merits analysis is not required because the Petitioner has not established that he has met at least three of the six criteria.

waiver is moot.¹⁰ The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. Because the documentation in the record does not establish eligibility for the underlying EB-2 classification, further analysis of eligibility under the framework outlined in *Dhanasar* would serve no meaningful purpose.

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).

ORDER: The appeal is dismissed.

¹⁰ Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding 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).