



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

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

In Re: 10891879

Date: MAR. 8, 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 operations representative, seeks second preference immigrant classification as a 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 did not qualify for classification as a professional holding an advanced degree or 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. On appeal, the Petitioner submits a brief asserting that the Director's findings were erroneous.

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.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 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 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 states that he is a Deputy Resident Representative-Operations for the [REDACTED], and claims to be an internationally recognized expert in various fields, including security and risk analysis, risk mitigation, security and risk management, crisis management, security and financial logistics, finance, conflict resolution, negotiation, peacekeeping, and economic development. The Petitioner did not specifically state whether he was seeking classification as a professional holding an advanced degree or an individual of exceptional ability, and refers to these terms interchangeably throughout the record as the basis for his eligibility for second preference immigrant classification.

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).

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

A. Member of the Professions Holding an Advanced Degree

To qualify as a member of the professions holding an advanced degree, a petitioner must show that his occupation meets the definition of a profession, and that he holds a qualifying advanced degree. With respect to his occupation meeting the definition of a profession, section 101(a)(32) of the Act does not include operations representatives in the list of professions, and the Petitioner has not established that a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into his occupation.⁴

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). Although the Petitioner contends that he has received the equivalent of a U.S. bachelor’s degree in economics, he did not submit evidence of this degree.

Here, the Petitioner submitted two documents from the University [redacted] entitled “Certificate of Achievement in Lieu of a Diploma,” along with certified English translations.⁵ Each document states that the Petitioner has achieved a “bachelor’s in applied economic science” and a “graduate in economic science,” respectively, and that “the original copy of his diploma is temporarily kept at the Academy’s General Secretariat of the University [redacted] for operational reasons.” The Petitioner also submitted an academic credentials evaluation from [redacted] equating his foreign academic coursework to a U.S. bachelor of science in economics. The Petitioner, however, failed to submit evidence of his undergraduate degree, transcripts, or other official academic records that list or describe his coursework, though these items are highly relevant to the matter at hand.

The Petitioner offers no explanation as to why these documents were not submitted. On appeal, the Petitioner does not address the evidentiary deficiencies, but instead asserts that the Director erred by not affording the [redacted] evaluation evidentiary value. Specifically, the petitioner states that [redacted] [redacted] is one of the most respected credential evaluation firms in the United States.” The [redacted] evaluation, however, generally references the nature of the Petitioner’s coursework, the number of years of coursework, his grades, and his hours of academic coursework, but it never specifically states how it obtained this information or what the information actually is. Rather, it simply refers vaguely to basing the evaluation on “copies of the original documents provided by [the Petitioner].” As we are duty bound to independently evaluate the evidence in order to determine how much weight to afford it, and thereby any evaluation based upon it, the absence of this evidence undermines the evidentiary value of the academic evaluation as a whole. In our discretion, we may discount or give less weight to an evaluation of a person’s foreign education where that opinion is not in accord with

⁴ The record as constituted does not clearly define the Petitioner’s occupation, or the minimum requirements for entry into the occupation. Further, the Petitioner acknowledges that it was unable to select an appropriate corresponding Standard Occupational Classification (SOC) code set forth by the U.S. Department of Labor’s Bureau of Labor Statistics that fits the description and job requirements for the occupation.

⁵ Both of these documents are dated November 30, 1987.

other information or is in any way questionable.⁶ We cannot know what the evaluator examined in arriving at their conclusions and therefore the evaluation is of little value in this matter. As such, the record contains insufficient evidence to conclude that the Petitioner qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

In denying the petition, the Director determined that while the Petitioner fulfilled three of the regulatory criteria, specifically 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B) and (F), the record did not establish that he has achieved the level of expertise required for exceptional ability classification.⁷ We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner meets the requirements of at least three criteria.

Although the record reflects that the Petitioner has fulfilled the ten years of full-time experience criteria, for the reasons discussed below, the evidence does not support the Director's decision relating to the degree and recognition for achievements criteria. In addition, as explained below, the Petitioner has not demonstrated that he has satisfied the remaining three criteria.

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).

As noted above, the Petitioner submitted two documents from the University [redacted] entitled "Certificate of Achievement in Lieu of a Diploma," along with certified English translations. Each document states that the Petitioner has achieved a "bachelor's in applied economic science" and a "graduate in economic science," respectively, and that "the original copy of his diploma is temporarily kept at the Academy's General Secretariat of the University [redacted] for operational reasons." The 8 C.F.R. § 204.5(k)(3)(ii)(A), however, calls for 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. The Petitioner did not supplement the record with copies of his diplomas, transcripts, or other official documents outlining or describing his coursework. Contrary to the Director's determination, we do not consider the submitted documents to constitute official academic records.

⁶ See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988); see also *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988).

⁷ A petitioner must provide documentation that satisfies at least three of six regulatory criteria in order to meet the initial evidence requirements for this classification. 8 C.F.R. § 204.5(k)(3)(ii). The submission of sufficient initial evidence does not, however, in and of itself establish eligibility. If a petitioner satisfies these initial requirements, we then consider the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality"). See also *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 20, 22-23 (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

Furthermore, the Petitioner must establish that the degree relates to the area of claimed exceptional ability. Even if the Petitioner had submitted sufficient evidence of his academic achievements, it is not self-evident that the Petitioner's claimed degrees in economics relate to his claimed exceptional ability in the fields of security and risk analysis, risk mitigation, security and risk management, crisis management, security and financial logistics, finance, conflict resolution, negotiation, peacekeeping, and economic development, or that his education contributes to exceptional ability in his field. We note that the burden of proof is on the Petitioner in the current matter. Section 291 of the Act, 8 U.S.C. § 1361.

The Petitioner has not met the plain language requirements of 8 C.F.R. § 204.5(k)(3)(ii)(A). For the aforementioned reasons, we withdraw the Director's finding to the contrary.

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 record contains an Attestation from the Deputy Resident Director of the [redacted] in [redacted] indicating that the Petitioner has been employed by [redacted] since 2001. The Director found this Attestation sufficient to demonstrate that the Petitioner has at least ten years of full-time experience, and we concur with this determination. The Petitioner has met 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 any evidence to show that a license or certification is required to practice his profession, or that he possesses such a license or certification. This criterion has not been met.

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 submitted one document entitled "Statement of Earnings and Deductions" for the period from July 1, 2019, to July 31, 2019, indicating that he earned a gross salary of \$9,021.58 for that period.

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of his claimed exceptional ability relative to others working in the field.⁸ The aforementioned statement demonstrates the Petitioner's earnings for only one month, and thus is not representative of what the Petitioner consistently earns for his services beyond this one-month period. Absent additional documentation, this document is not representative of his "salary" or "remuneration for services," as it does not demonstrate what the Petitioner routinely earns as an annual salary or as remuneration for his services. Moreover, the Petitioner has not offered documentation showing that his earnings are indicative of exceptional ability relative to others performing similar

⁸ See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 21* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

services in the field. Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

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

The Petitioner did not submit any evidence of his membership in professional associations. This criterion has not been met.

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 submitted a Certificate of Appreciation from the [] recognizing his fifteen years of service, but this award only recognizes his length of service with his employer. The Petitioner has not presented evidence demonstrating that he has received “recognition for achievements and significant contributions to the industry or field.” The Petitioner has not met the plain language requirements of 8 C.F.R. § 204.5(k)(3)(ii)(F). For the aforementioned reasons, we withdraw the Director’s finding to the contrary.

On appeal, the Petitioner does not specifically identify any erroneous conclusion of law or statement of fact relating to the Director’s determinations for the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C)-(E). Nor does the appeal brief even reference the Director’s discussion regarding the aforementioned criteria.⁹ Without offering specific arguments to overcome the Director’s findings, and for the reasons outlined above, the Petitioner has not established that he 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 classification under section 203(b)(2)(A) of the Act 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. As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as an advanced degree professional 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.

⁹ As stated earlier in this decision, the Petitioner only challenges the Director’s finding that the [] was insufficient to establish that the Petitioner possessed the equivalent of a U.S. bachelor’s degree in economics and thus was not a professional holding an advanced degree.

ORDER: The appeal is dismissed.