



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

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

In Re: 20478160

Date: MAY 09, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an education administrator, seeks second preference immigrant classification as a member of the professions holding an advanced degree, 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 an advanced degree professional 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 he is an advanced degree professional and is eligible for a national interest waiver.

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) defines an advanced degree to mean the following:

Any United States academic or professional degree or a foreign equivalent degree above that of a 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 individual must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) sets forth the following criteria an individual must meet in order to qualify as a professional holding an advanced degree:

(A) An official academic record showing that the individual has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the individual 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 individual has at least five years of progressive post-baccalaureate experience in the specialty.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the following six criteria, at least three of which an individual must meet in order to qualify as an individual of exceptional ability in the sciences, the arts, or business:

(A) 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;

(B) 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Only those who demonstrate “a degree of expertise significantly above that ordinarily encountered” are eligible for classification as individuals of exceptional ability. 8 C.F.R. § 204.5(k)(2).

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.

II. ANALYSIS

The Director found that the Petitioner did not have an advanced degree or a foreign equivalent baccalaureate degree followed by at least five years of progressive experience in the specialty under 8 C.F.R. § 204.5(k)(3)(i) and did not meet at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii).

A. Evidentiary Criteria for Advanced Degree

The Petitioner in this case earned a foreign master’s degree in business administration in 2007 from [redacted] and a foreign baccalaureate degree in social communication from [redacted] School of Social Communication in 1996. However, the Petitioner does not allege, and did not submit evidence to indicate, that his business administration degree is a foreign equivalent degree above that of a United States baccalaureate. Therefore, the issue on appeal is whether the Petitioner has a foreign equivalent to a United States baccalaureate degree followed by five years of progressive experience in education administration, the Petitioner’s specialty.

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).

We agree with the Director's finding that while the Petitioner's degree in social communication is a foreign equivalent to a United States baccalaureate degree, he did not establish he had five years of progressive experience in his specialty. The Director determined the Petitioner's letters of employment only noted his last held executive position but did not specify how long the Petitioner had held the last known executive positions and did not provide sufficient detail to show the Petitioner obtained progressive work experience in his specialty. On appeal the Petitioner argues he has 22 years of progressive experience in education administration and therefore qualifies as an advanced degree professional.

The record includes two academic evaluations, from [redacted] and [redacted] finding the Petitioner's foreign baccalaureate degree in social communications followed by "more than five years of full-time work experience in the field of education administration" is the foreign equivalent of a master's degree in education administration. The academic evaluations state that their determinations were based on an accurate reading of the work experience documents submitted by the Petitioner of which there is at least one inconsistency. Throughout the record, the Petitioner claims he held dual employment from July 2017 to January 2018 as an executive director at both [redacted] and [redacted]. However, the Petitioner provided a service agreement from [redacted] which states that it hired the Petitioner through his company [redacted] and classified the Petitioner as a contractor. This inconsistency is not explained in the record and casts doubt on the Petitioner's submitted work experience documentation. Doubt cast on any aspect of the Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted by the Director, the letters from the Petitioner's previous employers, [redacted] and [redacted] only state the Petitioner last held an executive position and provide a list of macro assignments performed by the Petitioner. The letter from [redacted] states the Petitioner was employed from August 2, 1999, until February 1, 2011, and his "last executive position was as a Marketing Manager." The letter from [redacted] states the Petitioner was employed from February 11, 2011, until April 8, 2015, and his last executive position was as a sales director. However, neither letter provides enough detail to show the Petitioner obtained progressive experience in education administration in these positions as the letters do not state how long the Petitioner was an executive, whether he held any other positions during his employment from which he was promoted or given greater responsibility, or provide sufficient detail of his work duties to show progressive experience in his specialty.

Additionally, the Petitioner claims he earned progressive experience as an education administration through his companies in the United States. However, the Petitioner has not provided evidence to show that his employment at [redacted] or [redacted] provided progressive experience in education administration. While the Petitioner's resume indicates he was a shareholder at [redacted] from October 2018 to November 2018, and a shareholder and executive director at [redacted] from January 2019 to present, his assertions are not supported by documentary evidence. The Petitioner only provided incorporation documents from the State of Florida for both companies as proof of his obtaining progressive experience. However,

none of these documents specify his job duties, work achievements, or provide details into his business activities at these companies.

While the Petitioner has documented some employment in the field of education administration, the submitted documentary evidence does not provide sufficient detail to show that he has five years of progressive work experience and the record contains some inconsistent information regarding his job titles and work history which casts doubt on the reliability and sufficiency of his submitted documentation. Therefore, the Petitioner has not established that he meets this regulatory criterion.

B. Evidentiary Criteria for Exceptional Ability

As discussed below, a review of the record indicates that the Petitioner does not meet at least three of the relevant evidentiary 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)

The Petitioner submitted a diploma in social communication from [redacted] School of Social Communication in 1996. Accordingly, the Petitioner has established that he meets this regulatory 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)

The Director determined the Petitioner did not meet this criterion because submitted employment letters from [redacted] and [redacted] encompassing 16 years of his claimed 22 years of employment, were not sufficient to establish the Petitioner has at least 10 years of full-time experience in the occupation sought by the Petitioner. The Director found the letters only stated the Petitioner's last position was an executive position but did not specify the dates of employment for his last known position or any other positions within the organization which would show he obtained full-time experience in the occupation for which he is being sought.

On appeal, the Petitioner argues the Director erroneously imposed a stricter standard for the requirement under 8 C.F.R. § 204.5(k)(3)(ii)(B) by finding the submitted employment letters do not provide a description of the duties performed by the Petitioner. The Petitioner argues he has 22 years of experience in the field and therefore qualifies under this criterion. We disagree. The Director noted that the Petitioner must not just who that he has at least 10 years of full-time experience but that the experience must be in the occupation for which the Petitioner is being sought. The employment letters at issue stated the Petitioner's last position was in an executive position but did not provide enough detail to show the executive position or the Petitioner's job duties provided full-time experience in education administration. Since the Petitioner has not demonstrated he has at least 10 years of full-time experience in education administration, he has not established that he meets this regulatory 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 claim to meet this criterion. Therefore, the Petitioner has not established that he meets this regulatory 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 Director determined the Petitioner did not meet this criterion because the submitted wage surveys, were only partially translated and therefore not in compliance with 8 C.F.R. § 103.2(b)(3) and the record otherwise lacked evidence that would establish the Petitioner's alleged remuneration was comparable to the wage survey. However, neither the Petitioner's appellate brief nor the evidence submitted on appeal address his qualification under this criterion. When dismissing an appeal, we generally do not address issues that were not raised with specificity on appeal. Issues or claims that are not raised on appeal are deemed to be "waived."³ Since the Petitioner did not address this issue with specificity on appeal, we deem the issue waived and find the Petitioner has not established that he meets this regulatory criterion.

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

The Petitioner provided evidence of membership in the Associacao Brasileira de Educacao a Distancia (ABED) as well as the mission statement for ABED. As such, the submitted evidence meets this criterion.

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 four letters of reference in support of this criterion. However, the Director found these letters did not establish his achievements and contributions to his employers constituted an achievement or significant contribution to his industry or field. However, neither the Petitioner's appellate brief nor the evidence submitted on appeal address his qualification under this criterion. Since the Petitioner did not address this issue with specificity on appeal, we deem the issue waived and find the Petitioner has not established that he meets this regulatory criterion.

Summary

The record supports the Director's finding that the Petitioner did not meet at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(iii) allows for the submission of "comparable evidence" if the above standards "do not readily apply to the beneficiary's occupation." In this case, the Petitioner has not demonstrated

³ See, e.g., *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The courts' view of issue waiver varies from circuit to circuit. See *Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (finding that an issue referred to in an affected party's statement of the case but not discussed in the body of the brief is deemed waived); but see *Hoxha v. Holder*, 559 F.3d 157, 163 (3d Cir. 2009) (issue raised in notice of appeal form is not waived, despite failure to address in the brief).

that the standards at 8 C.F.R. § 204.5(k)(3)(ii) are not readily applicable to his occupation, or that any of his documentation is “comparable” to the specific objective evidence required at 8 C.F.R. § 204.5(k)(3)(ii)(A) – (F).

The Petitioner in this matter 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 did not demonstrate that he is an advanced degree professional, and as previously discussed, has not shown that he meets regulatory criteria for classification as an individual of exceptional ability.

C. National Interest Waiver

Because the Petitioner has not first established he is an advanced degree professional or an individual of exceptional ability, further analysis of his eligibility for a national interest waiver under *Dhanasar* would serve no meaningful purpose.⁴

III. CONCLUSION

The Petitioner has not demonstrated he is an advanced degree professional. 8 C.F.R. § 204.5(k)(3)(i). Additionally, the Petitioner has not demonstrated he meets at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). 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.

⁴ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion, grant a national interest waiver.