



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 22667167

Date: SEP. 19, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a general and operations manager, seeks second preference immigrant classification as either 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 Director of the Texas Service Center denied the petition, concluding that the evidence did not establish the national importance of the proposed endeavor or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver.

The matter is now before us on appeal. The Petitioner reasserts her eligibility, arguing that the Director did not review the evidence under the proper standard of proof and 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, 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, 8 USC § 1101(a)(32), 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). 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). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. 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). As a matter of discretion, the national interest waiver may be granted 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. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Director did not provide any analysis or specific determination regarding whether the Petitioner established that she qualifies as a member of the professions holding an advanced degree or as an individual of exceptional ability. On appeal, the Petitioner notes the decision’s lack of analysis, specifically on whether she qualifies as an individual holding an advanced degree. Based upon the record as currently constructed, we conclude that the Petitioner has not established eligibility for the underlying EB-2 classification.

A. Advanced Degree Professional

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 [individual] 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 [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.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner provided evidence of a “título de bacharel” in economic sciences, which she earned after completing a program of study in Brazil from 1993 to 1999. Following this education, the Petitioner submitted documentation indicating that she pursued a post-graduate course of study (“lato sensu”) in controlling and finance, which she completed in 2001. The record also reflects that in 2006, she completed a specialization program (“curso de especialização”) in economics and energy management. In addition, the Petitioner provided certificates of completion for various trainings and individual courses, such as “Fundamental Negotiations,” “Fiscal Metering of Gas and Liquids,” and “Management Development Program Level I,” among others.

To support a finding that she qualifies as an advanced degree professional, the Petitioner provided an academic and experience evaluation from [redacted] a professor at the [redacted] College of the [redacted]. In the academic portion of the evaluation, the only information specific to

the Petitioner's education appears to be the titles of her academic programs, name of her university, and the dates in which she completed her various courses of study. Although [redacted] stated that the courses completed and the number of credit hours earned indicated the equivalency of the Petitioner's education, [redacted] offered little explanation of the Petitioner's courses and credit hours and did not explain how they are the equivalent of a U.S. education. Here, [redacted] restated in paragraph form basic information found in the Petitioner's academic records without adding actual analysis of the programs. Therefore, his generalized conclusions are insufficient to establish the U.S. equivalency of the Petitioner's education. For this reason, we conclude that this evaluation is of little probative value in this matter. Additionally, we question [redacted] knowledge of the Brazilian academic system and the specific qualifications he has as a U.S. professor that demonstrate his ability to credibly opine on the equivalency of Brazilian academic degrees.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.* Here, the evaluator did not demonstrate specific knowledge of the Brazilian education system, the Petitioner's specific university, or how her credit hours, grades, and the content of her courses translate to a U.S. education. Nor did the evaluator offer sufficient analysis or support for the conclusions contained in the evaluation. As such, we conclude that this evaluation is insufficient to establish the academic equivalency of the Petitioner's foreign education.

Based on the information contained in the record, we conclude that the Petitioner has not met her burden to establish the U.S. equivalency of her foreign education in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner should be prepared to address this evidentiary shortcoming in any of her future filings. Nevertheless, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. See generally American Association of Collegiate Registrars and Admissions Officers, *Electronic Database for Global Education*, <https://www.aacrao.org/edge> (last visited Sep. 13, 2022). Although the database reflects that a "título de bacharel" may be a foreign equivalent of a U.S. bachelor's degree, it does not indicate that the post-graduate "lato sensu" is the foreign equivalent of a U.S. master's degree. Rather, the database suggests that the Petitioner may have completed a graduate program in which she received graduate credits leading to a professional certificate, but not necessarily leading to a graduate degree. *Id.* In addition, the database suggests that the "curso de especialização" is a program in a particular area of study in which a student may select to specialize. *Id.* It is not apparent from the documentation the Petitioner provided whether this specialization program is a degree program, nor is it apparent that upon completion of it, students would receive the foreign equivalent of a U.S. advanced degree.

Moreover, the evidence provided is insufficient to conclude that the Petitioner has at least five years of progressive post-baccalaureate experience in the specialty. Although the employment letters indicate that the Petitioner has over five years of post-baccalaureate employment experience, the letters only list the titles of the positions the Petitioner held. As the letters do not discuss the Petitioner's duties, it cannot be concluded that the Petitioner's work was progressively responsible in nature. To illustrate, one letter stated that the Petitioner worked in the same position from 2001 to 2013. As such, it is not apparent from the title of the position alone that her work was progressive in nature, particularly as the letter indicates that she remained in the same position throughout her tenure

with that employer. Accordingly, we cannot conclude that the Petitioner possesses an advanced degree, nor can we conclude that the Petitioner's foreign equivalent of a U.S. bachelor's degree is followed by five years of progressive post-baccalaureate experience.

B. Individual of Exceptional Ability

We reviewed the entirety of the record and have considered the Petitioner's eligibility as an individual of exceptional ability. We conclude that the Petitioner has not satisfied at least three of the six criteria and therefore we need not reach a final merits determination. Accordingly, the Petitioner does not qualify as an individual of exceptional ability. While we may not discuss each piece of evidence individually, we have reviewed and considered each one.

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)

Although the academic documentation in the record combined with the information found in the AACRAO EDGE database is sufficient to conclude that the Petitioner completed education that is the equivalent of a U.S. bachelor's degree, the record does not show that the Petitioner earned this degree in the area of claimed exceptional ability. The Petitioner proposes to work in general and operations management. Based on the record as currently constructed, we cannot conclude that her bachelor's degree in economic sciences is sufficiently related to general and operations management as to be in the "area of exceptional ability." Accordingly, the Petitioner has not persuasively established that she has 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)

By a preponderance of the evidence standard, the Petitioner has established that she satisfies 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 provided evidence that she received an "economist" professional identity card from the Regional Economic Council of "region 1" of [REDACTED]. The associated documents in the record suggest that the Petitioner registered as an economist in 2015 and that the purpose of the Regional Economic Council "is to supervise the professional activity of economists and service providers." However, this evidence is insufficient to establish that the Petitioner's identity card is a license or certificate to practice as a general and operations manager. First, the Petitioner has not provided evidence that a license or certification is required to practice the profession of general and operations manager. The Petitioner appears to have fully performed in her prior positions of "business operations coordinator" and "coordinator of logistics programming" without previously registering, such that we cannot conclude that a license or certification is required for the occupation of general and operations manager. Even if it were established that the identity card is a license or certificate, it is not apparent whether a professional license or certificate to practice as an economist would be sufficiently related to the claimed area of exceptional

ability. Finally, the Petitioner's identity card with the council expired in December 2018, prior to the filing of the I-140 petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). Therefore, we cannot conclude that the Petitioner has a license to practice the profession or certification for a particular profession. Accordingly, the record is insufficient to establish the Petitioner's eligibility under 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 provided a website printout of salary data for the position of "operations manager" in Brazil. Although the printout stated that the data provided is from August 2017 to August 2018, it is unclear if the salaries listed correspond to an hourly, monthly, annual, or some other salary timeframe. The Petitioner highlighted the figures pertaining to the professional level for which she believes she qualifies. Among "trainee," "junior," "full," "senior," or "master," the Petitioner selected "senior," indicating that she has six to eight years of experience. In addition, she highlighted the size of the company for which she worked during the relevant time frame. Among "little," "average," or "great," the Petitioner highlighted "little." Nevertheless, the Petitioner has not offered sufficient evidence to establish that these figures in the chart apply to her. For instance, the record contains insufficient evidence of the size of her employer during the relevant time frame in which to conclude that it is a "little" employer. Additionally, the Petitioner provided insufficient documentation to establish that she is a "senior" level operations manager. While we acknowledge that the Petitioner has experience in operations management, the record does not sufficiently reflect that she occupied an operations manager position for six to eight years, as opposed to a coordinator within operations management.

The Petitioner's paystubs, tax returns, and bank documents indicate that during the years 2013 to 2015, she received income from [REDACTED]. However, the chart provided does not reflect salary data from this time period. Therefore, the salary data in the chart is inapplicable to the Petitioner, as it does not correspond to the relevant years for which she provided evidence of her income. Even if it were established that the Petitioner received a salary that exceeded certain figures on the chart, it would still only provide a very limited picture of the Petitioner's salary in comparison to others in the profession. In other words, even if the Petitioner provided sufficient evidence that her salary was in fact higher than other operations managers, it would simply establish that she earned a higher-than-average salary. The evidence does not suggest that the salary she earned was due to her ability.

The record does not support a finding that the Petitioner commands a salary that demonstrates exceptional ability. For the foregoing reasons, the Petitioner has not satisfied this criterion.

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

For this criterion, the Petitioner submitted her registration and identity card as an economist with the Regional Economic Council of "region 1" of [REDACTED]. As previously noted, the Petitioner has not established how registration as an economist is relevant to the profession of general and operations manager. In addition, the Petitioner's 2015 registration expired in December 2018, prior to the filing of her national interest waiver petition. Therefore, this evidence does not establish eligibility at the time of

filing. Accordingly, the Petitioner has not provided evidence sufficient to establish eligibility under 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)

We reviewed the entire record for evidence of recognition for the Petitioner's achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. We acknowledge evidence that includes, but is not limited to, certificates of completed trainings and courses, a national interest waiver eligibility evaluation, and letters of support from professional acquaintances. As previously stated, while we may not discuss each piece of evidence individually, we have reviewed and considered each one.

Although the letters of support indicate that her professional acquaintances hold her in high regard personally and professionally, as well as that she has received recognition for achievements and significant contributions within the companies she has worked for, this evidence does not suggest that the Petitioner has received recognition for achievements and significant contributions to the industry or field. To illustrate with several examples [redacted] a gas and policy regulatory affairs manager at [redacted] described the Petitioner's role and performance, the value of her as an employee, and the results she achieved for the company. However, [redacted] did not provide sufficient detail concerning how these internal accomplishments constituted recognition for achievements or significant contributions to the field. Similarly, [redacted] a project manager at the [redacted] described specific milestones in the Petitioner's career, the duties she performed, and her value as an employee, as well as stated that her work on the project led to the success of the initiative. However, it cannot be concluded from the information presented that the Petitioner's career, performance, value, and success constituted recognition for achievements and significant contributions to the industry or field.

Although [redacted] a packing manager working within a joint venture, stated that the Petitioner "developed a unique methodology to negotiate with the IRS" and that "[the Petitioner] developed the "transfer price," thus creating a new and clear understanding of the rules of importation and commercialization of natural gas," [redacted] does not explain how this "transfer price" could be construed as an achievement or significant contribution to her field, as opposed to an accomplishment for the individual companies and clients involved in the transaction. Likewise, [redacted] wrote that the project upon which the Petitioner worked "was a nationally important project for [company name], as well as a strategic contribution to the country's energy matrix." However, it is not apparent from the details in [redacted] [redacted] letter or the evidence in the record, what she means by the phrase "strategic contribution to the country's energy matrix" or how this would be considered a contribution to the field or industry. [redacted] [redacted] did not provide sufficient details concerning how the Petitioner's work constituted recognition for achievements and significant contributions to the industry or field, as opposed to the individual companies and clients for whom she worked. Overall, the authors of the letters explained how the Petitioner's past accomplishments were important to the Petitioner's employers, but the letters do not support a finding that such accomplishments constitute recognition for achievements and significant contributions to the industry or field.

We acknowledge the background materials about operations manager careers and other written materials that offer an overview of the operations management profession, including industry reports and articles

concerning the field, foreign direct investment, the competitiveness of U.S. companies, and the need for operations management professionals, among others. Nevertheless, these materials do not mention the Petitioner specifically, or how she has impacted the field or industry such that we can conclude she has received recognition for achievements and significant contributions. Merely working in an important field is insufficient to establish that she has received recognition for achievements and significant contributions in that field.

In the Petitioner's professional plans and statements, she described her past achievements as well as reiterated the information that [redacted] provided about her "unique methodology to negotiate with the IRS" and the "transfer price." However, the Petitioner did not offer a sufficient explanation for what the unique methodology is, how she is credited with the development of the methodology and transfer price, how the methodology and transfer price differ from other methods used, or whether others in the industry know about and now use the methodology and transfer price. To further illustrate, it is not apparent from the record how the "transfer price" created a new and clear understanding of the rules of importation and commercialization of natural gas or what effect, if any, this development had outside the parties to the transaction. Even if the Petitioner offered evidence to support a finding that she developed the methodology and transfer price, this would still not establish how others in the field or industry would know about and benefit from what she developed such that the Petitioner's work would constitute achievements and significant contributions to the industry or field. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner has not done so here.

Finally, we return to the evaluation from [redacted]. Although [redacted] offered his opinion on the Petitioner's education, experience, and eligibility under the Dhanasar framework, the evaluation does not contain a cogent discussion of how the Petitioner qualifies as an individual of exceptional ability nor does it contain support for a conclusion that the Petitioner has received recognition for achievements and significant contributions to the industry or field. Much of the evaluation repeats the contents of the Petitioner's résumé or contains statements repeated by other authors.¹ As previously explained, the record contains insufficient evidence to establish that the Petitioner has received recognition for achievements and significant contributions to the industry or field. Rather, as noted, the Petitioner's professional accomplishments appear to impact the parties relevant to the transaction but do not appear to reach the industry or field as a whole. As a matter of discretion, we may 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, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.* Here, the evaluation from [redacted] does not sufficiently address the Petitioner's eligibility for the underlying employment classification. Therefore, it has little probative value under this criterion.

Based on the evidence provided, we conclude that the Petitioner has not established how her professional accomplishments extend beyond her individual employers, clients, and projects. While the Petitioner may be a valuable employee with an impressive record of success, her professional performance does not

¹ It is unclear if [redacted] has repeated Counsel's statements or if Counsel repeated [redacted] statements. In either case, portions of the petition contain statements that the signing author may not have independently written.

represent achievements and significant contributions to the industry or field. Accordingly, the evidence does not establish that the Petitioner satisfied this criterion.

Summary

The record does not support a finding that the Petitioner meets at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner therefore has not established her eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As previously outlined, the Petitioner must show that she either possesses exceptional ability or is an advanced degree professional before we reach the question of the national interest waiver. We conclude that the evidence does not establish that the Petitioner meets the regulatory criteria for classification as an individual of exceptional ability or that she is a member of the professions holding an advanced degree. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act.

III. CONCLUSION

The Petitioner has not established that she is eligible for the underlying classification as an advanced degree professional or as an individual of exceptional ability. Therefore, further analysis of her eligibility under the framework outlined in *Dhanasar* would serve no meaningful purpose.

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

The appeal will be dismissed for the above stated reason.

ORDER: The appeal is dismissed.