



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

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

In Re: 24808560

Date: APR. 7, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a construction project manager, seeks classification as an individual of exceptional ability. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the EB-2 immigrant classification or that a waiver of the classification's job offer requirement would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

To establish eligibility for a national interest waiver, a petitioner *must first demonstrate qualification for the underlying EB-2 immigrant visa classification*, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

"Exceptional ability" means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.¹ If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally* 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual>.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act.

The Director determined that the Petitioner met the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and we agree. The Petitioner also provided evidence of his valid professional registration (license) as a civil engineer from the National Professional Council of Engineering (COPNIA) in Colombia and, thus, we withdraw the Director’s conclusion regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). In addition, he claims to meet the following two criteria.²

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 record includes an “extract translation” of the Petitioner’s 2017 tax return and salary information for civil engineers and civil engineering drafters. As an initial matter, the Petitioner did not provide “a full English language translation which the translator has certified as complete and accurate” of the tax return as required by 8 C.F.R. § 103.2(b)(3). Further, the Petitioner did not supply supporting documentation to establish the source(s) of his “gross income earned from work” listed on his tax return.³ Finally, and as explained by the Director, in addition to the deficiencies in the submitted salary information, the Petitioner has not shown that the evidence regarding civil engineers and civil engineering drafters demonstrates his exceptional ability as a construction project manager.⁴ For all these reasons, the Petitioner has not met this criterion.

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

The Petitioner again relies on his professional registration as a civil engineer. While the Petitioner did provide printouts from the COPNIA website which explains that it is a “public entity” which “[i]ssue[s] Registration Cards, Professional Registration Certificates and Registration Certificates to engineers,” along with the requirements for registration, the documentation does not include information to establish that there is a membership component. As the Petitioner has not demonstrated that being issued a professional registration to practice his profession by a public entity qualifies as membership in a professional association, we cannot conclude that he meets this criterion.

Because the Petitioner does not satisfy at least three of the criteria, we need not conduct a final merits determination. Further, since he has not demonstrated that he qualifies for the underlying EB-2 classification, we decline to reach and hereby reserve the remaining arguments concerning his national interest waiver claim. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they

² As the Petitioner does not claim to meet the two remaining criteria on appeal, we will not address them here.

³ For example, while the letter from [redacted] confirms the Petitioner’s role as a project manager, it does not include information regarding his salary or dates of employment.

⁴ While not a basis for our conclusion, we note that although the Petitioner submitted information regarding the average civil engineer salary in Colombia from Indeed.com, the same website includes average salary information for construction managers, which is \$ 105,695,011. This average salary is significantly higher than that of a civil engineer (\$ 39,851,781) and his 2017 gross earnings of \$ 65,376,000. *See* <https://co.indeed.com/career/gerente-de-construccion/salaries> (last accessed Apr 7, 2023).

reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.