



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

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

In Re: 24807904

Date: APR. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an oil and gas specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 immigrant 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 had not established eligibility for the underlying EB-2 classification as an individual of exceptional ability.¹ 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.

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. Section 203(b)(2)(B)(i) of the Act. 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

¹ The Director concluded that the Petitioner does not qualify as an advanced degree professional in the request for evidence (RFE) issued on February 22, 2022. On appeal, the Petitioner does not contest this finding.

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.

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).

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) 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 [individual] 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 [individual] 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 [individual] 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.

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 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); *See USCIS 6 Policy Manual F.2*, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

II. ANALYSIS

A. Individual of Exceptional Ability

The Director found that the Petitioner satisfied only two criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (C) out of the required three to demonstrate eligibility for an individual of exceptional ability. On appeal, the Petitioner contends that he meets the remaining criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (D), (E), and (F). As discussed below, a review of the record indicates that the Petitioner does not meet at least three of the relevant criteria at 8 C.F.R. § 204.5(k)(3)(ii).

1. Criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A)

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) requires 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 initially described his occupation as an “oil and gas specialist”² and identified his proposed endeavor in which he claims exceptional ability to include “Oil and Gas project management, petroleum quality control, equipment usage and maintenance, technical team leadership, ensuring safety protocols are being carried out, as well as the safe and efficient extraction and processing of petroleum.”

We will first address whether the Petitioner’s “Ensino Médio Técnico em Informatica” or “Vocational Secondary School in Information Technology” diploma from [redacted] in Brazil meets this criterion, as the Director found that this diploma is not related to his area of exceptional ability. The school transcript from [redacted] includes general education courses commonly taken during a secondary school such as language, history, mathematics, biology, physics, chemistry, physical education, and introduction to computer science. The American Association of Collegiate Registrars and Admission Officer (AACRAO) Electronic Database for Global Education (EDGE) confirms that the Ensino Médio diploma is awarded following three years of secondary education and represents attainment of a level of education comparable to completion of a senior in high school in the United States.

On appeal, the Petitioner contends that this vocational school degree in information technology is related to his area of exceptional ability because such degree was required for the Petitioner’s employment at [redacted] a large oil company in Brazil. The Petitioner then refers to pages from [redacted] showing that a position of “Operator I” requires a “certificate of completion of a high school technical professional education course in Electronics (any major).” However, this document demonstrates that many positions within the company generally requires a high school equivalent diploma and does not explain how an information technology degree relates to the Petitioner’s exceptional ability in oil and gas processing and production than those of an individual

² The Petitioner did not provide any information in Part 6 of the Form I-140 “Basic Information About the Proposed Employment.”

with actual degrees in petroleum engineering.³ Therefore, we find that the Petitioner's vocational school diploma in information technology does not meet this criterion.

We will now address the Petitioner's claim that there are three "Technical Operation Training Certificates in 2007 from [redacted] professional training courses" that should meet this criterion. The Petitioner states that while working at [redacted] he attended "full-time classes and passed the demanding exams on the strict training courses provided by [redacted] professional educational branch." We acknowledge that the Petitioner has worked at [redacted] over 13 years as an operations technician, supervised various aspects of oil production processing and equipment maintenance, and took courses offered by [redacted] to increase his work knowledge and understanding.⁴ However, the Petitioner has not submitted evidence related to [redacted] professional educational branch to demonstrate it is a qualifying academic institution. We find that the record does not establish the Petitioner's professional training courses taken during his employment at [redacted] are academic record or certificates from "college, university, school, or other institution of learning" as delineated by the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A).

2. Criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D)

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D) requires "[e]vidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability." The Petitioner previously submitted average salaries for technicians at [redacted] from indeed.com to satisfy this criterion. The Director found that such information is insufficient to show that the Petitioner's salary is based upon exceptional ability. We agree. This criterion requires demonstration of exceptional ability by salary or other remuneration compared to other individuals in the field, not just employees at the Petitioner's place of employment. See 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policymanual>.

On appeal, the Petitioner provides a one-page chart purportedly from a collective agreement between labor unions and [redacted] and claims that his salary of R\$28,700 a month is higher than the highest salary of R\$16,880.29 shown in the chart. However, the Petitioner does not provide an English translation of this document per 8 C.F.R. 103.2(b)(3). Therefore, we are unable to determine the evidence's relevance and reliability on the issue of whether the Petitioner's salary demonstrates his exceptional ability. Furthermore, the record does not establish that his higher salary or remuneration is a result of his exceptional ability, as opposed to the standardized pay scale for his position and time at his employment.

³ Although the Petitioner's academic evaluation report states that he has a bachelor of science in petroleum engineering, upon careful reading of the report, we note that the evaluator equated the Petitioner's 13 years of work experience at the oil company to a bachelor's degree in petroleum engineering.

⁴ The Petitioner's experience and learning at the job fit the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) which requires at least ten years of full-time experience in the occupation. The Director previously determined that the Petitioner has met this criterion.

3. Criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E)

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires “[e]vidence of membership in professional associations.” The Petitioner submitted his “Professional Identity Card” issued by the Federal Council of Industrial Technicians, registered on February 7, 2020, and valid until July 31, 2020. On appeal, the Petitioner asserts that his “mandatory membership with the Federal Council of Industrial Technicians as a Computer Technician should be considered valid to comply with this criterion.” The Petitioner also contends that his membership to the [REDACTED] a labor union of oil and gas professionals in the state of [REDACTED] where the Petitioner worked meets this criterion.

We note that the term “profession” is defined at 8 C.F.R. § 204.5(k)(2) as “any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” The Petitioner has not demonstrated that his occupation requires a U.S. bachelor's degree or foreign equivalent, and thus, these associations are not “professional associations” within the meaning of the regulation. We conclude that the Petitioner’s registration with the Federal Council of Industrial Technicians and labor union membership do not satisfy this criterion.

4. Criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F)

The only other remaining criterion under which the Petitioner asserts eligibility on appeal is 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.”

The Petitioner’s evidence for this criterion consists of six letters of support from his colleagues at [REDACTED] and one letter from a general manager of [REDACTED] (a company providing FPSOs or floating production storage and offloading platforms to oil and gas industries) who worked with the Petitioner on an emergency response in 2020.⁵ The letters from his peers at [REDACTED] contain general praise for the Petitioner’s work expertise, supervision and leadership skills, and work ethics, along with additional details about his specific responsibilities, but provide no indication that the Petitioner’s contributions go beyond being a dedicated and competent employer. The letter from [REDACTED] credits the Petitioner’s assistance in responding to a particular emergency event in 2020 but does not mention any other substantive recognition or contribution besides this single episode.

The Petitioner further claims serving as the president of [REDACTED] internal accident prevention commission) for two years (2018-2020) shows recognition by his peers since [REDACTED] members are “most respected professionals in the company.” The Petitioner’s co-workers at [REDACTED] mention this in their letters of support and commend the Petitioner for “implementing a very well planned and coordinated work leading the committee,” “reducing number of accidents . . . of the workers involved,” and “mobilizing all workers to adopt safe behaviors and achieving . . . healthy work environment.” However, these letters do not provide specific examples of how the Petitioner's work was recognized as an achievement or significant contribution to the industry or field rather than as an achievement for his employer. The Petitioner also submitted an article from [http://\[REDACTED\]](http://[REDACTED]) quoting his

⁵ The Petitioner also submitted a reference letter from a lieutenant colonel of the Brazilian army, but it does not contain any relevant information regarding the Petitioner’s exceptional ability as an oil and gas specialist.

statement on the topic of occupational accident prevention but the article does not recognize the Petitioner for any achievement or significant contribution to the industry or field.

Aside from personal reference letters, we find two journal articles co-authored by the Petitioner published on the Brazilian Journal of Development, [redacted] acknowledgement of the Petitioner along with other employees in 2020, and evidence of the Petitioner's merit raise from his employer in 2021. The record lacks evidence demonstrating that the Petitioner's authorship of the journal articles has been considered an achievement or significant contribution to the industry. The recognition and merit raise by the Petitioner's own employer do not demonstrate impact or influence beyond that employer. Therefore, we find that the evidence is insufficient in demonstrating evidence of recognition and significant contributions in the industry or field as contemplated by the regulations.

For the reasons set forth above, the evidence does not establish that the Petitioner has not satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), and thus, we need not conduct a final merits determination. Nevertheless, we have reviewed the record in the aggregate and examined "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). While we acknowledge that the Petitioner has had a successful career at [redacted] in Brazil, he has not demonstrated exceptional ability that rises above that ordinarily encountered in his field.

B. National Interest Waiver

Because the Petitioner did not establish eligibility as an individual of exceptional ability, we need not address the Petitioner's assertions on appeal regarding whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act. We reserve our opinion regarding whether the Petitioner satisfies any of the criteria set forth in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

III. CONCLUSION

The Petitioner has not met 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.