



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

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

In Re: 26009390

Date: APR. 18, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as an individual of exceptional ability in the sciences. See 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 Nebraska Service Center denied the petition, concluding that the record does not establish that the Petitioner qualifies for classification as an individual of exceptional ability or that a waiver of the required job offer, and thus of the labor certification, 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 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. *See* section 203(b)(2) of the Act; *see also* 8 C.F.R. § 204.5(k)(3). To qualify as an individual of exceptional ability, the Form I-140, Immigrant Petition for Alien Workers, must be accompanied by at least three of the six criteria provided at 8 C.F.R. § 204.5(k)(3)(ii).

The Director concluded that the record contains sufficient evidence to meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), but did not establish that she satisfies any of the remaining criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) – (F). On appeal, the Petitioner reasserts that she satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), (E), and (F).¹

¹ As the Petitioner does not claim that she meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), we will not address it.

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 discussed the deficiencies in the submitted employment verification letters in the request for evidence (RFE) and decision.² Rather than provide new evidence which included the missing information required by the plain language of the regulation,³ the Petitioner, through counsel, again summarizes her prior experience. Without more, we cannot conclude that she meets 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 claim to have met this criterion in the initial filing. On appeal, the Petitioner repeats her response to the Director's RFE verbatim. She asserts that because "the licensing requirement is not applicable to the Beneficiary's field of endeavor," the Director should consider "comparable evidence submitted herewith to establish that the Beneficiary possesses a degree of expertise that is significantly above that ordinarily encountered." However, for comparable evidence to be considered, a petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to his or her occupation and establish that the submitted evidence is "comparable" to that criterion. 8 C.F.R. § 204.5(k)(3)(iii). The Petitioner has not done so here. Not only has she not identified which evidence we should consider under this criterion, but she has not explained how it is comparable to "a license to practice the profession or certification for a particular profession or occupation."

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

The Petitioner relies on her membership in the Society of Professional Journalists (SPJ) to satisfy this criterion. She did not, however, provide supporting evidence, such as the membership requirements and/or by-laws, which establishes that SPJ is a professional association. Profession is defined as "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." 8 C.F.R. § 204.5(k)(2). Without evidence that SPJ requires its members to hold a bachelor's degree (or the foreign equivalent), the Petitioner has not established that she meets this criterion.

Although the Petitioner asserts that she meets one additional criterion relating to achievements and significant contributions at 8 C.F.R. § 204.5(k)(3)(ii)(F), we need not reach a decision on this additional ground because she cannot meet the required three criteria. As the Petitioner cannot fulfill the initial evidentiary requirement under 8 C.F.R. § 204.5(k)(3)(ii), we reserve the remaining issues. *See INS v. Bagambashad*, 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 reach); *see also Matter of L-*

² The Petitioner did not address this criterion in the RFE response.

³ *See also* 8 C.F.R. § 204.5(g)(1) which provides that evidence relating to qualifying experience or training shall be in the form of letters from current or former employers or trainers and shall include a specific description of the duties performed by the individual or of the training received.

A-C-, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

As the Petitioner has not met the requisite second-preference classification as an individual of exceptional ability, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.