



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

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

In Re: 24833842

Date: FEB. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 record did not establish that the Petitioner qualifies for the classification sought or for the national interest waiver. 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.

The record does not identify the Petitioner's intended occupation. Initially, the Petitioner stated that she seeks employment as an "entrepreneur" in the field of "finance." "Finance" is a broad field that encompasses many different occupations. In a request for evidence (RFE), the Director noted that "the petitioner did not provide a nontechnical job description of her proposed endeavor." Although the Petitioner responded to the RFE, her response did not address this issue.

When the Director denied the petition, the Director identified several deficiencies as grounds for denial. The Petitioner's appeal consists of a statement in which the Petitioner repeats her RFE response, almost verbatim, adding the phrase "USCIS [U.S. Citizenship and Immigration Services] erred in finding otherwise" to several paragraphs. The appeal statement also includes additional information relating to her claim of eligibility for the national interest waiver.

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.

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2). "Profession" is defined as of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.¹ 8 C.F.R. § 204.5(k)(3).

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).² Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ We 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,⁴ grant a national interest waiver if the petitioner demonstrates that: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and, on balance, waiving the job offer requirement would benefit the United States.

II. EXCEPTIONAL ABILITY

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. When she filed the petition in November 2019, the Petitioner claimed eligibility as an individual of exceptional ability, but she did not explain which of the six regulatory criteria she claimed to satisfy. In response to the Director's RFE, the petitioner claimed to have satisfied three of the 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).

¹ The listed occupations are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.

² If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

³ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

⁴ See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

The translation of a diploma from [redacted] University states that the Petitioner “accomplished the full academic course of the University, specializing in- [sic] Commodity science and organization of trading with nonfoods.” The translator signed the translation, stating: “This translation corresponds to original.” This statement does not meet the regulatory requirements. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

In the RFE, the Director asked the Petitioner for a properly certified translation of the diploma, and further information about the degree and the underlying course work.

In response, the Petitioner submitted another copy of the translation of the diploma, with a certification by a different translator. This second translator stated: “I have made WRITTEN translation of the attached document” (emphasis in original), but the accompanying English translation appears to be a photocopy of the first version. The two translations are identical in content and appearance, with the same superfluous hyphen between the words “in” and “Commodity.” Thus, two different translators claim not only to have translated the same document, but to have prepared the same translation.

In the denial notice, the Director concluded that the evidence is deficient because the Petitioner had not shown that the diploma relates to the area of claimed exceptional ability. Specifically, the Petitioner had not explained how a diploma in “Commodity science and organization of trading with nonfoods” pertains to the field of “finance.” We will not speculate as to how the degree might relate to the field of finance, because it is the Petitioner’s burden to establish eligibility.

On appeal, the Petitioner asserts that the Director erred, but she does not explain how her degree relates to her field. The Petitioner has neither addressed nor overcome the Director’s conclusions.

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 Petitioner submitted letters attesting to her employment as an appraiser in the Republic of Georgia, first at a bank in [redacted] from 1998 to 2017, and then for a microfinance organization in [redacted] from 2017 to 2019. The letters did not specify whether the Petitioner’s employment was full-time.

Evidence relating to qualifying experience shall be in the form of letters from current or former employers and shall include the name, address, and title of the writer, and a specific description of the duties performed by the individual or of the training received. 8 C.F.R. § 204.5(g)(1). The submitted letters do not fully meet these requirements, because the letters do not include specific descriptions of the Petitioner’s duties.

In the RFE, the Director observed that the employers’ letters were deficient, because they did not specify the Petitioner’s duties and show that the employment was full-time. In response, the Petitioner resubmitted copies of the same letters.

The Director denied the petition, stating that, upon being advised of the deficiencies in her initial evidence, the Petitioner “submitted the same evidence.” On appeal, the Petitioner summarizes her claimed employment history, but she does not address or overcome the deficiencies that the Director identified in the employers’ letters.

We agree with the Director that the letters do not meet the minimum evidentiary requirements of 8 C.F.R. § 204.5(g)(1) and (k)(3)(ii)(B). As a result, the Petitioner has not submitted sufficient evidence of past employment. Furthermore, because the Petitioner has not specified the occupation in which she intends to work in the United States, she has not shown that the letters establish experience in the occupation she seeks to pursue.

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 did not initially claim to have satisfied this criterion. In the RFE, the Director suggested various types of evidence that might show recognition for the Petitioner’s achievements and significant contributions. In response, the Petitioner claimed that her evidence “clearly established that this criterion has been met,” but she did not specifically identify what evidence addressed the criterion or how it did so.

We agree with the Director’s determination that the Petitioner did not identify any record evidence relevant to this criterion, or explain how she satisfies the criterion. The Petitioner repeats, on appeal, that she has satisfied it, but does not say how. The burden of proof is on the Petitioner, and she cannot meet that burden simply by asserting that she has met it.

The Petitioner’s evidence does not satisfy at least three of the criteria at 8 C.F.R. § 204.5(k)(3). Therefore, she has not shown that she qualifies for classification as an individual of exceptional ability.

III. ADVANCED DEGREE PROFESSIONAL

The Petitioner did not initially claim to qualify as a member of the professions holding an advanced degree. In the RFE, the Director stated that, if the Petitioner seeks this classification, she must submit further documentation to show that she possesses either (1) an advanced degree or (2) a U.S. baccalaureate degree or equivalent foreign degree followed by at least five years of progressive experience in the specialty in which the Petitioner seeks employment. The Director acknowledged the Petitioner’s previous submission of a diploma from the University of [] but the Director noted that the Petitioner had not submitted “transcripts or an evaluation of credentials” to establish that the degree was equivalent to a U.S. baccalaureate or advanced degree.

As noted above, the Petitioner resubmitted copies of the diploma and the same translation in response to the RFE, but she did not provide any further evidence or information to establish equivalence to a baccalaureate or higher degree from a U.S. institution.

The Director concluded that the diploma and employers’ letters, as submitted, were deficient. On appeal, the Petitioner asserts that she “clearly established that she is advanced degree professional

[sic],” but she does not address or overcome the deficiencies identified by the Director. The record does not contain the minimum evidence required to establish eligibility for the classification sought.

Beyond the above determinations, we add that, because the Petitioner has not identified the specific occupation in which she intends to work, she has not established that she qualifies as a member of the professions. Qualification as a professional depends on the requirements for the position, not the educational background of the individual. *See* 8 C.F.R. § 204.5(k)(2).

IV. NATIONAL INTEREST WAIVER

The Petitioner has not shown that she qualifies for classification under section 203(b)(2) of the Act, either as a member of the professions holding an advanced degree, or as an individual of exceptional ability. Because this issue determines the outcome of the Petitioner’s appeal, we reserve the appellate arguments regarding the national interest waiver. *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).

Nevertheless, we agree with the Director’s observation in the RFE that the Petitioner has not described a specific proposed endeavor. On the petition form, the Petitioner described herself as an “entrepreneur,” but she claimed no past experience establishing or operating her own business. Her past experience was as an appraiser for financial institutions. The Petitioner did not specify what type of business she intends to establish in the United States, or how her proposed endeavor meets the requirements set forth in the *Dhanasar* framework.

The initial submission includes a statement, signed by the Petitioner, indicating that her education and experience have given her “transferrable skills, such as: analytical skills, mathematical abilities, customer service experience, communication with people of all backgrounds, [and] leadership expertise,” which she plans to use in “the field of finance.” The Petitioner, however, provided no further details about what she plans to do in that field, even after the Director specifically asked for that information.

The Petitioner’s initial statement also indicated that “the architectural industry is experiencing a vast shortage of qualified workers.” The Petitioner claims no credentials or qualifications as an architect, and therefore this reference to “the architectural industry” raises questions about the true authorship of her statement.

V. CONCLUSION

We will dismiss the appeal, because the Petitioner has not demonstrated eligibility for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability.

ORDER: The appeal is dismissed.