



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

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

In Re: 25690629

Date: MAR. 1, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a police investigator, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. 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 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 the Petitioner qualifies for classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. The Director further concluded that, because the Petitioner has not qualified for second-preference classification, he is ineligible for, and does not merit, a national interest waiver as a matter of discretion. 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. Section 203(b)(2) of the Act. The regulations define an advanced degree as either “any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate” or a “United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.” 8 C.F.R. § 204.5(k)(2). The regulations further specify that, in order to establish the equivalent of an advanced degree by a combination of education and experience, a petition must be accompanied by an 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 employers 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). In the alternative, for the purpose of determining eligibility under section 203(b)(2)(A) of the Act, “exceptional ability” is defined as “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

A brief summary of the procedural history of this matter is as follows. After the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, the Director sent the Petitioner a request for evidence (RFE), noting that “it has not been established that the [Petitioner] qualifies for the E21 classification with and advanced [sic] degree” and, furthermore, that “[n]o representations have been made that the [Petitioner] has exceptional ability and no discussion was provided.” After the Petitioner responded to the RFE, the Director dismissed the appeal without first determining whether the Petitioner established eligibility for second-preference classification under section 203(b)(2)(A) of the Act. We withdrew the Director’s decision and remanded the matter for a determination of whether the Petitioner established eligibility for second-preference classification. The Director sent another RFE, to which the Petitioner responded, and the Director denied the Form I-140 a second time, concluding that the record does not establish the Petitioner qualifies for classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. The Petitioner then appealed the matter a second time.

On second appeal, the Petitioner asserts in a two-paragraph brief that he “cannot understand the assessment” in the Director’s decision, “mainly to the requirement about my training and its applicability to my Investigator Police career ‘Professions Holding an Advanced Degree.’” The Petitioner also resubmits his second RFE response in support of the appeal.

The record contains a photocopy of a degree in a language other than English, and a certified English translation of it. The translation indicates that [redacted] University granted the Petitioner a bachelor’s degree in accounting sciences. An accompanying transcript of courses the Petitioner completed, and a certified English translation of it, indicates that the Petitioner completed coursework consistent with an academic specialty in accounting, with some general education or elective coursework such as “Portuguese I” and “Indoor Soccer I.” The record also contains an academic credentials evaluation from United States Credential Evaluations, stating that the Petitioner’s degree is “the U.S.A. equivalent of: Bachelor’s Degree in Accounting awarded by regionally accredited Universities in the United States.” Although the record contains other job-training certificates issued from one or more nonacademic institutions, the record does not contain, and the Petitioner does not assert that he received, a degree from an academic institution other than his degree equivalent to a U.S. bachelor’s degree in accounting.

The Petitioner did not specifically identify his desired occupation on the Form I-140—the entire section “Part 6. Basic Information About the Proposed Employment,” including fields for the job title, a nontechnical job description, wages, and worksite location, is blank. However, in a statement submitted in support of the petition, the Petitioner summarized his work experience “in the role of Inspector and Investigator . . . in the Civil Police,” and he asserted that his prospective endeavor’s “commitment will be to fight crime in accordance with the law.” The Petitioner further asserted in that statement that his “goal is professional growth within the Government Institution, performing the function intended for me, applying the BIO security standards, and ensuring the life, integrity and

security of every society, as well as my team growth.” In response to the Director’s second RFE, the Petitioner asserted that he “is specialized in law enforcement in Brazil” and that “public securities patrol assigned areas, observe and investigate suspicious behavior, enforce laws, apprehend suspects, and prepare incident reports.” Although the Petitioner explains how his bachelor’s degree in accounting related to his former career in accounting, he also states, “Since 2008, [the Petitioner] has been a Police Investigator for the Civil Judicial Police of the State of [redacted]” without any further reference to accounting work. The Petitioner does not explain how his bachelor’s degree in accounting is in the specialty of police investigation.

In order for a combination of a bachelor’s degree and at least five years of progressive experience to qualify for the equivalent of a master’s degree, and thus the equivalent of an advanced degree, both the bachelor’s degree and the experience must be “in the specialty.” 8 C.F.R. § 204.5(k)(2). As the Director concluded in the decision, the record does not establish how the Petitioner’s bachelor’s degree in accounting is “in a field that relates to his proposed endeavor” of police investigation, which entails in the Petitioner’s own words, patrolling assigned areas, observing and investigating suspicious behavior, enforcing laws, apprehending suspects, and preparing incident reports. Because the record does not establish that the Petitioner has a bachelor’s degree in the specialty, he cannot qualify for second-preference classification as an advanced degree professional, regardless of whether he has sufficient progressive experience in the specialty, because the classification nevertheless requires a qualifying degree in the proposed endeavor’s specialty. *See id.*

We note that the Petitioner may qualify for second-preference classification, in the alternative, as an individual of exceptional ability. However, the only criterion that the Petitioner references on appeal is the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), which requires “[a]n official academic record showing that the [noncitizen] 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.” For similar reasons to those explained above, the record does not establish how the Petitioner’s bachelor’s degree in accounting is “relating to the area of exceptional ability” in police investigation; therefore, it does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). Similarly, as the Director explained in the decision, although the record contains various training certificates relating to police investigation, the record does not establish that they are “from a college, university, school, or other institution of learning” as required by regulation; therefore, they also do not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). Moreover, the Petitioner does not identify on appeal at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) under which he may qualify as an individual of exceptional ability, and the record does not support such a conclusion; therefore, we need not further address whether the Petitioner qualifies for second-preference classification as an individual of exceptional ability.

For the reasons explained above, the record does not establish that the Petitioner qualifies for second-preference classification as an advanced degree professional or, in the alternative, as an individual of exceptional ability; therefore, we conclude that the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.