



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

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

In Re: 25690847

Date: MAR. 02, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Exceptional Ability)

The Petitioner seeks to employ the Beneficiary as a “International SAP Functional Analyst,” and requests his classification as an individual of exceptional ability in business under the second preference immigrant classification. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1153(b)(2). The employment-based “EB-2” immigrant classification makes an immigrant visa available to noncitizens with an advanced degree or with a degree of expertise significantly above that normally encountered in the sciences, arts, or business.

The Director of the Nebraska Service Center denied the petition, concluding that the labor certification did not support a petition filed on behalf of an individual holding an advanced degree because the minimum qualifications for the position did not require a degree. 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

On appeal, the Petitioner asserts that the Director erred by failing to consider the evidence and provide a reasoned analysis for its denial under the requested exceptional ability in business classification.

Part 2 of the Form I-140, Immigrant Petition for Alien Worker, indicates that the Petitioner checked box 1.d, which corresponds to a request for classification as either an advanced degree professional or an individual of exceptional ability (who is not seeking a waiver of the labor certification requirement). However, the Petitioner included a supplemental page to the Form I-140 that specified they were “filing this EB-2 I-140 Petition pursuant to Exceptional Ability regulations.” The Petitioner further specified in the supporting documentation that the petition was for an individual of exceptional ability in business.

The Director found that “no representations have been made that the beneficiary has exceptional

ability . . .,” however, the Petitioner asserts the petition was filed on behalf of the Beneficiary as a noncitizen of exceptional ability in business. Because the Director appears to have mistakenly adjudicated the petition as one filed on behalf of an advanced degree professional, instead of considering the Beneficiary’s qualifications as a noncitizen of exceptional ability in business, we will withdraw the Director’s decision and remand the matter for entry of a new decision.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.