



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

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

In Re: 25442978

Date: MAR. 7, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a civil engineer, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established eligibility as either an advanced degree professional or 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.

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. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “[e]xceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. Petitioners must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). However, meeting the minimum requirements by providing at least three types of initial evidence does not, in itself, establish that the individual in fact meets the requirements for exceptional ability. *See 6 USCIS Policy Manual F.5(B)(2)*, <https://www.uscis.gov/policymanual>. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. *Id.* The officer must determine whether or not the petitioner, by a preponderance of the evidence, has demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.*

¹ The Director did not make a determination regarding the Petitioner’s eligibility for a national interest waiver.

Next, a petitioner must demonstrate that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance the proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

As indicated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). In denying the petition, the Director determined that the Petitioner fulfilled only one criterion, official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A). On appeal, the Petitioner maintains that she satisfies two additional criteria.³ Although the Petitioner presents further evidence establishing that she meets the membership criterion under 8 C.F.R. § 204.5(k)(3)(ii)(E), she does not fulfill the achievements and significant contributions criterion under 8 C.F.R. § 204.5(k)(3)(ii)(F), discussed below.

The Petitioner contends:

The educational background, professional experience, and superb skills of the [Petitioner] enabled the [Petitioner] to contribute to her field and will allow her to continue to do so in the future.

Based on the documentation in the record, [the Petitioner] clearly established that this criterion has been met, and USCIS erred in finding otherwise.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities or professional or business organizations.”⁴ The Petitioner does not specifically indicate her achievements and significant contributions; identify the peers, governmental entities or professional or business organizations; and elaborate or discuss the “documentation in the record.” Furthermore, the Petitioner does not explain how the Director erroneously erred in deciding this criterion.

Notwithstanding the above, in response to the Director’s request for evidence, the Petitioner only referenced an “expert opinion” letter for this criterion. The record reflects that the Petitioner submitted a letter from Dr. J-A-L-, Department of Civil and Environmental Engineering at University. The letter, which mainly discusses *Dhanasar*’s three-prong analytical framework, summarized the Petitioner’s educational background, indicated a research project, and listed her professional experience. However, the letter does not show that the Petitioner has been recognized for her achievements and significant contributions to the industry or field. The letter does not provide specific

² *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).

³ The Petitioner does not contest the Director’s decision relating to her eligibility as an advanced degree professional. Therefore, we consider this issue waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

⁴ *See also 6 USCIS Policy Manual, supra*, at F.5(B)(2).

information identifying the Petitioner's achievements and explaining how her contributions rise to a significant level. Without detailed, probative information, the letter does not sufficiently demonstrate her recognition for achievements and significant contributions to the industry or field. Accordingly, the Petitioner did not establish that she meets this criterion.

For the reasons discussed above, the Petitioner did not establish eligibility for at least three criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A) – (F). Therefore, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification.⁵ In addition, we need not reach a decision on whether, as a matter of discretion, she is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues.⁶ 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.

⁵ See also 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

⁶ 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 alternate issues on appeal where an applicant is otherwise ineligible).