



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

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

In Re: 29700635

Date: FEB. 14, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the trucking industry, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner qualifies for EB-2 classification as an advanced degree professional. The Director further determined that the Petitioner did not establish a waiver of the required job offer 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.

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 a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2) 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).

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).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will 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.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates that:

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

II. EB-2 CLASSIFICATION

The primary issue we will address is whether the Petitioner established his eligibility for EB-2 classification. At the time of filing, and in his response to the Director’s request for evidence, the Petitioner claimed eligibility for EB-2 classification as a member of the professions holding an advanced degree. On appeal, the Petitioner maintains that the previously submitted evidence also demonstrates his eligibility for EB-2 classification as an individual of exceptional ability.

A. Member of the Professions Possessing an Advance Degree

As evidence of his eligibility for EB-2 classification as an advanced degree professional, the Petitioner has submitted:

- Bachelor’s diploma issued by [REDACTED] upon his completion of a degree program in “technological machines and equipment” in 2008.
- A bachelor’s diploma supplement issued by the same institution which lists the courses the Petitioner completed over a four-year period.
- A letter from the Petitioner, in his capacity as sole owner of [REDACTED], indicating he has worked as a certified transportation professional for this entity from February 2018 through March 2023.
- A self-employment verification letter from the Petitioner’s accountant (who is also the accountant for [REDACTED]).

¹ 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).

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

³ 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).

- A letter from the chief executive officer of [redacted] who states the Petitioner worked for this company as a CDL lease truck operator between March and October 2020.
- A letter from the president of [redacted] who states the Petitioner worked as a contracted owner operator/truck driver for this company from October 2020 through March 2023.
- An evaluation of academic qualifications and work experience prepared by an assistant professor at [redacted] who states that the Petitioner has the equivalent of a master's degree. This determination is based on the evaluator's conclusion that the Petitioner holds the foreign equivalent of a bachelor's degree followed by five years of post-baccalaureate experience gained with [redacted] between February 2018 and April 2023, when the evaluation was prepared.

The Director concluded that the Petitioner did not establish that he qualifies for EB-2 classification as an advanced degree professional. Specifically, the Director determined the record does not reflect that the Petitioner holds either (1) a United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree, or (2) the foreign equivalent of a bachelor's degree followed by five years of post-baccalaureate experience. The Director acknowledged the submitted evaluation of the Petitioner's qualifications but observed that the evaluator's determination that he possessed the required five years of experience was based, in part, on experience the Petitioner accrued after the filing of the petition on October 23, 2022. Therefore, the Director determined that the evidence did not establish the Petitioner's eligibility for the requested classification at the time of filing, as required by 8 C.F.R. § 103.2(b)(1).

On appeal, the Petitioner maintains that the evidence of record demonstrates that he holds the foreign equivalent of a bachelor's degree followed by five years of progressive experience, and that the Director erred in concluding otherwise. However, he does not address the Director's determination that he neither claimed nor established that he had accrued five years of work experience prior to the date of filing. Upon review of the evidence listed above, in addition to the Petitioner's resume and the ETA Form 750 labor certification application that accompanied the petition, we note that the Petitioner has claimed no relevant employment experience prior to February 2018. Therefore, based on his own statements, the record reflects that the Petitioner had accrued no more than four years and eight months of relevant work experience as of October 2022.

Further, the Petitioner did not provide sufficient evidence to corroborate his claimed continuous full-time employment in the transportation industry since February 2018. For example, the record establishes that the Petitioner established [redacted] as a single member limited liability company in [redacted] 2018, but there is insufficient evidence to corroborate that he immediately began providing full-time services as a "certified transportation professional" from that date. Further, although he submitted a letter from [redacted] indicating he started working as a contracted driver in October 2020, he also provided his contractor operating agreement with that company, which was not executed until June 2021. Similarly, the Petitioner's resume indicates that he has provided services as a leased operator with [redacted] since May 2018, but he provided a subcontractor and equipment lease agreement with this company that was executed in October 2019. Additional evidence would therefore be needed to address these apparent inconsistencies and to document his history of full-time employment in this field.

For the reasons discussed, the Petitioner did not establish that he is eligible to be classified as a member of the professions holding an advanced degree under section 203(b)(2) of the Act.

B. Individual of Exceptional Ability

On appeal, the Petitioner contends that the previously submitted evidence demonstrates his eligibility for EB-2 classification as an individual of exceptional ability under section 203(b)(2) of the Act. Specifically, the Petitioner maintains that he meets four of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii).

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A) requires an official academic record showing that the individual 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. As noted, the Petitioner provided evidence that he has a bachelor's degree from an institution in Uzbekistan that satisfies this criterion.

The Petitioner also maintains that he has a commercial driver's license (CDL) and therefore has "a license to practice the intended profession" as required under the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). The record contains multiple references to the Petitioner's CDL and we note that he indicated in the initial filing that a copy of his license was attached. However, the Petitioner did not in fact include a copy of his CDL in the initial filing or with his response to the Director's RFE. Therefore, he has not established that he satisfies this criterion.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(D) requires evidence that the individual has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. On appeal, the Petitioner asserts that "based on the documentation previously submitted and/or attached hereto, [he] clearly established that this criterion has been met." The Petitioner previously provided copies of his IRS Forms 1040, U.S. Individual Income Tax Return, with Schedule C, Profit or Loss from Business, for the years 2019, 2020, 2021 and 2022, which show the gross receipts and net profit earned by [redacted]. However, this evidence alone does not demonstrate how the Petitioner's earnings are comparably higher than the earnings of others in his field. Information concerning salaries or other remuneration for similarly employed persons is necessary to support the Petitioner's claim that he has commanded remuneration for his services that demonstrates exceptional ability. This type of comparative evidence has not been provided. Accordingly, the Petitioner did not meet his burden to demonstrate he meets this criterion.

Finally, the Petitioner asserts that he provided evidence of his membership in a professional association and therefore meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). The Petitioner submitted evidence of his membership in the [redacted], which is described in the record as "the international trade association representing the interests of independent owner-operators and professional drivers on all issues that affect truckers." The Petitioner provided screenshots from the [redacted] website that discuss the mission, history, and activities of the association, but did not include information regarding the association's specific membership requirements in support of his claim that it is a "professional association." The reference to "professional drivers" on the association website is insufficient. The term "profession" includes 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 into the

occupation.⁴ 8 C.F.R. § 204.5(k)(2). Here, the Petitioner has not offered sufficient evidence to establish the professional nature of the association of which he is a member. Accordingly, we cannot conclude the Petitioner meets this criterion.

In summation, the Petitioner has not established that the evidence of record satisfies at least three of the exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we need not determine whether the record establishes the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in his field. *See* 8 C.F.R. § 204.5(k)(2). Furthermore, because the record does not establish that the Petitioner satisfies at least three of the exceptional ability criteria, it does not establish that he qualifies for second-preference classification as an individual of exceptional ability.

Based on the foregoing discussion, the Petitioner has not demonstrated that he is eligible for EB-2 classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability.

III. NATIONAL INTEREST WAIVER

The Director also denied the petition based on a conclusion that the Petitioner did not establish his eligibility for the requested national interest waiver. We acknowledge that the Petitioner contests this determination in his appellate brief. However, the Petitioner has not established that he meets the threshold requirement of eligibility for the underlying EB-2 classification. Because this issue is dispositive, we need not address whether he is eligible for, and merits as a matter of discretion, a national interest waiver. Accordingly, we reserve this issue. *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).

IV. CONCLUSION

The record does not establish that the Petitioner qualifies for second-preference classification as a member of the professions holding an advanced degree or 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.

⁴ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.