



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

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

In Re: 30371666

Date: MAR. 07, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and a chief executive officer (CEO), seeks second preference immigrant classification (EB-2) 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 EB-2 immigrant 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 Petitioner did not establish his qualification for the EB-2 classification as a member of the professions holding an advanced degree. The Director further concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, 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.

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 definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

In order to qualify as an individual of exceptional ability in the sciences, the arts, or business, 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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner satisfies these initial requirements, we then consider the entire record to determine whether the individual has a degree of expertise significantly above that ordinarily encountered. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121-22 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *see generally* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual>.

The Director concluded that the Petitioner did not establish his qualification for the underlying EB-2 classification as a member of the professions holding an advanced degree. Although the Petitioner claimed that the combination of his high school diploma and 30 years of work experience in the field equals a bachelor's degree in business administration, the Director stated that "in order to have a bachelor's degree under INA § 203(b)(2), the beneficiary must have a single degree that is a foreign equivalent degree to a U.S. baccalaureate degree or a U.S. baccalaureate degree."

On appeal, the Petitioner claims that the academic credential evaluation on record "takes into account the professional experience of the candidate by analyzing formal education, training programs, and work experience" and "clearly shows that the petitioner has the equivalent of a US degree of Bachelor in Business Administration." We reviewed the evaluation from the GEO Credential Services that states: "[c]onsidering that a High School diploma followed by more than five years of full-time work experience in the field of Business Administration is equivalent to a U.S. Bachelor of Business Administration, it is my expert opinion that [the Petitioner] with a High school Diploma and 30 years of experience, has the equivalent of the U.S. degree of Bachelor of Business Administration."

However, this evaluation is not in accord with the relevant regulation. The regulation at 8 C.F.R. § 204.5(k)(2) refers to "degree" in the singular, indicating that an advanced degree equivalency requires a degree that is either a single U.S. bachelor's degree or a single foreign equivalent of a U.S. bachelor's degree, without combining educational credentials or combining education with experience. As the plain language of the regulation demonstrates that an advanced degree equivalency requires a single degree, rather than a combination of experiences or lesser education credentials, we will not grant any evidentiary weight to the evaluation presented on record. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (stating that we may give less weight to or decline to accept an expert opinion that is not in accord with other information or is in any way questionable).

Without evidence demonstrating his high school diploma alone is the foreign equivalent degree to either a U.S. baccalaureate degree or a U.S. advanced degree, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.<sup>1</sup>

The Petitioner further asserts that "[w]hile a bachelor's degree can provide valuable skills and knowledge, it is not a strict requirement for entrepreneurship" and "[m]any successful entrepreneurs have achieved their goals without holding a bachelor's degree." However, the Petitioner has not cited to any regulations or policies demonstrating that entrepreneurs are specifically exempt from the

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<sup>1</sup> The Petitioner included two college transcripts but indicated that he did not obtain degrees from these institutions and did not provide any evidence of diplomas.

requirements in 8 C.F.R. § 204.5(k)(2) of possessing a single foreign degree equivalent to a U.S. baccalaureate degree.

In addition, the Petitioner claims USCIS “recognized” that he “satisfied at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.” However, there is no such indication in the record. The Petitioner sought to qualify for the EB-2 classification only as an advanced degree professional, not as an individual of exceptional ability, and did not submit any relevant evidence with the initial filing or in response to the Director’s request for evidence (RFE) to qualify himself as an individual of exceptional ability. On appeal, the Petitioner does not submit any documentary evidence establishing that he satisfied at least of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. Therefore, the Petitioner has not established that he is an individual of exceptional ability.

Based on the foregoing, the Petitioner has not established that he qualifies for the second-preference classification either as a member of the professions holding an advanced degree 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 and reserve our opinion regarding whether the record satisfies the criteria set forth in the precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that “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).

**ORDER:** The appeal is dismissed.