



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

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

In Re: 23037554

Date: FEB. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an airline pilot, 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 Texas Service Center denied the petition, concluding the Petitioner had not established eligibility as an individual of exceptional ability and 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.

The Director found the Petitioner met three of the five claimed categories of evidence. Specifically, the Director indicated the Petitioner satisfied the following criteria: official academic record at 8 C.F.R. § 204.5(k)(3)(ii)(A), ten years of experience at 8 C.F.R. § 204.5(k)(3)(ii)(B), and license at 8 C.F.R. § 204.5(k)(3)(ii)(C). Because the Petitioner fulfilled at least three criteria, the Director conducted a final merits determination, concluding the Petitioner did not possess a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, which in this case, is as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). 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. A petitioner 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.*

On appeal, the Petitioner argues he also meets the criteria for salary at 8 C.F.R. § 204.5(k)(3)(ii)(D) and recognition at 8 C.F.R. § 204.5(k)(3)(ii)(F). Because the Director concluded the Petitioner met at least three criteria, we need not make a determination on the Petitioner's other two claimed criteria. However, we will evaluate the totality of the evidence in the context of the final merits determination below.

The Petitioner provided evidence showing he completed [redacted] [redacted] from [redacted] School in Brazil in 2005. In addition, the Petitioner submitted various pilot courses and training programs between 2012 and 2017. However, the Petitioner did not demonstrate how these professional achievements set him apart from other airline pilots to show a degree of expertise significantly above that ordinarily encountered in his field. He did not, for example, establish how his completion of trainings and courses compared to the overall education of other pilots.

Further, the Petitioner offered documentation of employment history as a pilot: [redacted] (2014 – Present), [redacted] (2007 – 2018), [redacted] (2007 – 2014), and [redacted] (2002 – 2007). Moreover, the Petitioner operated his own services company from 2011 to the present. Although the evidence indicates his approximately 20 years of experience as a pilot, the Petitioner did not show how he has obtained a level of expertise significantly above other pilots. For instance, the Petitioner did not demonstrate how his experience related to other pilots, nor did he establish the significance of his employment.

In addition, the Petitioner presented evidence of his pilot licenses for Brazil and the United States. Again, the Petitioner did not establish how the possession of his pilot licenses places him among pilots with a degree of expertise significantly above that ordinarily encountered in his profession. The Petitioner did not explain or show how his licenses differentiates him from the average licensed pilot.

As it relates to his salary, the Petitioner submitted his fiscal year 2018 Brazilian income tax return reflecting wages from [redacted] as well as earnings from his own business. While the evidence shows his income from three employment sources, the Petitioner did not demonstrate the significance of his wages, nor did he establish he earned income commensurate with a degree of expertise significantly above that ordinarily encountered in his field. He did not, for example, compare his earnings, either individually or collectively, to other pilots in Brazil.

Finally, in regard to his recognition and contributions, the Petitioner provided some letters attesting to his employment. While the letters confirm his employment and praise his skills and abilities, they do not discuss his specific achievements and significant contributions to the industry or field. Rather, the letters make broad statements and limit their discussions to his individual employers, such as “he served our collective interests and his work contributions were paramount to our success” [redacted]

[redacted] and “he has made fundamental contributions that have increased revenues to the company”  
[redacted] The lack of detailed information does not place the Petitioner at a level of expertise significantly above that ordinarily encountered in his field.

The record as a whole, including the evidence discussed above, does not establish the Petitioner’s eligibility as an individual of exceptional ability. Although the Director determined that the Petitioner satisfied three of the initial categories of evidence, the record does not demonstrate that the Petitioner has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).<sup>1</sup> As such, we need not reach a decision on whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver. Accordingly, we reserve this issue.<sup>2</sup> 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.

---

<sup>1</sup> See also 6 USCIS Policy Manual, *supra*, F.5(B)(2).

<sup>2</sup> 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 alternative issues on appeal where an applicant is otherwise ineligible).