



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

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

In Re: 25843984

Date: MAR. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not had not established 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.

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

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). In addition, "profession" is defined as of 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.¹ 8 C.F.R. § 204.5(k)(3).

Furthermore, "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

¹ 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.

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.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. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner stated that he started computer science courses at [REDACTED] in Brazil, but he did not present an official academic record showing that he received a degree from the university. In addition, the Petitioner submitted a certificate from Data Kbyte® stating that he completed instruction in “Windows 98, Word, Excel, and Access.” He also provided a certificate from Google AdWords indicating that he successfully completed “the Google AdWords certification exams.” These certificates, however, do not constitute a U.S. advanced degree, a U.S. baccalaureate degree, or their foreign equivalent. Accordingly, the record supports the Director’s determination that the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

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).

B. Exceptional Ability

The Petitioner asserted that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

In the appeal brief, the Petitioner maintains that he also meets the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), the membership criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), and the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). After reviewing the evidence, we agree with the Director that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

An official academic record showing that the alien 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. 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner presented his certificate from Data Kbyte® stating that he completed instruction in “Windows 98, Word, Excel, and Access.” He also provided his certificate from Google AdWords indicating that he successfully completed “the Google AdWords certification exams.” These certificates, however, are not official academic records. Nor has the Petitioner provided evidence demonstrating that Data Kbyte® or Google AdWords constitute “a college, university, school, or other institution of learning.” For the aforementioned reasons, we withdraw the Director’s determination that the Petitioner meets this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

As evidence of his ten years of business experience, the Petitioner submitted a May 2021 letter from [redacted] indicating he worked for the organization in “a full-time position, from February 2009 to July 2016 as a Manager” and “remotely on a full position, from August 2016 to November 2018 as a Consultant and Advisor.” The Petitioner also presented a May 2021 letter from [redacted] stating that he served as a full-time chief operating officer and manager from February 2006 until January 2009. These two letters listing the Petitioner’s business operations experience are sufficient to demonstrate that he has at least ten years of full-time experience in his occupation. Accordingly, the Petitioner has established that he meets the requirements of this regulatory criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

The letter from [redacted] stated that the Petitioner received R\$ 252,000 in 2015, R\$ 176,400 in 2016, R\$ 131,000 in 2017, and R\$ 120,100 in 2018. In addition, the letter from [redacted] indicated that he received monthly compensation in the amount of R\$ 20,000 from February 2006 until January 2009. The Petitioner also submitted information from Salario BR listing the

corresponding salaries for entrepreneurs at small, medium, and large organizations at various levels of experience.⁴

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of their claimed exceptional ability relative to others working in the field.⁵ The Petitioner states on appeal that the information from Salario BR provides “the average salaries in small and medium sized businesses at different managerial positions.” The Director’s decision noted that the Salario BR survey was limited to a sampling of 100 salaries and that this criterion requires the Petitioner to demonstrate a salary indicative of exceptional ability and not just “above average” earnings in his occupation. Additionally, the Salario BR information listed a “data validity” period from “12/26/18 to 12/26/19.” Because the Salario BR information is contemporaneous with only one of the years for which the Petitioner has documented his salary (2018), he has not shown that the former provides a proper analysis of his pre-2018 earnings. Here, the Petitioner has not offered documentation showing that his earnings are indicative of exceptional ability relative to others in the field. Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated he meets this regulatory criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

The Petitioner contends that his membership in the [redacted] meets this criterion. As evidence for this criterion, the Petitioner provided his [redacted] membership card and a declaration from the organization’s chairman stating that [redacted] is “a scientific, non-profit society that has the following purposes: the study, development, promotion, and dissemination of open, flexible and distance learning.” The chairman’s declaration further asserted that registration in the organization requires “a level of deep knowledge, by training and/or working time in the minimum area of 10 years’ experience.” The Director indicated that the aforementioned information was not corroborated by the [redacted] membership bylaws or other official association documents. The evidence presented is not sufficient to demonstrate that [redacted] has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association.⁶ Accordingly, we agree with the Director’s determination that the Petitioner has not satisfied this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F).

As evidence for this criterion, the Petitioner provided a Certificate of Achievement (February 2018) in recognition of his “exceptional achievement and contribution to the [redacted]”⁷ The Petitioner also submitted a letter from [redacted] Chairman of the City Council of [redacted] discussing the Petitioner’s involvement with the [redacted]

⁴ This salary survey was based on a population of 220 salaries with a sampling of 100 salaries.

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

⁶ The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “Profession means one of 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 in the occupation.”

⁷ This certificate was signed by [redacted] Chairman of the City Council of [redacted]

he has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *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).

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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.