



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

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

In Re: 28963349

Date: JAN. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur and general business manager, seeks employment-based second preference (EB-2) immigrant classification 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 record did not establish that the Petitioner is an individual of exceptional ability or 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.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate eligibility 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.

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

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. *See* 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policymanual>.

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 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.

II. ANALYSIS

The Director determined that the Petitioner met the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), but not (E) and (F).³ The Director also conducted a final merits determination and concluded that the Petitioner’s education and work experience was insufficient to establish she is an individual of exceptional ability in her field or industry. The Director noted that because the Petitioner obtained her master’s degree in business administration after the filing of the petition, it would not be considered in a final merits determination because she must establish her eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

On appeal, the Petitioner asserts that the Director overlooked evidence of her “significant acclaim during her **eighteen (18) years** of experience, specifically based on her solid professional background.” (emphasis in the original). She further contends that she meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F), and that for the final merits determination, she has provided “clear and concrete evidence demonstrating” that she is a general manager of exceptional ability.

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

The Director determined the evidence was insufficient to demonstrate that the Petitioner is a member of a “professional” association within the meaning of 8 C.F.R. § 204.5(k)(2), which defines profession as “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 into the occupation.” The list of occupations in section 101(a)(32) of the Act includes architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. On appeal, the Petitioner asserts that using “strict definitions and requirements overlooks the diverse backgrounds and educational qualifications of association members, as well as the significance of active participation and commitment to professional growth.” The Petitioner submitted proof of payment for her “New Member Order” for the [REDACTED] [REDACTED] dated December 2022. However, because the evidence postdates the filing of the petition, we will not include it in our evaluation of this criterion. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1).

³ As the Petitioner does not claim that she meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C) and (D), we will not address them here.

The Petitioner also provided documents titled “Membership Admission Conditions” and “Admission criteria,” to establish that her membership in the [redacted] satisfies this criterion. The Petitioner’s evidence describes the admission criteria and responsibilities for [redacted] members as, for example: “1. [an] enterprise [with] good economic yield, with an annual turnover above 50 million yuan; 2. industries with an innovative characteristic and government support enjoy a priority, such as: technological innovation, culture and tourism, intelligent manufacturing, new energy and new material, biotechnology, etc.; 3. The enterprise must be founded above 3 years; and 4. The founder holds a track record of entrepreneurship above 5 years.” The Petitioner also provided her [redacted] “Membership” document, which shows that she is Vice President of the [redacted]. Based on [redacted] membership criteria, it appears that members must run a business, but are not required to hold a baccalaureate degree or otherwise meet the definition of profession as described in 8 C.F.R. § 204.5 (k)(2). As such, we agree with the Director that the Petitioner’s evidence is insufficient to meet the plain language of 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).

The Petitioner asserts that the submitted recommendation letters are relevant, probative, and from knowledgeable individuals in the field attesting to her significant contributions. Although the letters describe her in positive terms as a professional whose “contributions have been essential to the industry,” they do not explain her “significant contributions” with sufficient detail. *See Matter of Chawathe*, 25 I&N Dec. at 376. For example, one writer describes the Petitioner as a great leader who earns her team members’ trust and asserts that she is a “top professional” in their field. Another explains that he has known the Petitioner since 2012, when he worked with her during a product launch, and that they continued to cooperate on many projects after that. He describes her as having the “most enthusiasm” and “the strongest execution ability” and that the Petitioner helped him solve a business problem with a product launch because she understood his needs, and took the time to help. He also states that he found her to be a “serious” and “responsible professional,” and that in 2014, he founded a company and continues to collaborate with her. Another writer states that he has known the Petitioner since 2008 when they worked for the same company in different departments and enjoyed a “natural and successful business understanding.” He describes her as “well organized, responsible, decision and detail oriented” and states that after leaving that company, they worked together another time. He opines that she is a “natural leader,” “with great ability to influence people and manage a team.” While having a good reputation is a positive attribute, it is not sufficient to establish she has received recognition for her achievements and significant contributions to the industry or field. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76.

In addition to the letters, the Petitioner submitted documents to show that while working at the company, [redacted], she won the following awards: the team award for best industry innovative marketing (2015); the team [redacted] Award (2016); the individual Silver Award (2016); and the [redacted] team award for Best Effect Marketing Innovation (2017). We have carefully considered this evidence; however, it lacks probative value for several reasons. Importantly, the Petitioner has not sufficiently established that she was the actual recipient of any of the awards. For instance, rather than submitting clear copies of the actual award, she provided distant photographs of herself (and others) holding an award with what appears to be self-provided descriptions. In addition, although she

provided an accompanying printout that purports to be from [redacted] website regarding the 2016 Silver Award, the information states that [redacted] “won the ‘Silver Award in the Network Category,’” for “the case of [redacted] Superb Precision Digital Marketing,” with no mention of the Petitioner in the body of the article. While we acknowledge the grainy photograph of the group of five people, with four of them holding an award, the accompanying caption, which states that the Petitioner “won the ‘Silver Award at the Network Category,’” appears to contradict the information from [redacted] website.⁴ Similarly, the information regarding the [redacted] awards indicates that “[redacted] won the Bronze Award for Best -Effective Marketing Innovation Award with the promotion case of [redacted] [redacted] new car launch,” while the caption for the photograph states that “the team led by [the Petitioner] helped [redacted] win the best effect marketing [i]nnovation award of meihua.com.” In other words, the awards appear to have been given to [redacted], and do not single her out for recognition of achievement and significant contributions to her field or industry. The Petitioner must resolve such ambiguities and contradictions in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the Petitioner did not provide evidence from the issuing entity or independent news coverage to demonstrate the basis for the granting of the awards. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76. Without more, we cannot conclude that the Petitioner has established her (as opposed to her employer’s) receipt of the claimed awards or, more importantly, that they are evidence of recognition of her achievements and significant contributions to the field or industry as required by the plain language of this criterion. *Id.*

Because the Petitioner has not established that she meets three of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination. Nevertheless, we advise that we have reviewed the record in the aggregate, and it does not support a finding that the Petitioner has established that she possesses a degree of expertise significantly above that ordinarily encountered in her field.

III. CONCLUSION

As the record does not establish that the Petitioner qualifies for second-preference classification as an individual of exceptional ability, we decline to reach and hereby reserve the Petitioner’s arguments regarding her eligibility under the *Dhanasar* analysis. *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).

ORDER: The appeal is dismissed.

⁴ Further, given the information from [redacted] website that the “Silver Award” was given in recognition of the [redacted] case, we are also unable to determine if the claimed 2016 “team [redacted] Award” is a different award.