



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

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

In Re: 29460896

Date: JAN. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a project manager, 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.

To establish eligibility for a national interest waiver, a petitioner must 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 definition: “[e]xceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 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.*

Next, a petitioner must then demonstrate that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion¹, grant a national interest waiver if the petitioner shows:

- 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.

As indicated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Director determined the Petitioner’s qualification for only two criteria - 8 C.F.R. § 204.5(k)(3)(ii)(A) and 8 C.F.R. § 204.5(k)(3)(ii)(B).² On appeal, the Petitioner maintains his satisfaction for an additional category - 8 C.F.R. § 204.5(k)(3)(ii)(F). After reviewing the evidence, we conclude the record does not support a finding of his eligibility for at least three.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires “[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities or professional or business organizations.”³ The Petitioner contends his submission of recommendation letters shows his eligibility for this criterion. While the letters highlight various projects completed by the Petitioner and praise his professional abilities and personal traits, they do not indicate how he has been recognized for his achievements, nor do they explain how his contributions have risen to the level of “significant” consistent with this regulation. For instance⁴, A-B-M-C- described the Petitioner as “an excellent professional” and stated that he “has contributed significantly to the [] client, since through his experience in Upgrade projects he has been able to identify and anticipate situations . . . providing timely support to the client with the intention of minimizing risks, guiding the proper management of solutions” The letter, however, does not further elaborate and explain how the Petitioner’s achievements have been recognized or how his contributions have been considered “significant” to the industry or field.

Likewise, J-G-P-M- indicated a few projects he collaborated with the Petitioner and indicated that the Petitioner “was responsible of developers and functional team” and “was a key piece because of his deep knowledge.” Again, the letter does not show whether the Petitioner’s achievements have been recognized in the industry or field and how the Petitioner’s contributions have been viewed as “significant” to the industry or field. Similarly, A-P- described the Petitioner as “an outstanding and complete professional” without further expounding on any recognition the Petitioner received from his achievements or explaining whether the industry or field deems his contributions to be significant.

Here, the letters do not show how his contributions have impacted or influenced the field or industry in a significant manner beyond his employers. Without detailed, probative information, the letters do not sufficiently demonstrate his recognition for achievements and significant contributions to the industry or field. Accordingly, the Petitioner did not establish that he meets this criterion.

¹ *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).

² *See* the Director’s request for evidence.

³ *See also 6 USCIS Policy Manual, supra*, at F.5(B)(2).

⁴ Although we reference a sampling of letters, we have reviewed and considered each one.

The Petitioner did not demonstrate eligibility for any additional criteria on appeal thereby satisfying at least three criteria. Accordingly, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for exceptional ability classification.⁵ In addition, we need not reach a decision on whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues.⁶ 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.

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

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); 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 applicants do not otherwise meet their burden of proof).