U.S. Citizenship and Immigration Services

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

In Re: 42115079

Date: APR. 02, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a physiotherapist and entrepreneur, 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).

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner had not established eligibility for the underlying EB-2 immigrant classification. The matter is now before us on appeal pursuant to 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 qualify for the underlying EB-2 visa classification, petitioners must establish they are advanced degree professionals or individuals of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) 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. *See generally* 6 USCIS Policy Manual F.5(D)(1), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the petitioner is recognized as having the requisite degree of expertise and will substantially

[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). The Petitioner has not submitted comparable evidence.

benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If petitioners establish eligibility for the underlying EB-2 classification, they 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 the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] 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.

*Matter of Dhanasar*, 26 I&N Dec. at 889.

## II. ANALYSIS

The Petitioner was awarded a degree in physiotherapy from the [redacted] in Brazil in 2019. The Petitioner's resume and supporting letters indicate that after obtaining her degree, she worked as a physical therapist from 2019 to 2021. The Petitioner stated on her Form I-140, Immigrant Petition for Alien Workers, she intends to work as a physical therapist and entrepreneur. She includes a business plan that discusses a startup company she intends to create that "will act in the field of [h]ealth and [b]eauty and [w]ellness services."

The Petitioner claimed she meets the requirements for the underlying EB-2 visa classification as an individual of exceptional ability in the sciences, arts, or business.[3] In dismissing the petition, SCOPS determined the Petitioner only satisfied two of the six regulatory criteria under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) and the Petitioner's evidence in its totality did not show that she is recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Because the Petitioner had not demonstrated her eligibility for the underlying classification, which is dispositive of the petition, SCOPS did not analyze whether the Petitioner was eligible for a national interest waiver under the *Dhanasar* framework.

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[3] The Petitioner did not assert she is an advanced degree professional in the record below, nor does she claim on appeal that SCOPS erred in not analyzing this alternative basis of eligibility. We therefore deem the issue of whether the Petitioner is an advanced degree professional waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)) (providing any ground of ineligibility that is not raised on appeal is waived).

A. Exceptional Ability

As discussed above, exceptional ability is analyzed under a two-step process. First 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)(A)-(F), which the Petitioner here has not done.

SCOPS determined the Petitioner met the academic criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the membership in professional associations criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). On appeal the Petitioner asserts that SCOPS erred in determining she had not satisfied the criterion at § 204.5(k)(3)(ii)(C), requiring license or certification for a particular profession or occupation, and § 204.5(k)(3)(ii)(F), requiring evidence of recognition for achievements and significant contributions to the industry or field.[4]

We agree that the Petitioner has an official academic record showing a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability, satisfying 8 C.F.R. § 204.5(k)(3)(ii)(A).

We also conclude that the Petitioner has demonstrated she has a license to practice the profession or certification for a particular profession or occupation, satisfying 8 C.F.R. § 204.5(k)(3)(ii)(C). The Petitioner provided sufficient evidence, including her identification card indicating she is a physical therapist registered with the Regional Council of Physical Therapy and Occupational Therapy (CREFITO), a certificate stating she is registered with CREFITO's 8th Region, and credible evidence explaining CREFITO's role, demonstrating she is certified to practice physical therapy in Brazil.

However, we withdraw SCOPS' determination that the Petitioner satisfied 8 C.F.R. § 204.5(k)(3)(ii)(E) as the Petitioner has not provided sufficient evidence of her membership in professional associations to meet the regulatory requirement. The term "profession" is defined at 8 C.F.R. § 204.5(k)(2) as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." In support of this criterion the Petitioner submitted a declaration from the Association of Physiotherapists of Brazil indicating the Petitioner has been a member since April 2023, and a description from its website of the history of the association and its partnerships. However, the record does not contain documents describing the requirements for membership in the association. As a result, the Petitioner has not demonstrated that a U.S. bachelor's degree or foreign equivalent is a requirement for membership.

Further, we agree with SCOPS that the Petitioner has not satisfied 8 CFR § 204.5(k)(3)(ii)(F) as she has not provided sufficient evidence of her recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations to meet the regulatory requirement. The Petitioner submitted evidence that she attended two physiotherapy symposiums while obtaining her degree. Her documents indicate that she attended as a listener for one symposium and as an academic for another symposium. She does not explain how

[4] In the record below, the Petitioner claimed she satisfied the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (D), which requires evidence of at least ten years of fulltime experience in the field and that she commanded a salary or other remuneration for services demonstrating exceptional ability. SCOPS determined she did not provide sufficient evidence to meet the two criteria and she does not claim SCOPS erred in its determination on appeal. We therefore deem the issue of whether she satisfies these two criteria waived.

her attendance at the symposiums amounts to an achievement or significant contribution to the field as recognized by her peers. She also submitted an expert letter, dated August 2023, from an assistant professor at the [redacted] and recommendation letters from her colleagues. The expert letter focuses on her eligibility for the national interest waiver but does not provide details regarding her achievements or significant contributions to the field. While the recommendation letters describe, for example, her responsibilities and skills with certain therapies and contributions to her team, they similarly do not provide details regarding her achievements or contributions to the field. On appeal, the Petitioner highlights parts of the recommendation letters claiming her therapy outcomes "go beyond routine professional duties" and "demonstrate meaningful contribution with real-world impact." However, neither the appeal brief nor the record below discusses or corroborates how the Petitioner's achievements and contributions have affected the field of physical therapy. For example, the brief does not explain how her "real-world impact" would be considered an achievement or contribution to the field as recognized by peers, governmental entities, or professional or business organizations. The Petitioner also argues that SCOPS applied a heightened evidentiary standard by requiring her contributions to have industry-wide implementation. We, however, conclude SCOPS properly explained that the Petitioner did not meet her burden in demonstrating her achievements and significant contributions to the field. For these reasons, the Petitioner has not satisfied this criterion.

Accordingly, we agree with SCOPS that the Petitioner has not established three out of the six evidentiary criteria of 8 C.F.R. § 204.5(k)(3)(ii). As a result, the Petitioner has not satisfied step one of the exceptional ability analysis, and we need not proceed to a final merits determination. *See generally* 6 *USCIS Policy Manual*, *supra,* at. F.5(D)(1), (explaining, as guidance *if* a person meets at least three of the six categories of evidence, USCIS *then* conducts a final merits determination) (emphasis added). However, we will discuss the final merits to address the Petitioner's assertions on appeal.

B. Final Merits

In a final merits review, we determine whether the petitioner, by a preponderance of the evidence, has demonstrated that the beneficiary has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *See generally* 6 *USCIS Policy Manual*, *supra,* at. F.5(B)(2), (explaining, as guidance, how to evaluate evidence in the exceptional ability context). In reviewing the totality of the evidence, we consider the quality of the evidence. *Id.* Further, "the petitioner must demonstrate that the beneficiary is above others in the field; qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that ordinarily encountered." *Id.*

In reviewing the final merits, SCOPS explained that physical therapists entering the occupation need a Doctor of Physical Therapy (DPT) degree and are required to be licensed in the United States.[5] SCOPS then determined that the Petitioner did not demonstrate she has her DPT degree and is licensed to practice in the United States and therefore has not established that she possesses a degree of expertise significantly above that ordinarily encountered in the field of physical therapy.

[5] The Department of Labor's *Occupational Outlook Handbook* entry relating to physical therapists states physical therapists entering the occupation need a DPT degree and that all states require physical therapists to be licensed. *See* Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Physical Therapists, https://www.bls.gov/ooh/healthcare/physical-therapists.htm).

On appeal, the Petitioner asserts that SCOPS "short-circuited the adjudication" and did not provide a full final merits review. The Petitioner also asserts SCOPS improperly conflated professional practice regulations with federal immigration eligibility criteria. We disagree. SCOPS properly weighed and considered the entry level requirements for the occupation in determining the Petitioner's education and experience did not demonstrate a degree of expertise significantly above that ordinarily encountered in her field. *See generally* 6 *USCIS Policy Manual*, *supra,* at. F.5(B)(2)(providing, as guidance, the petitioner must demonstrate that the beneficiary is above others in the field). Further, mere possession of a degree, diploma, certificate or similar award from a college, university, school, or other institution of learning is not by itself considered sufficient evidence of exceptional ability. *See* INA 203(b)(2)(C).

In addition, we note that the Petitioner did not explain in the record below or on appeal how the totality of her evidence demonstrates she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. We remind the Petitioner that she bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Based on our review, it is not self-evident how the Petitioner's education and training, which does not consist of a DPT degree and licensure, limited experience of a few years in the occupation, and recommendation and expert letters, which do not corroborate that she possesses qualifications above most physical therapists, demonstrate in totality that she is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. We therefore conclude that the Petitioner has not met her burden to establish by a preponderance of the evidence that she has the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

## III. CONCLUSION

The Petitioner has not established that she qualifies for the underlying EB-2 classification. Without such a showing, the Petitioner cannot qualify for the national interest waiver of the job offer attached to that classification.

**ORDER:** The appeal is dismissed.

**NOTICE:** This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.