U.S. Citizenship and Immigration Services

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

In Re: 42250800

Date: APR. 15, 2026

Appeal of Service Center Operations Decision

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

The Petitioner, an entrepreneur in the field of cybersecurity and crisis management, 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 record did not establish 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 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, a petitioner must establish they are an advanced degree professional or an individual 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(B)(2), 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 they are 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. Section 203(b)(2)(A) of the Act.

[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).

If a petitioner establishes 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.

*Id.*

## II. ANALYSIS

On the Form I-140, the Petitioner indicated that her job title is "chief executive officer [(CEO)]" and provided a business plan which states that her proposed endeavor is to establish a cybersecurity and crisis management company in [redacted], Florida. She explained that her company's services "will include risk assessment, security plan development, team training, and the implementation of preventive measures."

The Petitioner claims her qualification for the underlying EB-2 visa classification as an individual of exceptional ability. The Petitioner must 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). SCOPS determined the Petitioner met all six of the regulatory criteria. Therefore, SCOPS proceeded to a final merits determination. However, we disagree. For the reasons discussed below, the Petitioner does not demonstrate she meets at least three categories of evidence and does not qualify as an individual of exceptional ability.[3]

### A. Official Academic Record

This criterion requires 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. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A). The Petitioner submitted her foreign diploma in design and implementation of computer networks and academic transcripts from the [redacted]. Based upon the submitted evidence, we concur with SCOPS that the Petitioner has met this criterion.

[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] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

B. Ten Years of Full-Time Experience

This criterion requires evidence in the form of a letter from current or former employers showing that the alien has at least 10 years of full-time experience *in the proposed occupation*. *See* 8 C.F.R. § 204.5(k)(3)(ii)(B). As noted above, the Petitioner's proposed endeavor is working as a CEO for her cybersecurity and crisis management company. In her business plan, she explained that her "role involves overseeing all major corporate decisions, managing overall operations, and allocating resources efficiently." The employment letters submitted do not sufficiently establish the Petitioner's employment was related to the occupation outlined in proposed endeavor. For instance, the letter from [redacted] states that the Petitioner worked as a full-time support analyst and her "work involved complete administration of Windows servers, including installation, configuration, maintenance and optimization of essential services such as Active Directory, DNS, DHCP, GPOs, WSUS and File Services." In addition, the letter from [redacted] states that the Petitioner worked as a full-time support technician providing "[a]nalysis of technical and operational requirements with a focus on the stability and performance of server and systems infrastructure." Here, the duties do not establish duties of a CEO that oversees corporate decisions, manages overall operations, and allocates resources efficiently.

Accordingly, the Petitioner has not established eligibility under this criterion, and we withdraw SCOPS' determination to the contrary.

C. License or Certification

This criterion requires evidence of a "license to practice the profession or certification for a particular profession or occupation." 8 C.F.R. § 204.5(k)(3)(ii)(C). In support, the Petitioner submitted several training certificates for completing information technology (IT) related courses with [redacted] and [redacted] However, the Petitioner does not explain how these certificates amount to certification for a particular profession or occupation. Without more, the Petitioner has not established that she meets this criterion, and we withdraw SCOPS' conclusion to the contrary.

D. Salary or Other Remuneration

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.[4] 8 C.F.R. § 204.5(k)(3)(ii)(D). The Petitioner asserts that her exceptional ability is in the field of IT and cloud solutions. In support of this criterion, the Petitioner submitted her tax returns from 2021 through 2024, along with a letter from [redacted] that states she made R$14,101.41 a month as a cloud solution architect. The Petitioner also provided a Salary Study from Salary Sync, which concludes that the Petitioner made a total of R$234,835,03 per year in 2024 as a cloud solution architect for [redacted] Salary Sync explains that this remuneration is composed of salary and wages, bonuses, benefits, stock and equity compensation and commissions. Salary Sync also references salary data from Glassdoor, Jooble, Vagas, and Geekhunter. The record, however, does not include documentary evidence from Glassdoor, Jooble, Vagas, and Geekhunter's salary data that Salary Sync references. While Salary Sync does provide website links, they do not include the information

[4] *See 6 USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

referenced in the report. For instance, the Glassdoor website states that the page could not be found and the Jooble website provides salary information for 2026 and not 2024. Moreover, the Vagas website link does not provide any salary information and the salary data from Geekhunter is for the position of cloud solution engineer and not for a cloud solution architect. Here, the Petitioner has not presented sufficient documentation showing that her earnings are indicative of exceptional ability relative to others working in her field.

Without evidence demonstrating that she has commanded a salary, or other remuneration for services, which demonstrates her exceptional ability, the Petitioner has not established that she meets this regulatory criterion. We therefore withdraw SCOPS' determination to the contrary.

E. Membership in Professional Associations

This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). Further, 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." The Petitioner claimed eligibility based on her memberships with the Association for Computing Machinery (ACM), Information Systems Audit and Control Association (ISACA), Instituto Joule, and Microsoft Alumni Network. However, the Petitioner has not asserted, and the record does not otherwise demonstrate, that ACM, ISACA, Intituto Joule, and Microsoft Alumni Network requires their members to possess the equivalent of a U.S. bachelor's degree. Consequently, the Petitioner has not shown that ACM, ISACA, Intituto Joule, and Microsoft Alumni Network are professional associations within the meaning of the regulations at 8 C.F.R. § 204.5(k)(2) and (3)(ii)(E). As such, the Petitioner has not demonstrated she meets this criterion, and we withdraw SCOPS' conclusion to the contrary.

F. Additional Criteria and Eligibility

As the Petitioner has only met one criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), we need not determine whether she satisfies the remaining criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) as she would still not meet at least three of the six criteria as required and reserve our opinion on this criterion, as well as any final merits determination. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "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). As this issue is dispositive of the Petitioner's appeal, we likewise decline to reach and hereby reserve the remaining issue before us of her eligibility for a waiver of the job offer requirement in the national interest.

## III. CONCLUSION

The Petitioner does not meet at least three of the regulatory criteria to establish exceptional ability and is consequently ineligible for EB-2 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.