U.S. Citizenship and Immigration Services

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

In Re: 30556525

Date: APR. 24, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a business administrator and entrepreneur, seeks classification as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he qualifies as an individual of exceptional ability or that he merits a national interest waiver as a matter of discretion. 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 first 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.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). 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 meets the requirements for exceptional ability. *See generally* 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 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.*

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then demonstrate 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 USCIS may, as matter of discretion,[1] 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.

The Petitioner, a business administrator and entrepreneur, seeks to open and direct the operations of an automotive parts company in the State of Massachusetts. In denying the petition, the Director first determined that the Petitioner was not an individual of exceptional ability. Specifically, the Director concluded that although the Petitioner met at least three of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii), the record lacked evidence that the Petitioner's professional achievements demonstrated a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Director went on to discuss the Petitioner's eligibility for a national interest waiver, applying the three-prong framework set forth in *Dhanasar*, and concluded that although the Petitioner established that his endeavor has substantial merit, he had not established that his endeavor has national importance, that he is well positioned to advance his endeavor, or that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

Regarding the underlying EB-2 classification, the Director addressed the evidentiary deficiencies in the Petitioner's documentation in a final merits determination. Specifically, the Director acknowledged the Petitioner's education and experience, as well as his acquisition of a professional certification as a commercial representative from the State Regional Council of Sales Representatives in the State of Bahia and his membership in the Regional Council of Commercial Representatives, but concluded that the Petitioner did not establish by a preponderance of the evidence that he has achieved a degree of expertise that is significantly above that ordinarily encountered in the sciences, arts, or business. *See generally* 6 *USCIS Policy Manual*, *supra,* at F.5(B)(2).

On appeal, the Petitioner acknowledges that "USCIS expressly recognized the Petitioner meets at least three of the six criteria," but does not address or dispute the Director's final merits determination that he does not qualify as an individual of exceptional ability. As noted above, and as previously stated both in the Director's request for evidence (RFE) and in the denial, meeting the minimum requirements by providing at least three types of initial evidence is not sufficient to establish that the Petitioner is an individual of exceptional ability, but instead is only the first step. *See id.* Here, the second step of the process is based on a comprehensive qualitative analysis of the evidence, which the Director performed.

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

When dismissing an appeal, we generally do not address issues that are not raised with specificity on appeal. An issue not raised on appeal is waived. *See, e.g., 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)). Since the Petitioner did not address or contest the Director's final merits determination that he has not achieved a degree of expertise that is significantly above that ordinarily encountered in the sciences, arts, or business, we deem the issue waived.

The Petitioner has not established the threshold requirement of eligibility for the underlying EB-2 classification as an individual of exceptional ability.[2] Accordingly, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility for a for a discretionary waiver under the *Dhanasar* analytical framework.[3] *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 an applicant is otherwise ineligible).

**ORDER:** The appeal is dismissed.

[2] The Petitioner did not assert eligibility for EB-2 classification as an advanced degree professional.

[3] We note that the Director thoroughly reviewed, discussed, and analyzed the Petitioner's claims under the *Dhanasar* prongs, including his submission of industry reports and articles relating to the importance and growth of the automotive industry, his job experience and skills, and the economic impact of his ownership of a company. Although the Director determined that the Petitioner's proposed endeavor has substantial merit, the Director explained how specific evidence within the record, such as the Petitioner's business plan, industry reports, and letters of support, did not establish that the Petitioner's proposed endeavor to work as commercial director and manager of his auto parts company has national importance, that he is well positioned to advance his endeavor, or that it would be beneficial to the United States to waive the requirements of a job offer and, thus, of a labor certification.