U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40384685

Date: DEC. 5, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner is an avionics specialist who seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver (NIW) 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).

After other procedural steps, SCOPS issued a notice of intent to deny (NOID) the Form I-140, Immigrant Petition for Alien Workers (petition), and then denied it concluding that the record did not establish that the Petitioner qualified for the underlying visa classification, nor did he merit a discretionary waiver of the job offer requirement in the national interest. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of exceptional ability individuals. *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.

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, 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. USCIS' decision to grant or deny an NIW is discretionary in nature. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the First, Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals).

II. EXCEPTIONAL ABILITY UNDER THE EB-2 CLASSIFICATION

SCOPS determined that the Petitioner was not eligible for the EB-2 classification as an individual of exceptional ability. And we agree with that determination. SCOPS determined the Petitioner satisfied the exceptional ability criteria related to an official academic record showing he has qualifying credentials in the area of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(A), and a license or certification to practice for a particular profession or occupation found at 8 C.F.R. § 204.5(k)(3)(ii)(C). But they did not agree with the Petitioner that he satisfied any of the remaining criteria. On appeal the Petitioner only contests SCOPS' determination that he did not submit evidence from current or former employers showing that he has at least ten years of full-time experience in the occupation in which he seeks to work in the United States. *See* 8 C.F.R. § 204.5(k)(3)(ii)(B).

The Petitioner's main argument in the appeal is that SCOPS applied "an overly literal, piecemeal review of the submitted documentation, rather than a holistic consideration of the totality of the evidence which is the standard of review for the case." To be clear, neither the regulations nor USCIS policy mandate that SCOPS must piece together different facts from sporadic materials to blend the Petitioner's claims under the ten years of full-time experience requirement like a mosaic. It is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of P. Singh*, 27 I&N Dec. 598, 605 (BIA 2019); *Matter of Rehman*, 27 I&N Dec. 124, 125 (BIA 2017). Commensurate with that burden is the responsibility for explaining the significance of offered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Filing parties should not submit various forms of evidence without notifying the agency of the specific documentation that corroborates their claims within such material, as doing so places an undue burden on the appellate body to search through the documentation without the aid of the filing party's knowledge. *Nolasco-Amaya v. Garland*, 14 F.4th 1007, 1012–13 (9th Cir. 2021) (citing *Toquero v. INS*, 956 F.2d 193, 196 n.4 (9th Cir. 1992)); *Nazakat v. INS*, 981 F.2d 1146, 1148 (10th Cir. 1992).

It is the filing party's responsibility to inform us of what errors the lower entity committed and how their claims and evidence satisfy which eligibility requirements. *Nolasco-Amaya v. Garland*, 14 F.4th at 1012–13; *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 599 (5th Cir. 2015); *S.E.C. v. Thomas*, 965 F.2d 825, 827 (10th Cir. 1992); *see also Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d

1533, 1540 n.3 (10th Cir. 1996) (concluding that where the evidence in the record is voluminous, it is imperative that an appellant provide specific references to record); *Uli v. Mukasey*, 533 F.3d 950, 957 (8th Cir. 2008) (citing to *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) and noting when a case includes voluminous background materials, it is necessary to specifically identify the material one relies on to come to their conclusion). The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).

Summarizing the Petitioner's remaining appellate claims, he alleges SCOPS: (1) overlooked or undervalued the [redacted] payroll manager's letter submitted with the NOID response; (2) applied an overly rigid interpretation of the term "full time"; (3) ignored comprehensive duties detailed in the NOID response employment letters and in an opinion letter; and (4) failed to account for the inherent nature of his work over a long period of time.

Within the first item, we do not agree that SCOPS overlooked or undervalued the [redacted] payroll manager's letter submitted with the NOID response as they specifically acknowledged the letter and credited it. That letter addressed the Petitioner's employment between 2014 and 2016, and SCOPS acknowledged those approximately two years of employment indicating the letter provided his functions or job duties, and they considered it in conjunction with other positions he held with that same company. As a result, the Petitioner's allegation does not bear out.

Turning to item two, the Petitioner asserts SCOPS' "insistence on explicit 'full-time' language in every historical employment letter, particularly from international employers, is an overly rigid interpretation that the AAO has often found to be an abuse of discretion." The Petitioner did not provide any legal authority to substantiate his claim that the regulation's plain language requirements are overly rigid, nor did he provide evidence that this office "has often found [such an application of the regulation] to be an abuse of discretion." SCOPS followed the regulatory language when they evaluated the requirements for experience letters, and we find no error in their application.

Next, we address item three that SCOPS ignored comprehensive duties detailed in the NOID response employment letters and in an opinion letter. The Petitioner states that SCOPS' "claim of lacking 'any duties' in certain letters is refuted by the comprehensive body of evidence," and he generally points to numerous letters he offered within the NOID response. But this assertion is too vague. The Petitioner does not specify which letters they applied that quoted language to and the phrase does not appear in SCOPS' denial decision. The Petitioner's statement here also does not appear to account for some of SCOPS' analysis in which they stated some letters contained the requirements and "provid[ed] his functions" indicating some of the material was individually adequate for the timeframe specified in the letter, even if the letters did not establish he "has at least ten years of full-time experience in the occupation for which he or she is being sought." And regarding the opinion letter from Professor Sarder, that material does not satisfy the regulation's requirement that evidence under this criterion be "in the form of letter(s) from current or former employer(s)." As a result, we need not address this claim any further.

For the final item, the petitioner also indicates that due to the nature of his job that he has held over the years, that this "inherently implies full-time engagement" of his work activities and it defies common industry practice and logical inference to suggest that a professional of his caliber "would

operate in a consistently part-time or intermittent capacity." This assertion on the Petitioner's part is not supported with adequate evidence corroborating his claims. *Matter of G-C-I-*, 29 I&N Dec. 176, 178 (BIA 2025) (finding that unsupported assertions in an appellate brief are not facts or evidence and will not carry a filing party's burden of proof). It remains that he has not provided reliable evidence that meets his burden of proof as it relates to demonstrating he "has at least ten years of full-time experience in the occupation for which he or she is being sought" under 8 C.F.R. § 204.5(k)(3)(ii)(B).

And we take administrative note of two additional issues in the record. When we reviewed two letters from [redacted] in the NOID response, we observed that the functions listed for his positions as Line Maintenance Supervisor II and for Maintenance Technician 4 were virtually identical with the only difference being one bullet that was a statement about administration and not having to do with his duties. The letters were dated December 24, 2024, and December 30, 2024, and were authored by two different individuals in distinct positions within that company.

For the first issue, the Petitioner offers no explanation how two different positions in the same company—one at a supervisory level two ranking, and another without any indication of supervisory duties in the title—could have the same responsibilities. While we understand that English may not have been each author's first language, the Petitioner offers no foreign language version nor any indication why the functions are effectively identical. This can be an indication that someone other than the authors drafted some portions of the letters. The identical language in the submitted letters undermines their probative value. Identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. U.S. Dep't of Homeland Sec.*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. at 376.

And finally, we reiterate SCOPS' noted concerns with some of the translations of foreign language documents in the record. For instance, the certified translations for the documents in the NOID response associated with [redacted] are identical to include the illegible and partially visible signature of the translator. It therefore appears the Petitioner provided identical translation certificates that do not identify the document they are translating, and they only make reference to "the attached Document, pertaining to [the Petitioner]." This undermines the reliability of the translated material, and the Petitioner has provided documentation for the record that he did not demonstrate was probative and sufficiently supportive of his eligibility claims here.

III. NATIONAL INTEREST WAIVER

As we explain above, a petitioner's eligibility under an EB-2 classification are independent of the requirement that they merit a discretionary waiver of the job offer requirement "in the national interest." Because the Petitioner has not established that he has qualified under the claimed EB-2 classification, he is not eligible for an NIW and further discussion of *Dhanasar's* three prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of K-S-H-*, 29 I&N

Dec. 307, 311 (BIA 2025) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

IV. CONCLUSION

The Petitioner has not demonstrated that he qualifies as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought.

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 who are 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.