U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40781776

Date: JAN. 07, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an entrepreneur in artificial intelligence (AI) powered robotics and control systems, 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 the record did not establish that the Petitioner qualified for classification as an individual of exceptional ability and a discretionary waiver of the job offer requirement, and thus a labor certification, was not merited upon application of the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AA)O 2016). 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 establish eligibility for a national interest waiver, a petition 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest, but only if a petitioner categorically establishes eligibility in the EB-2 classification.

The regulation at 8 C.F.R. § 204.5(k)(2) defines exceptional ability as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." To demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii):

(A) 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;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

If the above standards do not readily apply, the regulations permit a petitioner to submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

But meeting at least three criteria does not, in and of itself, establish eligibility for this classification. We will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If we conclude that a petitioner has an advanced degree or is of exceptional ability such that they have established their eligibility for classification as an immigrant in the EB-2 classification, we evaluate the national interest in waiving the requirement of a job offer and thus a labor certification.

Whilst neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, *see supra*. *Dhanasar* states that USCIS may as a matter of discretion grant a national interest waiver of the job offer, and thus of the labor certification, to a petitioner classified in the EB-2 category if they demonstrate that (1) the noncitizen's proposed endeavor has both substantial merit and national importance, (2) the noncitizen is well positioned to advance the proposed endeavor, and (3) that on balance it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

A. Categorical Ineligibility for EB-2 Classification

The Petitioner is an entrepreneur in artificial intelligence (AI) powered robotics and control systems seeking to demonstrate eligibility in the EB-2 classification based on his exceptional ability.[1] A petitioner must demonstrate expertise significantly above that ordinarily encountered to show that he or she is of exceptional ability. We agree with SCOPS' conclusion that the Petitioner is not of exceptional ability and therefore categorically ineligible for the EB-2 permanent immigrant classification.

The Petitioner claimed he met two of the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). He submitted in support of his claim to the criterion contained at 8 C.F.R. § 204.5(k)(3)(ii)(A) a copy of his bachelor's degree in aeronautics engineering with transcripts from the [redacted], India. And the Petitioner claimed he met the criterion contained at 8 C.F.R. § 204.5(k)(3)(ii)(F) based on his status as a founder of a company [redacted] raised over $1.7 million in venture capital funding and was selected by Y Combinator, an incubator/start up accelerator, for investment and mentorship. The Petitioner contended his claim to [redacted] achievements as a founder also served as comparable evidence to satisfy criteria contained at 8 C.F.R. §§ 204.5(k)(3)(ii)(B), (C), and (E) that he averred did not readily apply.[2] And the Petitioner concluded he satisfied the final merits determination as the totality of the evidence supporting his claimed criteria contained at 8 C.F.R. § 204.5(k)(3)(ii) demonstrated he possessed a degree of expertise significantly above that ordinarily encountered in his field of robotics and control systems.

SCOPS issued a request for evidence (RFE) wherein it concluded the Petitioner met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A) but did not meet the remaining criteria either directly or with comparative evidence. The Petitioner timely responded to the RFE.

SCOPS denied the petition. In concluding the Petitioner did not demonstrate categorical eligibility for permanent immigrant classification in the EB-2 category, SCOPS decided the Petitioner met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F). But SCOPS concluded that the comparable evidence the Petitioner submitted initially with the petition and in response to the RFE applicable to criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (C) did not meet the relevant criteria. And, because the Petitioner's response to the RFE did not address his claim of eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(E), SCOPS concluded he did not meet the criterion based on the applicable evidence and contentions contained in Petitioner's initial submission. Because this meant the Petitioner did not meet the required three of the six criteria, the Director was not required to and did not proceed with a final examination of the record in totality to evaluate if the Petitioner had a degree of expertise significantly above that ordinarily encountered in her field to merit a determination of exceptional ability.

We agree with the Director's ultimate conclusion that the Petitioner did not demonstrate eligibility for EB-2 permanent immigrant classification. But we do not agree with SCOPS and withdraw its conclusion

[1] The Petitioner does not claim eligibility for, nor does he submit evidence seeking, classification in the EB-2 permanent immigrant category as an advanced degree professional.

[2] The Petitioner did not claim eligibility under the criterion contained in 8 C.F.R. § 204.5(k)(3)(ii)(D) pertaining to if he commanded a salary, or other remuneration for services, which demonstrates his exceptional ability.

that that Petitioner met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(A).[3] So, upon de novo review, we conclude the Petitioner does not meet three out of six of the criteria contained at § 204.5(k)(3)(ii) for the reasons set forth below.

1. 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; 8 C.F.R. § 204.5(k)(3)(ii)(A).

The record contains a copy of the Petitioner's bachelor of technology in aerospace engineering (with a minor in computer science and engineering) from [redacted] with transcripts. The Petitioner's credential is a degree and the [redacted] is an accredited Indian institution of higher education. For the Petitioner's aerospace engineering (with a minor in computer science and engineering) degree to meet the criteria, it would have to be demonstrated by a preponderance of the evidence that the degree was relating to the area of his proposed endeavor in robotics and control systems. *See generally* 6 *USCIS Policy Manual* F.5(D)(1), https://www.uscis.gov/policy-manual.

The Petitioner stated his degree required coursework in numerous technical fields that this "equipped him with a strong analytical and technical foundation in his area of exceptional ability." It is a petitioner's burden to demonstrate the connection between his or her exceptional ability and the proposed endeavor. *Id.* USCIS considers whether the area of exceptional ability and the proposed endeavor share skillsets, knowledge, or expertise. *Id.* We note that a degree in aerospace engineering follows a rigorous program of technical education. We also recognize that the technical educational program consisting of a degree in a particular discipline can equip an individual to perform job duties in a variety of disciplines not directly connected to that particular discipline. Or in other words, an individual with a degree in aerospace engineering is not forestalled from utilizing the knowledge gained in that technical education program to work in a different field such as robotics and control systems provided aerospace engineering and robotics and control systems relate to one another by shared skillsets, knowledge, and expertise.

But in the instant matter it is not preponderantly evident from the evidence in the record how the list of coursework provided by the Petitioner relates to robotics and control systems by shared skillsets, knowledge, and expertise. Whilst the Petitioner's list of coursework no doubt contains numerous science, technology, engineering, and mathematics disciplines, it is not adequately patent from the evidence in the record how those disciplines relate to the field of robotics and control systems as a shared skillsets, or what knowledge and/or expertise they share or have in common such that we it could preponderantly be demonstrated that they relate to one another. Or in other words, the Petitioner's general assertion that the coursework he completed to earn his degree "allows him to develop cutting-edge robotics and control systems that integrate complex engineering principles with advanced artificial intelligence" is not preponderantly supported by material, relevant, or probative evidence in the record.

[3] Analysis of the Petitioner's eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(F) would serve no legal benefit because he has not demonstrated he met any two out of the four remaining criteria he claimed for the reasons discussed herein. So, we reserve the issue of the Petitioner's eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(F). *See INS v. Bagamasbad*, 429 U.S. at 25.

We cannot determine from the evidence in the record how aerospace engineering relates to endeavors proposed in the field of robotics and control systems through a shared skillset, knowledge, or expertise. So, we will withdraw SCOPS' finding to the contrary and conclude the Petitioner has not met the criteria contained in 8 C.F.R. § 204.5(k)(3)(ii)(A).

2. Comparable Evidence to Meet Remaining Claimed Criteria

The Petitioner contends that the eligibility criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(B), 8 C.F.R. § 204.5(k)(3)(ii)(C), and 8 C.F.R. § 204.5(k)(3)(ii)(E)[4] do not readily apply to his occupation. So, pursuant to 8 C.F.R. § 204.5(k)(3)(iii), he submitted purportedly comparable evidence to establish his eligibility.[5] A petitioner must identify how the comparable evidence supplants the inapplicable criteria and tends to demonstrate a petitioner's exceptional ability. General assertions that objective criteria as contained in the regulations do not readily apply are not acceptable. *See generally* 6 *USCIS Policy Manual*, F.5(B)(2), https://www.uscis.gov/policy-manual.

a. Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The Petitioner contends that the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) pertaining to evidence in the form of letter(s) from current or former employer(s) showing that the Petitioner has at least ten years of full-time experience in the occupation for which he is being sought does not readily apply to him because it "is outdated when applied to rapidly evolving industries such as robotics and control systems" which the Petitioner asserts "has existed for less than a decade."

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[4] SCOPS' RFE provided the Petitioner an opportunity to further explain how his comparable evidence met the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(E), but the Petitioner did not respond to the SCOPS' request in his response. The Petitioner has now newly raised his eligibility to meet 8 C.F.R. § 204.5(k)(3(ii)(E) with additional comparable evidence and assertions on appeal. But SCOPS' RFE provided the Petitioner with notice and a reasonable opportunity to address this ground which the Petitioner did not pursue. So, we will not consider the Petitioner's claim of eligibility under this ground on appeal as it has been abandoned. And even if the Petitioner had not abandoned his claim, we would still have concluded the Petitioner's comparable evidence did not demonstrate that he met this criterion based on the same rationale as discussed in our decision herein. Or in other words, participation in Y Combinator and solicitation of $1,700,000 in venture capital funding does not supplant the criteria describing membership in professional associations because Y Combinator's membership is limited to corporations, not individuals. And, even if we expanded Y Combinator's acceptance of member companies to extend to its founders, we would still conclude the criterion was not met because it is not sufficiently evident that founders of Y Combinator member companies are considered professionals as that term is defined in the regulations and statute. And, as it relates to solicitation of $1,700,000 in venture capital funding, the record does not convincingly support how raising venture capital funding is comparable to earning membership in a professional association.

[5] The record contains a printout of an almost 14-and-a-half-year-old USCIS web page dated August 2, 2011, that now appears on the world wide web as archived content containing "Employment-Based Second Preference Immigrant Visa Category Frequently Asked Questions Regarding Entrepreneurs and the Employment-Based Second Preference Immigrant Visa Category." Archived content is generally out of date but could contain some useful content. The Petitioner asserts that achievements such as a successful history of obtaining venture capital funding and past participation in incubators that have high evaluative standards for participation may serve as comparable evidence. But the printout the Petitioner submitted into the record also states that the focus on such comparable evidence will center on how it compares to the regulatory criteria it seeks to substitute. As discussed herein, the Petitioner's participation of the company he co-founded, [redacted] in Y Combinator and the company's solicitation of $1,700,000 in venture capital funding does not compare favorably to the criteria it attempts to supplant.

To supplant the criteria contained at 8 C.F.R. § 204.5(k)(3)(ii)(B) pertaining to evidence in the form of letter(s) from current or former employer(s) showing that the Petitioner has at least ten years of full-time experience in the occupation for which he is being sought, the Petitioner provided comparable evidence and averred that the participation of the company he co-founded, [redacted] in Y Combinator and its solicitation of $1,700,000 in venture capital funding are reflective of his exceptional ability.

The Petitioner contends that [redacted] participation in Y Combinator, which enjoys a reputation as a "prestigious startup accelerator," is an achievement creditable to him as he is [redacted] co-founder. The record contains a letter from [redacted] group partner, at Y Combinator. [redacted] states that Y Combinator is "an elite network of entrepreneurs and the application process for acceptance [to Y Combinator] is extremely competitive" because its most recent application batch consisted of 27,000 applying companies, of which 260 were accepted reflecting a one percent acceptance rate. [redacted] stated that [redacted] represented by the Petitioner and his co-founding team was accepted into Y Combinator "for their mission of creating teachable, endearing robots that can seamlessly integrate into households…for practical home assistance."

We conclude that participation in Y Combinator is not sufficiently comparable evidence to meet 8 C.F.R. § 204.5(k)(3)(ii)(B) pertaining to evidence in the form of letter(s) from current or former employer(s) showing that the Petitioner has at least ten years of full-time experience in the occupation for which he is being sought. In the first instance, Y Combinator accepts companies into its program, not individuals like the Petitioner. Whilst the Petitioner is a co-founder of [redacted] he was not accepted to participate in Y Combinator; [redacted] was accepted as a business entity. And Y Combinator is not limited to the field of robotics and control systems; it accepts companies for participation amongst a wide spectrum of different fields and industries. The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) seeks to establish a petitioner's exceptional ability in the specific occupation for which he is being sought. Moreover, the record does not sufficiently establish that the selective nature of admittance for participation in Y Combinator renders selection and participation in Y Combinator equivalent to the experiences and challenges an individual could document to demonstrate exceptional ability after 10 years of full-time employment experience with an employer in robotics and control systems.

b. A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The Petitioner also posits that the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C) pertaining to a license to practice the profession or certification for a particular profession or occupation does not readily apply to him because "professional licensing is not applicable to the field of AI-powered robotics." Consequently, he proposes that his status as a founder of a company, [redacted] that has raised over $1.7 million in venture capital funding and was selected by Y Combinator, an incubator/start up accelerator, for investment and mentorship as comparable evidence to meet the criterion.

Licenses and certifications show that a person has the specific knowledge or skill needed to do a job. A license, generally conferred by an official government body, confers legal authority to work in an occupation. A certification, whilst not always required to work in an occupation, generally requires demonstrating competency to do a specific job.

As discussed above, Y Combinator is an "incubator/start up accelerator" that caters to a wide variety of companies and does not exclusively cater to occupations in robotics and control systems. So, it is not sufficiently evident how participation in Y Combinator after its selection process, as a founder of the actual selected participating company, would demonstrate specific knowledge, skill, or competence in robotics and control systems comparable to professional licensure.

And we do not conclude that the $1,700,000 in venture capital funding helps the Petitioner successfully claim eligibility under this criterion. Venture capital is an investment or business transaction. Moreover, venture capital funding was provided as an investment or business transaction to [redacted] and not the Petitioner. But, even if we credited the Petitioner for the venture capital raise on behalf of [redacted] we would still conclude that it did not support the Petitioner's claim to this criterion. The record does not persuasively establish that an investment or business transaction involving venture capital denotes specific knowledge, skill, or competence in the robotics and control systems field.

III. CONCLUSION

The Petitioner has not established eligibility in three of the six criteria contained at 8 C.F.R. § 204.5(k)(3)(ii). So, he cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). And 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. In addition, we need not reach a decision on whether, as a matter of discretion, the Petitioner is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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 alternate issues on appeal where an applicant is otherwise ineligible). The appeal is dismissed for the above-mentioned reasons, with each considered as an independent and alternate basis for the decision.

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.