U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40734187

Date: JAN. 21, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an environmental engineer and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of extraordinary 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).

SCOPS denied the petition, concluding that the Petitioner did not establish 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(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

[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.

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

SCOPS determined the Petitioner submitted documentation satisfying at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). However, upon a final merits review, it determined the evidence in its totality did not show that the Petitioner 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. SCOPS, therefore, concluded the Petitioner had not established his eligibility for the underlying classification and did not analyze whether the Petitioner was eligible for a national interest waiver under the *Dhanasar* framework.[3]

According to SCOPS, the Petitioner met the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), and (E) which, in general terms, require an official academic record showing a degree relating to the area of exceptional ability, letters demonstrating at least ten years of full time experience in the occupation, a license to practice the profession, and membership in professional associations. According to the Petitioner, SCOPS did not properly consider his evidence of remuneration and recognition for achievements under 8 C.F.R. § 204.5(k)(3)(ii)(D) and (F). We agree with SCOPS that the Petitioner has established 8 C.F.R. § 204.5(k)(3)(ii)(A) and (C) and has not established 8 C.F.R. § 204.5(k)(3)(ii)(D) and (F). However, we withdraw SCOPS' determination that the Petitioner's evidence satisfies the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(B) and (E).

The Petitioner plans to work as an environmental engineer and establish a consulting and forestry management company, committed to addressing environmental challenges through sustainable land

[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); *see generally* 1 *USCIS Policy Manual, supra,* at E.8(A)(2) n.20 (providing, as guidance, the national interest waiver element of a petition seeking classification under section 203(b)(2)(B) of the Act is discretionary).

[3] SCOPS determined without analysis that the Petitioner is not an advanced degree professional. On appeal, the Petitioner only asserts his eligibility as an individual of exceptional ability. 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)) (Any ground that is not raised on appeal is waived.)

management and innovative forestry solutions. He completed a degree in forest engineering in 2017 in Brazil and included, along with his academic record, an evaluation claiming his degree is the foreign equivalent of a bachelor of science degree in forestry in the United States. He also submitted documentation evidencing he has been registered as a forest engineer with the [redacted], governed by Brazil's [redacted] since 2017 and that this registration is required by law to perform engineering or forestry activities in Brazil. Based on this information, the Petitioner has established he 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, as required under 8 C.F.R. § 204.5(k)(3)(ii)(A) and a license to practice the profession or certification for a particular profession or occupation, as required under 8 C.F.R. § 204.5(k)(3)(ii)(C).

However, as noted, we withdraw SCOPS' determination with respect to 8 C.F.R. § 204.5(k)(3)(ii)(B) and (E). The Petitioner has not met the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(B) as he has not submitted sufficient evidence showing he has at least ten years of full-time experience in the occupation. According to 8 C.F.R. § 204.5(g)(1), evidence relating to qualifying experience or training shall be in the form of letters from current or former employers and shall include, in relevant part, a specific description of the duties performed by the petitioner. The Petitioner claims to have started working in the forestry field prior to obtaining his degree in 2017. One employer letter dated November 2024, provides the Petitioner began working as an intern full time in 2009 doing forest inventory digitization and moved on to work as a map designer, lecturer, and coordinator of environmental courses before leaving in 2012. A second employment letter, also dated November 2024, provides the Petitioner worked as a managing partner and "CEO" from 2013 to 2015. Neither of the letters provide detail explaining how the Petitioner's work as an intern and CEO demonstrate his experience in the occupation. A third letter, dated September 2024, generally provides the Petitioner was the owning partner and a forestry engineer from July 2015 to 2024. The letter lists eight duties performed by the Petitioner during this nine-year period, including his role of financial manager, team manager, and overseer of forestry projects. Here again, the letter does not provide detail explaining the Petitioner's duties. We also note that the letter claims he began work as a forestry engineer in 2015, which would have been two years prior to completing his degree and obtaining his license, which he asserts is necessary to working in the occupation. Based on the record, the Petitioner has not sufficiently established he has at least ten years of full-time experience in the occupation.

The Petitioner also has not satisfied 8 C.F.R. § 204.5(k)(3)(ii)(E) as he has not demonstrated his membership in professional associations. 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." The Petitioner submitted evidence of his membership in the Council on Forest Engineering (COFE). He claimed in the record below that COFE membership requirements include, for instance, a valid engineering license, continuing education requirements, and a demonstration of technical qualifications. However, the record does not contain documents describing the requirements for membership in COFE. Moreover, the exhibit the Petitioner references in support of his assertions contains information on licensing requirements for [redacted] and [redacted]. As a result, the Petitioner has not demonstrated he is a member of a professional association.

On appeal, the Petitioner asserts SCOPS erred in determining he had not established the requirements at 8 C.F.R. § 204.5(k)(3)(ii)(D) and (F). The Petitioner has not satisfied 8 C.F.R. § 204.5(k)(3)(ii)(D) as he has not submitted sufficient evidence that he commanded a salary, or other remuneration for services demonstrating exceptional ability. On appeal, the Petitioner argues he demonstrated that his salary is six to seven times that of an average environmental engineer. In the record below, the Petitioner submitted tax documents for years 2022 and 2023, which reflect his income as "a sole proprietor or employer owner" and did not explain how this salary is representative of his exceptional ability as a forestry engineer. He also included two 12-month service agreements for a company for which he is listed as representative. The agreements do not break down the services by cost or explain what portion of the contractual amount would be for the Petitioner's work in the area of exceptional ability. The Petitioner then provided salary data for a forest engineer, but without evidence of his specific salary for services within the area of exceptional ability, we do not have information to compare this data. As a result, the Petitioner has not provided sufficient information to establish this regulatory requirement.

The Petitioner also has not satisfied 8 CFR § 204.5(k)(3)(ii)(F) as he has not provided sufficient evidence of his recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. In support of this regulatory requirement, the Petitioner submitted a certificate of appreciation for participating in a lecture in 2011 and a certificate of participation in an exhibition, but he did not explain the significance of these certifications and how they amount to achievements in the industry. In addition, he submitted recommendation letters from peers complimenting his competence, responsibility, professionalism and letters from clients praising his work, but the letters do not describe the Petitioner being recognized for achievements or significant contributions in the industry or field. The Petitioner also submitted two articles dated 2020 and 2021, titled "[redacted]" and "[redacted]" which were printed from a website and contains no information on authorship. The Petitioner did not explain the significance of the articles or their content on the field or industry. Further, the articles are only a few paragraphs long, do not contain any citations to research, and do not discuss any personal research performed or novel findings by the Petitioner. The record also does not contain information on the publisher of the articles, such as its readership and recognition by the field. The Petitioner also submitted a "[redacted]" dated April 2025, awarded to the Petitioner for his evangelistic outreach and dedication and commitment to spreading faith. On appeal, the Petitioner argues that this recognition is formal government recognition and is not routine accolade. However, this commendation does not demonstrate his contributions to the industry or field. For these reasons, the Petitioner has not satisfied this regulatory requirement.

Accordingly, the Petitioner has not established three out of the six evidentiary criteria of 8 C.F.R. § 204.5(k)(3)(ii) to satisfy step one of the analysis, and we therefore withdraw SCOPS' determination to the contrary. The Petitioner has therefore not established his eligibility for the underlying visa classification. However, because we are withdrawing SCOPS' determination on this step, we will conduct a final merits review of the evidence.

In a final merits review, we determine whether or not 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.*

SCOPS provided a final merits analysis and concluded the evidence in its totality did not show that the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. On appeal, the Petitioner argues that SCOPS overlooked and undervalued evidence and did not consider the record as a whole. The Petitioner also highlights that he has worked over 200 projects and has exceeded 93 million Brazilian reals (BRL) in financial benefits to his clients. He also claims to have influenced public-sector compliance frameworks and private-sector sustainability practices.

Based on our de novo review of the relevant evidence, which includes the Petitioner's education, recommendation letters, articles, training, licenses, income, and experience, the Petitioner has not established he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. The Petitioner has a forestry degree and has met the legal licensing requirements to work as an environmental engineer in Brazil. These are occupational requirements possessed by most members of the field and do not demonstrate a degree of expertise significantly above that ordinarily encountered. The Petitioner's letters in support of his experience in the field lack detail and he did not provide evidence of his salary as a forestry engineer to demonstrate his exceptional ability relative to others. Moreover, while he provided letters from clients and colleagues who recommend qualities such as his professionalism and competence, the letters do not discuss the Petitioner's contributions to the field. The letters do not speak to, as claimed by the Petitioner on appeal, the significance of the 200 projects he has worked on or explain how the Petitioner's financial contributions to his clients demonstrate his recognition for contributions or achievements in the field. Nor does his evidence corroborate his claims of having influenced the private and public sectors. Even if the Petitioner's claims of proceeds or effects to the industry were independently corroborated in the record, he has not provided context for how this demonstrates expertise significantly above that ordinarily encountered in the sciences, arts, or business.

We therefore conclude that the Petitioner's evidence in its totality does not show he has the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States as required under Section 203(b)(2)(A) of the Act. Without such a showing, the Petitioner has not established his eligibility for the EB-2 classification and cannot qualify for the national interest waiver of the job offer attached to that classification. We therefore reserve the issue whether the Petitioner merits a discretionary waiver of the job offer requirement "in the national interest." *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 alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that he qualifies for the underlying EB-2 classification, and, as a result, the national interest waiver of the job offer requirement attached to this 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.