U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37779611

Date: JUN. 06, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a robotics educator, 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 the Petitioner qualifies for EB-2 immigrant classification as an individual of exceptional ability. 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(K)(2). A U.S. bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

To determine eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(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 renumeration 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.

8 C.F.R. § 204.5(k)(3)(ii).[1]

Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] We then consider the totality of the material provided in a final merits determination and assess whether the record shows that the petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.[3] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe,* 25 I&N Dec. at 376.

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.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).
[2] *See generally* 6 *USCIS Policy Manual* F.5(B)(2), https: //www.uscis.gov/policy-manual.
[3] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. *See generally* 6 *USCIS Policy Manual, supra*, at F.5(B)(2).

Citizenship and Immigration Services (USCIS) may, as matter of discretion,[4] 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

A. Exceptional Ability

The Petitioner's proposed endeavor is outlined in his personal statement as follows:

> "My proposed endeavor is based on the knowledge and extensive experience gained as a teacher in computer science to develop and implement a successful STEM education model based on applied robotics and playful programming, (sic) an educational model is the set of rules and standards that are created to generate a knowledge structure through pedagogical approaches. In this case I will develop and implement the STEM approach for elementary, middle and high schools, in order to provide technological tools and strengthen STEM skills of children and adolescents who are in vulnerable situations or at risk for economic, ethnic or social reasons, so that they can successfully enter the technical labor market in the United States[.]
>
> My work will continue to support advances in my field through the creation of technology schools where STEM didactics, strategies and pedagogy can be implemented in the United States and additionally by providing advice and logistical and experiential support to schools that wish to implement this model for their students."

In reviewing the Petitioner's eligibility for the underlying EB-2 visa classification, SCOPS concluded that the evidence did not establish that he met the requisite three of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii) to demonstrate his eligibility as an individual of exceptional ability. Specifically, SCOPS determined that the Petitioner met the criteria concerning the degree or diploma relating to the area of exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A), and the ten years of full-time experience at 8 C.F.R. § 204.5(k)(3)(ii)(B). We need not disturb this finding. However, the Petitioner did not meet the requirements of two other criteria for which he submitted evidence, namely, membership in a professional association and recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business

[4] *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).

organizations under 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F), respectively. The Petitioner did not submit evidence for, or claim eligibility under the remaining criteria.

In the appeal brief, the Petitioner maintains that he meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(E) and (F). After reviewing the evidence, we agree with SCOPS that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E).

To meet this criterion, the Petitioner submitted a certificate from [redacted] We note that the certificates states that "[t]this certificate authorizes you to use the logo for as long as you remain an active member of [redacted]." SCOPS requested additional information that [redacted] was a professional association. In response, the Petitioner submitted a March 2023 letter from J-D-V-S-[5], the CEO and cofounder of [redacted] confirming that he received an honorary membership in the organization. In the letter, J-D-V-S- asserted that the Petitioner participated in [redacted] 2022 and became deserving of a "lifetime" membership for the good performance of his students. The Petitioner also submitted a Certificate of Existence and Legal Representation from the [redacted] Chamber of Commerce[6] for [redacted] which provided the company's date of enrollment and address; and a description of [redacted] objectives which was to "promote, support and execute projects for the development of scientific and technological training activities dedicated to informal education and technology . . .." In denying the petition, SCOPS noted that the Petitioner did not provide documentary evidence of his actual honorary membership such as a membership certificate or an identity card. Thus, SCOPS concluded that the evidence did not establish the exact date of when the Petitioner received the honorary membership or when the membership began. SCOPS further observed that the Petitioner did not provide evidence of by-laws for membership, or other evidence to show that RedColRE was formed for the purpose of providing a professional service and furthering a particular profession and the interests of individuals engaged in that profession.

On appeal, the Petitioner argues that [redacted] is a professional organization, SCOPS overlooked critical evidence, misinterpreted the nature of [redacted] and applied an unnecessarily restrictive standard to the evidence provided. Specifically, he asserts that [redacted] Certificate of Existence and Legal Representation issued by the Chamber of Commerce of [redacted] confirms its "official registration, along with its stated purpose of fostering scientific and technological development in educational contexts." He argues that [redacted] serves to promote professional development and collaboration in educational robotics which he claims SCOPS did not adequately address. He further argues that the honorary membership, as confirmed by the letter from J-D-V-S-, indicates that it was based on the Petitioner's professional contributions to robotics education, including his leadership during [redacted] 2022. Moreover, the Petitioner objects to SCOPS's concern regarding the absence of a specific membership certificate or identity card, and states that this imposes an evidentiary standard not required by regulation. He proffers that membership in a professional association can be evidenced through official correspondence, as provided; and that recognition as an

[5] We use initials to protect the privacy of individuals.
[6] Although we do not list all the evidence in the record, we consider all of it.

honorary member inherently reflects professional distinction. However, the preponderance of the evidence standard requires that the evidence demonstrate that the petitioner's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality."

We agree with SCOPS that the record does not include adequate evidence showing that RedColRE is a professional association as contemplated by regulation. The regulation at 8 C.F.R. § 204.5(k)(2) defines "profession" as any occupation having a minimum requirement of a U.S. bachelor's degree or foreign equivalent for entry into the occupation. The record does not show that this entity requires that its membership body be comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association. According to its website, there are two ways to become a member of [redacted] First, membership by contribution, which is open to professors, researchers and professionals who "actively contribute to the development of the network through projects, research, or technological development." Membership by contribution is free of charge. Second, regular membership, which requires the payment of an annual fee. Upon paying the fee, regular members gain access to all the benefits of the network based on their membership category. *See* https:[redacted] (last accessed May 19, 2025). Therefore, membership in [redacted] does not appear to be exclusively limited to professionals, rather it is open to individuals who are interested or engaged in robotics. Thus, there is insufficient evidence to demonstrate that the organization has a membership body comprised of individuals who have a U.S. baccalaureate degree or its foreign equivalent, or that the association otherwise constituted professional associations. The Petitioner must support his statements with independent, relevant evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without adequate evidence of the professional nature of this association, the Petitioner has not demonstrated his membership in a professional association, by a preponderance of the evidence.

> Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F).

To satisfy the plain language of the criterion, the Petitioner is required to demonstrate that he has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions.

In support of this criterion, the Petitioner points to the letters describing his qualities, experience, work accomplishments, potential business connections, communication skills and interpersonal relationships. However, as the Director correctly observed, this evidence does not demonstrate that he has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field.

On appeal, the Petitioner argues that he meets this criterion because he submitted 3 work experience letters, 4 letters of recommendation and 5 documents that demonstrate his contributions to the field through several projects he successfully carried out. We recognize the awards and media articles highlighting the robotics competitions. One article recounts the Petitioner's team's third place finish in the [redacted] in [redacted] MO. However, we note that the Petitioner has not established how these awards were a manifestation of significant contributions to the robotics industry or field.

Rather, the awards appear to recognize that the Petitioner's team's robotics skill was, in that place, and at that time, superior to other competitors. The Petitioner argues that his work in robotics education has advanced the field by inspiring innovation, developing curricula and achieving notable results in international competition. The letters of recommendation and work experience letters attest to the Petitioner's competence, valuable skillset, expertise and work contributions in the field of robotics education. The Petitioner is described as a fabulous educator, and an outstanding coach. He is noted to have strong analytical, interpersonal and leadership skills, and he is supportive of his fellow educators and colleagues. However, they do not provide information on how the Petitioner's experience in the field equates to achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. Moreover, the recommendation letters were not accompanied by any corroborative evidence of the impact of the Petitioner's work, beyond the work done for his employers and colleagues. USCIS may, in its discretion, use such letters as advisory opinions submitted by expert witnesses. However, USCIS is ultimately responsible for making the final determination of the individual's eligibility. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). Without documentation showing that the Petitioner has been recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field, USCIS cannot conclude that the Petitioner meets this criterion. In one of the letters from R-P-, a primary school principal, she states that the Petitioner left his mark on the school due to "his exemplary work and the excellence of his character." She explains as follows:

> "[The Petitioner] made a significant impact on our ICT program. First, he brought in quality programs and activities, such as the implementation of Carnegie Cyber Academy-style gamification, creation of Internet safety protocols for children, among many other programs and activities used to train students in concepts of digital citizenship and protection while using technology. [. . .]
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> By the end of the fifth grade, our students were programming robots to go through mazes and growing in the necessary collaborative skills to help them be successful on teams. He created an after-school robotics program that became one of the most popular offerings for primary students."

Here the "significant contribution" made was to his employer, the primary school, and not the industry or field broadly. Thus, this letter, like the others, does not establish how the Petitioner's skills as a robotics educator accomplished achievements and significant contributions to the industry or field, as required by 8 C.F.R. § 2014.5(k)(3)(ii)(F).

For the reasons set forth above, the evidence does not establish that the Petitioner satisfies at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. The Petitioner has not shown that he has satisfied the regulatory criteria and achieved the level of expertise required for exceptional ability classification. Accordingly, the Petitioner has not established eligibility for the underlying EB-2 immigrant classification. Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility for a national interest waiver under the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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 M-S-I-*, 29 I&N Dec. 61, 65 (BIA 2025) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The evidence does not establish that the Petitioner is eligible for classification as an individual of exceptional ability. Therefore, we will not reach whether he has established eligibility for a national interest waiver of the job offer requirement.

ORDER: The appeal is dismissed.