U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37337445

Date: JUN. 11, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a tax auditor, 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 Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver petition), concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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.

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 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,[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.

Id.

II. ANALYSIS

A petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business, in order to qualify for the underlying EB-2 visa classification. Section 203(b)(2)(A) of the Act. The Petitioner in this case claims that he meets at least three of the regulatory criteria for classification as an individual of exceptional ability. The Petitioner stated on his Form I-140 and ETA 750 Part B, Application for Alien Employment Certification, that his proposed endeavor is to work as a Chief Executive Officer (CEO). In his business plan, the Petitioner stated that he plans to establish a foreign trade consulting firm.

SCOPS denied the petition, determining that the Petitioner fulfilled only the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).[3] On appeal, the Petitioner does not address SCOPS's finding that he did not submit any evidence to demonstrate that he meets the license to practice criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).[4] The Petitioner asserts, however, that in addition to the academic record criterion and ten years of full-time experience criterion, he meets the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), the membership criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E), and the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). Upon de novo review of the record, we find that the Petitioner has not overcome the basis for denial.

[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).

[3] SCOPS also determined that the Petitioner did not demonstrate eligibility for EB-2 visa classification as an advanced degree professional because the educational evaluation he submitted shows that the degree he received in Brazil is the U.S. equivalent of an Associate of Science in System Analysis, which does not constitute an advanced degree under 8 C.F.R. § 204.5(k)(2). Since the Petitioner's filing before SCOPS and on appeal requests classification solely as an individual of exceptional ability in the sciences, arts, or business, this decision will focus on the criteria to establish exceptional ability.

[4] We, therefore, deem this issue to be waived and will not address this criterion further. Issues and prior eligibility claims not raised on appeal are 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).

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).

SCOPS determined that the Petitioner submitted evidence that reflects the Petitioner's earnings, but he did not provide evidence of comparison of a high salary or other remuneration to professionals of exceptional ability in the field. SCOPS noted that the Petitioner submitted the following evidence: Individual Tax Forms for the 2019, 2020, 2021, 2022, and 2023 calendar years; Glassdoor data for Federal Revenue Tax auditor salaries in Brazil; earning statements from September to December 2021 and January to November 2022; and civil compensation forms.

On appeal, the Petitioner asserts that as a tax auditor for the [redacted], he has earned an average monthly salary of R$ 34,654.86, which significantly surpasses the national average for his profession in Brazil. He states that in February 2023, his monthly earnings were publicly recorded at R$ 34,654.86, which illustrates an income level that aligns with the top tier of income earners in Brazil. Further, the Petitioner asserts that his income level places him within the top 1-2% of earners in Brazil for all professions in the country, which he contends, shows that he has skills and contributions that are valuable and rare. The Petitioner states that according to salary data from job search websites, Glassdoor.com and Vagas.com, the median salary for a tax auditor in Brazil is listed as R$ 24,844.00 and R$ 5,851.00, respectively. The Petitioner notes that while his salary is statutorily determined, he has received bonuses for his accomplishments.[5] The Petitioner also contends that the selection for the tax auditor position is highly competitive and selective, which he claims, further shows his exceptional abilities.[6]

To satisfy this criterion, the evidence must show that an individual has commanded a salary or remuneration for services that is indicative of their claimed exceptional ability relative to others working in the field. See 6 USCIS Policy Manual, supra, at F.5(B)(2). Here, the Petitioner has not offered documentation showing that his earnings are indicative of this exceptional ability. The Petitioner submitted evidence of his income and contends that it is well above the median salary for his occupation as a tax auditor, but this salary is not based on his indicated area of exceptional ability, foreign trade consultant; rather, it is based on his work as a tax auditor. For this reason, the Petitioner has not shown that he meets this criterion.

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

The Petitioner contends that his membership in two professional associations, [redacted] and [redacted], meets this criterion. SCOPS acknowledged that the Petitioner submitted evidence which demonstrates his membership with [redacted] and [redacted] since 2011 and 1993, respectively, but

[5] We note that a comparison of an individual's total remuneration including bonuses to the base salary of earnings is not persuasive evidence.

[6] In his appeal brief, the Petitioner states that he currently receives a monthly salary of R$40,810.80. As additional evidence, the Petitioner submits his earnings statements from August – October 2024. However, a petitioner must meet the eligibility criteria as of the date the petition was filed, in this case April 18, 2023. 8 C.F.R. § 103.2(b)(1). Moreover, even if we considered this evidence, it would still not demonstrate that the Petitioner's salary is indicative of his claimed exceptional ability relative to others working in the field.

determined that the Petitioner did not demonstrate that the organizations require members of the association to have a bachelor's degree in the field required to enter the profession.

On appeal, the Petitioner asserts that his involvement in these two associations "not only illustrate his professional standing but also his commitment to the advancement of tax auditing and administration in Brazil." The Petitioner states that [redacted] operates as a non-profit entity representing tax auditors across Brazil and [redacted] functions as a professional association dedicated to the advocacy and professional advancement of federal revenue auditors. Further, the Petitioner contends that these organizations are recognized as professional associations under USCIS guidelines and focus on professional development, advocacy, and public interest. However, the Petitioner does not address SCOPS's finding that he did not present evidence to demonstrate that [redacted] and [redacted] have membership bodies comprised of individuals who have earned a bachelor's degree in the field required to enter the profession.

A "profession" is defined as one of the occupations listed in section 101(a)(32) of the Act,[7] as well as any occupation for which a United States bachelor's degree or its foreign equivalent is the minimum requirement for entry in the occupation. 8 C.F.R. § 204.5(k)(2). Although the Petitioner has shown that he is a member of organizations that represent tax auditors, the record does not show that membership in these organizations requires a United States bachelor's degree or its foreign equivalent to establish that it is a professional association for purposes of this criterion.

> 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).

SCOPS determined that the Petitioner's evidence, which includes: an endorsement letter from [redacted] transcripts of interviews of the Petitioner on television, several letters of recommendation from the Petitioner's former managers and colleagues, and a professional opinion letter from an Associate Professor of Business Administration at [redacted] do not adequately support the Petitioner's assertion that his achievements and contributions have been recognized as significantly above those ordinarily encountered in their industry or field. On appeal, the Petitioner asserts that his "career is richly supported by evidence of recognition from peers, governmental entities, and media outlets, affirming his significant contributions to the industry."[8]

Upon review, we agree with SCOPS's determination and find that the Petitioner has not established he has been recognized for his achievements and significant contributions to the industry or field. While we recognize the Petitioner's experience and contribution to his occupation as a tax auditor,

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[7] Section 101(a)(32) of the Act states that the term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

[8] The Petitioner submits as additional evidence, an order issued in October 2024 recognizing his performance from the customs delegate of [redacted]. However, a petitioner must meet the eligibility criteria as of the date the petition was filed, in this case April 18, 2023. 8 C.F.R. § 103.2(b)(1). Moreover, this letter is of little evidentiary value because it states that the Petitioner has "outstanding performance and commitment in his professional career," but does not detail the Petitioner's achievements and significant contributions to the industry or field.

this does not establish his achievements and significant contributions to the industry or field of foreign trade consulting. Even if we considered the Petitioner's experience as a tax auditor overseeing customs inspection teams at an international airport as meeting this requirement, the submitted evidence does not demonstrate that he received recognition for achievement and contributions that are "significant." First, the Petitioner has not explained how the letter from [redacted] endorsing him for the position of Chief of the [redacted] in [redacted] is probative evidence. The letter, issued in 1995, briefly states that the Petitioner is a "competent professional," but it does not indicate or describe how he significantly contributed to the industry or field. Similarly, the transcript of the Petitioner's television appearance, which indicates that he appeared on a news station to discuss the [redacted] Service's operation against smuggling of contraband goods, does not show that the Petitioner was recognized by peers, governmental entities, or professional or business organizations for achievements and significant contributions to the industry or field. While the recommendation letters from the Petitioner's former managers and colleagues at the [redacted] generally discuss the Petitioner's involvement in developing and implementing new procedures for customs inspections, they do not specifically explain these procedures and how these efforts amounted to significant contributions to the industry or field. In the letters, the Petitioner's former managers and colleagues attest to his expertise in customs inspections, and they praise the Petitioner's leadership of the customs inspection teams he managed. The letters show that the Petitioner's former colleagues and managers value his work and his dedication, and that the Petitioner has been an effective manager and received promotions, but they do not identify, and thus demonstrate, that the Petitioner has been recognized for significant contributions to the industry or field of foreign trade consulting, as required under the criterion.

In addition, the professional opinion letter does not speak to any recognition the Petitioner received for achievements and significant contributions to his industry or field. Instead, the letter focuses on the three prongs of the Dhanasar analytical framework for adjudicating national interest waiver petitions. When discussing how the Petitioner is well-positioned to advance his proposed endeavor under the second Dhanasar prong, the opinion letter simply provides details from the Petitioner's training courses and certifications, his work experience, and the recommendation letters from the Petitioner's former managers and colleagues. The opinion letter states that the Petitioner's "expertise supports his broad range of skills to provide services in the U.S. business sector," but it does not otherwise show that he has been recognized for achievements and significant contributions to the industry or field of foreign trade consulting by peers, governmental entities, or professional or business organizations.

Based on the above, the Petitioner has not demonstrated he meets this criterion.

Because the Petitioner has not established that he meets at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) through (F), we need not conduct a final merits analysis to determine whether the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). Nevertheless, we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

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. As previously outlined, 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 asserts that he is an individual of exceptional ability but has not shown that he has satisfied the regulatory criteria and achieved the level of expertise required to demonstrate exceptional ability. 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 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 his qualification for the EB-2 classification as an individual of exceptional ability in the sciences, arts, or business, and is therefore ineligible for a national interest waiver.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.