U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 41704791

Date: MAR. 05, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification.[1] *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 Petitioner did not establish eligibility for classification as a member of the professions holding an advanced degree and for a national interest waiver. 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 a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id*.

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] The Petitioner does not contend that he qualifies as an alien of exceptional ability.

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. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Pettioner presented his high school graduation certificate (May 1985), his "Diploma of Further Education" (July 1987) from [redacted] stating he "received further education in financial accounting at our school from October 1985 to July 1987 and has completed the two-year study with passing results," and a December 2023 letter from [redacted] indicating he has served as its general manager since 2003.[3] In its decision denying the petition, SCOPS stated that the submitted evidence did not demonstrate that the Petitioner "has a baccalaureate degree or a foreign equivalent degree" and therefore he had not established eligibility for classification as a member of the professions holding an advanced degree.

On appeal, the Petitioner maintains that his [redacted] diploma and subsequent work experience are sufficient to prove that he qualifies as a member of the professions holding an advanced degree. He asserts:

> It has been USCIS' long-standing rules that a 2-year associate degree plus 6-years of work experience, is equivalent to a bachelor's degree. The rule is 3 for 1, meaning that three years employment equals one-year academic study. In the instant petition, [the Petitioner] earned a 2-year associate degree. Therefore, a 6-year progressive employment plus his 2-year associate degree qualifies for the attainment of a bachelor's degree.

In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a U.S.

[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] The Petitioner's diploma from [redacted] was unaccompanied by an official academic record as required by the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).

baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B).[4] A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty).

When introducing the EB-2 regulations, the former Immigration and Naturalization Service (INS) explained that "the proposed rule does not provide a procedure to allow experience alone to substitute for either a baccalaureate degree or an advanced degree." Proposed Rule on Employment-Based Petitions, 56 Fed. Reg. 30703, 30706 (July 15, 1991). In response to stakeholder input, the INS reviewed the Immigration Act of 1990 Act and found the proposed regulations consistent with Congressional intent. The INS stated:

> [B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

INS Final Rule on Employment-Based Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

The regulation at 8 C.F.R. § 204.5(k)(2) indicates that an advanced degree equivalency must include a single bachelor's degree, without substituting experience for education or combining lesser educational credentials. Further, the regulation requires five years of progressive experience to follow "[a] United States baccalaureate degree or a foreign equivalent degree." Thus, an advanced degree professional must have at least a U.S. bachelor's degree or a single foreign degree equivalent. Here, the Petitioner has not established that his [redacted] diploma is the foreign equivalent to a U.S. bachelor's degree and therefore he has not demonstrated that he meets regulatory requirements for classification as a member of the professions holding an advanced degree.

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, would be in the national interest. In his letter accompanying the appeal, the Petitioner does not contest SCOPS' determination that he did not establish eligibility for or otherwise merit a national interest waiver. An issue not raised on appeal is 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)).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established eligibility for classification as a member of the professions holding an advanced degree and for a national interest waiver.

[4] The regulatory language at 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B) does not state that work experience is acceptable in lieu of a U.S. baccalaureate degree or a foreign equivalent degree.

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.