U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37911042

Date: MAY 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a CEO in the manufacturing and agricultural-machinery sectors, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

SCOPS denied the petition, concluding that the Petitioner did not establish that he qualifies for the underlying visa classification or merits a discretionary waiver of the job offer requirement "in the national interest." The matter is now before us on appeal. 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 petitioner 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.

For the purpose of determining 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;
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> (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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish eligibility for 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 (AAO 2016), provides the framework for adjudicating national

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[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).

interest waiver petitions. *Dhanasar* states that 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. at 889.

II. ANALYSIS

The Petitioner proposes to be a CEO in the manufacturing and agricultural-machinery sectors. In his petition he described his job as follows:

> "Petitioner will provide a comprehensive selection of tractor parts sourced from Turkey, meticulously crafted to meet the rigorous standards of the Agricultural Industry in the United States."

With respect to the underlying EB-2 classification, the Petitioner submitted evidence to support his argument that he meets three of the six criteria of evidence for exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner argued that he had at least twenty-five years of full-time experience in the occupation at 8 C.F.R. § 204.5(k)(3)(ii)(B), held membership in professional associations at 8 C.F.R. § 204.5(k)(3)(ii)(E), and had recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations at 8 C.F.R. § 204.5(k)(3)(ii)(F). The Petitioner did not provide any evidence that he met any of the remaining criteria. After reviewing the record, SCOPS concluded that the Petitioner did not meet any of the six criteria. SCOPS further found that the Petitioner did not merit a discretionary waiver of the job offer requirement "in the national interest." As discussed below, we agree with SCOPS.

On appeal, the Petitioner reasserts that he is an individual of exceptional ability by satisfying the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (E), and (F), and that he establishes by a preponderance of the evidence that he qualifies for the national interest waiver. He further alleges that SCOPS erred by failing to apply the preponderance of the evidence standard, and overlooked or misconstrued multiple pieces of evidence that established his eligibility. After reviewing the evidence in the record, the Petitioner has not demonstrated that he satisfies at least three of the six initial evidentiary criteria and is not otherwise eligible for the requested benefit.[5]

> 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).

To meet this criterion, the Petitioner claims he has more than twenty-five years of experience in the industry. He submitted two letters dated May 2024 from a certified public accountant (CPA). In one

[4] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[5] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

letter the CPA states that the Petitioner has been a partner in [redacted] since 2007 and holds a 25% share of the company. In another letter, he states that the Petitioner has been a partner of [redacted] since August 2010 and holds a 75% share of the company. We acknowledge that the Petitioner submitted documentation from the [redacted] confirming that he held this percentage of shares in the companies, that the Petitioner was elected as a manager, and he is a director/authorized person. In denying the petition, SCOPS explained that the CPA did not indicate his title in the letter, as required by regulation. Moreover, these letters did not describe the Petitioner's job responsibilities for these entities and whether the Petitioner worked full-time. Thus, SCOPS concluded that more documentation was needed to satisfy this criterion.

On appeal, the Petitioner argues that SCOPS ignored "letters of experience and official records showing that he has over ten years of full-time experience in the industry." However, the Petitioner's statements referencing these letters are not sufficient to demonstrate this criterion. Here, we note that the Petitioner does not explain how the evidence he submitted was comparable to that required under 8 C.F.R. § 204.5(k)(3)(ii)(B), or why any of the evidence mentioned in the regulatory criteria could not be obtained. 8 C.F.R. § 204.5(g)(1) states that evidence relating to qualifying experience shall be in the form of letter(s) from current or former employers(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the petitioner. Here, the CPA does not appear to be either a current or former employer of the Petitioner, and he does not make that claim. The Petitioner must support his statements with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. We therefore determine that the Petitioner has not met this requirement.

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

To meet this criterion, the Petitioner submitted a letter from the [redacted] stating that the Petitioner has been a full member since 2021, he has been an active member of their [redacted] and during the membership period, the Petitioner "contributed to the activities of the association as a sponsor with his company." A letter from the [redacted] states that the Petitioner became a full member in 2012 and "it has been continuing its production activities in the metal casting sector as our member. This document has been issued upon the request of the relevant company." It appears that this letter refers to the membership of the Petitioner's company rather than the Petitioner as an individual.

SCOPS determined that this evidence was insufficient because the Petitioner did not provide documentation to establish the membership requirements for these associations. Therefore, SCOPS could neither determine whether these associations were professional in nature, nor the basis used by the associations to admit the Petitioner as a member. SCOPS further observed that there was insufficient evidence to demonstrate that the associations had a membership body comprised of individuals who have a U.S. baccalaureate degree or its foreign equivalent, or that the associations otherwise constituted professional associations. We agree with SCOPS that the record does not include evidence showing that they are professional associations 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 either of the entities 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. Without more, the Petitioner has not established that [redacted] the [redacted] and the [redacted] are professional associations such that his membership in them would be sufficient to meet this criterion. On appeal, the Petitioner has not offered documentation showing that these associations are professional in nature. However, the Petitioner proffers that these associations meet the criterion because they are recognized for admitting individuals holding substantial qualifications and standing in the sector. The Petitioner must support his statements with independent, relevant evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without more evidence of the professional nature of these associations, 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 submits a letter from E-O-, Chairman of the Board of [redacted] E-O- states that in 2023, he presented a commemorative plaque to the Petitioner in recognition of his invaluable contributions to the association. He further states, "[t]his gesture acknowledges his unwavering commitment to upholding superior quality standards, thereby enhancing the overall reliability of our organization." A post on social media acknowledged the commemorative plaque from [redacted] The Petitioner also submits several recommendation letters describing him as a key player in the agriculture and construction machinery industry who has made exceptional contributions to the manufacturing industry and enhancing productivity.[6] One writer, with whom the Petitioner has conducted business, explained that the Petitioner was involved in the manufacturing of various tractor parts such as rear covers, PTO covers, gearbox covers, axles and transmission. Consequently, the Petitioner's company was recognized in 2023 with an [redacted] award for its machinery. The writer indicated that the Petitioner's company was an invaluable partner. While another writer confirmed a long association and trade value of €500.000 his company had with the Petitioner's company in Turkey. The Petitioner also submitted a 2022 article published by [redacted] Magazine in which he was featured titled [redacted] SCOPS observed that the Petitioner's personal and professional accomplishments reflected his education, skill, experience, and talents. However, SCOPS correctly concluded that the record did not reflect that he received recognition for achievements or significant contributions to the industry or field from peers, governmental entities, or professional or business organizations. Rather, the record reflected the Petitioner's contributions to his employers, companies and individuals with whom he is associated.

On appeal, the Petitioner argues that SCOPS "disregarded documented awards and plaques from professional entities that recognized his achievements." We disagree because SCOPS acknowledged the Petitioner's awards and plaques. However, these awards and plaques were not bestowed in recognition for achievements or significant contributions to the industry or field from peers,

[6] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

governmental entities or professional or business associations. Rather, they were representative of the contributions the Petitioner made to his employers. We note that the Petitioner submitted several letters of recommendation. However, the letters of recommendation attest to the Petitioner's competence, valuable skillset, expertise and work contributions. 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, or how the Petitioner's work has otherwise been recognized in the field or that it has been recognized beyond the work done for his customers. 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.

8 C.F.R. § 204.5(k)(3)(iii) states that if the above standards do not readily apply to the occupation, the Petitioner may submit comparable evidence to establish eligibility. The Petitioner submitted a resume, May 2024 business plan for Florida-based [redacted] and other documents in support of his proposed endeavor. However, the Petitioner did not persuasively explain why the standards do not readily apply to his occupation. As such, this evidence will not be considered in the context of "comparable" evidence. Hence, the Petitioner has not shown that he meets at least 3 of the 6 criteria necessary to establish that he is an individual of extraordinary ability and is therefore ineligible for EB-2 visa classification.

Because the Petitioner has not established that he meets at least three of the 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). Consequently, we conclude that the evidence does not support a finding that the Petitioner has established the recognition required for classification as an individual of exceptional ability.

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. While the Petitioner asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework, we reserve our opinion regarding these issues. *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").

[7] In response to a request for evidence, the Petitioner submitted, among other things, a copy of an application for an EIN for [redacted] a company in Illinois. However, the Petitioner did not meaningfully discuss this venture, and the EIN application post-dates the petition. Moreover, the Petitioner initially indicated that Florida-based [redacted] was the focus of his proposed endeavor.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.