U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43203454

Date: MAY 28, 2026

Appeal of U.S. Citizenship and Immigration Services Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification on behalf of the Beneficiary 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).

U.S. Citizenship and Immigration Services (USCIS) denied the petition, concluding that the Beneficiary had not established eligibility for the underlying immigrant classification and 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 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

The Beneficiary's proposed endeavor is to continue working as an aviation and aeronautics supply chain manager for the Petitioner. The Petitioner explains that the Beneficiary will provide "economic relief to major commercial airline companies, decreasing negative impacts on the environment, and contributing to the overall field's movement towards more operationally sustainable practices."

The Beneficiary claims his qualification for the underlying EB-2 visa classification as an individual of exceptional ability. The Beneficiary must meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). The Petitioner initially claimed the Beneficiary met four of the regulatory criteria relating to ten years of full-time experience, salary, membership in professional associations, and contributions. Without analysis, USCIS determined the Beneficiary established three of the initially claimed criteria relating to ten years of full-time experience, salary, and membership in professional associations. USCIS then proceeded to do a final merits determination and found insufficient evidence of establishing the Beneficiary to be an individual of exceptional ability. Upon de novo review, we conclude that the record does not establish that the Beneficiary meets the initial evidentiary requirement. Specifically, we conclude that the record does not satisfy the criteria regarding salary and membership in professional associations.[3]

A. Salary or Other Remuneration

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.[4] 8 C.F.R. § 204.5(k)(3)(ii)(D). The Petitioner asserts that the Beneficiary's exceptional ability is in aviation deconstruction and recycling.

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

[4] *See 6 USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

In support of this criterion, the Petitioner submitted the Beneficiary's earning statements from December 2023 and January 2024 showing that he earns $4,423.08 every two weeks ($115,000 annually). In addition, the Petitioner submitted a printout from Payscale's website, which shows that the average salary for a supply chain manager in [redacted] Georgia is $87,430 annually in 2023. However, the salary information from Payscale is not based on the Beneficiary's indicated area of exceptional ability, aviation deconstruction and recycling. Further, the printout does not offer sufficient information or details to verify the applicability and accuracy of the stated salary information. For instance, the printout lacks such critical information as the date range to which the data refers, how the data was compiled, the statistical significance of the data, and other indications of the reliability and comparability of this data to the Beneficiary's occupation.

Without evidence demonstrating that he has commanded a salary, or other remuneration for services, which demonstrates his exceptional ability, the Petitioner has not established that the Beneficiary meets this regulatory criterion. We therefore withdraw USCIS' determination to the contrary.

B. Membership in Professional Associations

This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). Further, the regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation." The Petitioner claimed eligibility based on the Beneficiary's memberships with the International Society of Transport Aircraft Trading (ISTAT) and the National Business Aviation Association (NBAA). However, the Petitioner has not asserted, and the record does not otherwise demonstrate, that ISTAT and NBAA require their members to possess the equivalent of a U.S. bachelor's degree. Consequently, the Petitioner has not shown that ISTAT and NBAA are professional associations within the meaning of the regulations at 8 C.F.R. § 204.5(k)(2) and (3)(ii)(E). As such, the Petitioner has not demonstrated that the Beneficiary meets this criterion, and we withdraw SCOPS' conclusion to the contrary.

C. Additional Criteria and Eligibility

As the Beneficiary has only met one criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), we need not determine whether he satisfies the remaining criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) as he would still not meet at least three of the six criteria as required and reserve our opinion on this criterion, as well as any final merits determination. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating 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). As this issue is dispositive of the Petitioner's appeal, we likewise decline to reach and hereby reserve the remaining issue before us of the Beneficiary's eligibility for a waiver of the job offer requirement in the national interest.

III. CONCLUSION

The Beneficiary does not meet at least three of the regulatory criteria to establish exceptional ability and is consequently ineligible for EB-2 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.