U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43129038

Date: MAY 28, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a wholesale company and distributor of automotive parts, seeks employment-based second preference (EB-2) immigrant classification for 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).

Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Beneficiary was an individual of exceptional ability, 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 satisfying at least three of six categories of evidence: (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 remuneration 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)(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 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: (1) the proposed endeavor has both substantial merit and national importance; (2) the individual is well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States. *Id.*

II. ANALYSIS

The Petitioner states it is a U.S.-based automotive parts wholesaler and distributor that specializes in supplying original equipment manufacturer (OEM) and aftermarket specialized automotive parts, electrical components, paints, and paint-related materials. The Beneficiary is the founder and president of the Petitioner.

The Petitioner claims the Beneficiary has over 19 years of experience as an international supply chain professional and qualifies for the underlying EB-2 visa classification is as an individual of exceptional ability in business. The Petitioner initially claimed the Beneficiary met the regulatory criteria for official academic record, at least ten years of full-time experience in the occupation, license to practice the profession or certification, and membership under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C), (E). The Petitioner also claimed "other comparable evidence" of the Beneficiary's eligibility—namely, two exclusivity agreements with clients, which it claims "demonstrate[s] [the Beneficiary's] exceptional ability as a premier supply chain management professional."

SCOPS concluded that the Beneficiary met at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, SCOPS found the Beneficiary fulfilled the criteria for official academic record, at least ten years of full-time experience in the occupation, and license to practice the profession or certification under 8 C.F.R. § 204.5(k)(3)(ii)(A)-(C).[3] Because SCOPS concluded that

[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).

[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] It is unclear whether SCOPS concluded the Beneficiary met the membership criterion at § 204.5(k)(3)(ii)(E). Aside from stating that the Petitioner submitted membership certifications from the [redacted]

the Beneficiary satisfied at least three categories of evidence, they proceeded to a final merits determination. However, in that determination, they concluded the Beneficiary did not possess a degree of expertise significantly above that ordinarily encountered in the field.

On appeal, the Petitioner argues that SCOPS failed to consider the totality of the evidence, ignored "probative" submissions, and applied an overly stringent standard in the decision.

Upon our de novo review, we disagree with SCOPS' determination that the Beneficiary met at least three of the six criteria and, therefore, we conclude he does not qualify as an individual of exceptional ability.[4]

> *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).

The Petitioner submitted two employment verification letters from [redacted] and [redacted] The letter from [redacted] states that the Beneficiary has been "continually employed" with the company since December 29, 2005, and "has maintained his role as Director since that time." The letter from [redacted] almost identically states that the Beneficiary has been "continually employed" with the company since August 19, 2009, and "has maintained his role as Chief Executive Officer since that time." However, the letters are deficient in that neither letter reflects the date it was written and, therefore, it is unclear how long the Beneficiary has been employed at either of these companies. Additionally, neither of the letters specify whether the Beneficiary's employment was, in fact, full-time to verify his claimed employment and show that he met the requisite experience.[5] Based on the evidence, the Petitioner has not demonstrated that the Beneficiary meets this criterion, and we withdraw SCOPS' conclusion to the contrary.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C).

The Petitioner submitted a copy of its Texas Sales and Use Tax Permit, which it claims allows it to legally sell imported auto parts as a distributor, wholesaler, or retailer throughout Texas. While this document authorizes the Petitioner to sell its products, the Petitioner has not shown that the Beneficiary holds a license to practice the profession or a certification for a particular profession or occupation as required by the plain language of the regulation. Therefore, the Petitioner has not established the Beneficiary's eligibility for this criterion, and we will withdraw SCOPS' conclusion to the contrary.

SCOPS did not provide an analysis of this evidence or a conclusion as to whether these documents were sufficient to satisfy this criterion.

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

[5] We also observe that the Petitioner claimed the Beneficiary was working "40+" hours per week in both positions at the time he completed his Form ETA-9089. The Petitioner has not provided further details explaining how the Beneficiary was concurrently working in two full-time jobs.

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).

The Petitioner does not dispute or address SCOPS' conclusion that it did not submit any evidence related to the criterion for salary and, thus, has not shown that the Beneficiary met this requirement. As the Petitioner has not contested this finding, the Beneficiary's eligibility under this criterion has been waived on appeal. *See, e.g.*, *Matter of F-C-S-*, 28 I&N Dec. 788, 792 n.6 (BIA 2024) (declining to address determinations not challenged on appeal). Accordingly, SCOPS' determination that the Beneficiary does not satisfy this criterion remains undisturbed.

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

The Petitioner contends that the Beneficiary meets this criterion based on his membership in the [redacted]. It submits two membership certificates issued to [redacted] valid between March 6, 2023 to March 31, 2024, and between March 19, 2025, to March 31, 2026. However, neither of these certificates were issued to the Beneficiary. Accordingly, the Petitioner has not shown that the Beneficiary meets this criterion. *See* 8 C.F.R. § 204.5(k)(3)(ii) (providing that the petitioner must "show that the *alien* is an alien of exceptional ability in the sciences, arts, or business") (emphasis added).

Because the Petitioner has not established the Beneficiary meets at least three of the six regulatory criteria, we need not address the remaining criteria related to official academic record or recognition for achievements, or conduct a final merits determination.[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see generally* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1) (explaining that if a person meets at least three of the six categories of evidence, USCIS then conducts a final merits determination).

We note, however, that even if we found the Beneficiary satisfied these two remaining criteria, he still could not establish that he meets the initial step of satisfying at least three of the six the regulatory criteria required to show exceptional ability. Moreover, even if the Beneficiary had met the requisite number of criteria, the record still would not establish he possesses a degree of expertise significantly above that ordinarily encountered in his field. For instance, on appeal, the Petitioner argues that the Beneficiary's two exclusivity agreements and recommendation letters "detail the Beneficiary's impact" and show "'significantly above ordinary' expertise in crisis management and network-building." But while the letters discuss the Beneficiary's skills, positive relationships with his clients, and benefits provided to those companies, they offer little discussion as to how his expertise is significantly above that of others in the field. Likewise, while the Petitioner asserts that the Beneficiary's exclusivity agreements, claimed as, but not established as comparable evidence, show "his exceptional ability as a premier supply chain management professional who has received the trust and commitment of two international manufacturers to manage their Pakistan and U.S. product launches," the evidence does not clearly illustrate how obtaining these *two* agreements are indicative

[6] The Petitioner argues on appeal that SCOPS failed to address the exclusivity agreements with [redacted] and [redacted] as comparable evidence sufficient to satisfy the criterion for recognition for achievements under 8 C.F.R. § 204.5(k)(3)(ii)(F). However, as the Petitioner has not established the Beneficiary met at least three of the six criteria, we do not reach and need not address this criterion.

of his exceptional ability relative to others. *See* 6 *USCIS Policy Manual*, *supra*, at F.5(D)(1) ("The petitioner must demonstrate that the beneficiary is above others in the field; qualifications possessed by most members of a given field cannot demonstrate a degree of expertise significantly above that ordinarily encountered."). As a whole, the record does not demonstrate how the Beneficiary's training, expertise, or professional accomplishments is significantly above that ordinarily encountered in the business industry.

Finally, the Petitioner argues on appeal that "USCIS's application of the final merits step is unlawful" per *Mukherji v. Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026). However, we are not bound to follow a decision of a United States district court in contrast to the precedential authority of the case law of a United States circuit court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Suchite-Salguero v. Att'y Gen. United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf. Matter of K-S-*, 20 I&N Dec. at 719 (considering the reasoning of district court decisions). We also note that the *Mukherji* decision arises out of a different category, extraordinary ability, and not exceptional ability, the category before us. *See generally* 8 C.F.R. § 204.5(h). Accordingly, we are not bound by the ruling of *Mukherji* in the instant case, and SCOPS' analysis of the visa petition under the current two-step review framework provided in *Kazarian* was not in error. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

Because the Petitioner has not demonstrated the Beneficiary's eligibility for the underlying EB-2 classification, we need not consider whether he merits a discretionary waiver of the job offer requirement in the national interest and, therefore, also reserve these issues. *See INS v. Bagamasbad*, 429 U.S. at 25.

III. CONCLUSION

As the Petitioner has not shown the Beneficiary meets the requirements for EB-2 classification, we conclude it has not established eligibility for a national interest waiver.

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.