U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40283179

Date: NOV. 24, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a meat industry executive and entrepreneur, 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).

SCOPS denied the petition, concluding that the Petitioner did not demonstrate he is eligible for the EB-2 classification as an individual of exceptional ability. In addition, SCOPS concluded the Petitioner did not establish he otherwise merits a national interest waiver as a matter of discretion. 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. Section 203(b)(2)(B)(i) of the Act. Only those who demonstrate "a degree of expertise significantly above that ordinarily encountered" are eligible for classification as individuals of exceptional ability. 8 C.F.R. § 204.5(k)(2).

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F) sets forth the following six criteria, at least three of which an individual must meet in order to qualify as an individual of exceptional ability in the sciences, the arts, or business:

> (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 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. 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 a degree of expertise significantly above that ordinarily encountered in the field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); *see generally* 6 *USCIS Policy Manual* F.5(B)(2), https: //www.uscis.gov/policy-manual.

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner 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. 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. *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.

[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 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 to be discretionary in nature).

II. ANALYSIS

The Petitioner is an owner of a meat distribution business in Minnesota, [redacted] Inc., for which he is its president and chief executive officer (CEO). For this petition, he intends to continue working in the United States for his business.

For the underlying EB-2 classification as an individual of exceptional ability, he asserts that he meets three of the evidentiary criteria, namely ten years of full-time experience in the occupation; high salary or renumeration; and recognition for achievements and significant contributions to the industry under 8 C.F.R. § 204.5(k)(3)(ii)(B), (D), and (F), respectively. SCOPS determined that although the Petitioner satisfied the initial evidentiary requirements by meeting three of the six criteria, he did not demonstrate that he has been recognized as having a degree of expertise significantly above that ordinarily encountered in his field. Upon de novo review, the Petitioner has not established eligibility for the underlying EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

A. 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 record includes a letter from the vice president of [redacted] Inc. verifying the Petitioner as a co-founder and having been its president and CEO since 1998. While the letter indicates the Petitioner has experience in executive management of the business, it does not meet the plain language of the criterion because it does not indicate whether he has worked in a full-time capacity for ten years. The Petitioner also submitted his Form W-2 wage and tax statements for the years 2011 – 2013, 2015, 2016, 2018 – 2024, claiming these statements demonstrate his full-time employment with [redacted] Inc. However, the statements detail his wages and other compensation, but do not indicate his employment was full-time. Because the evidence provided does not demonstrate that he has at least ten years of *full-time* experience in the occupation being sought, the Petitioner has not established that he meets the plain language of the criterion. We withdraw SCOPS determination to the contrary.

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

To meet this criterion, the Petitioner submitted the above-mentioned Form W-2 wage and tax statements, his Form 1040, U.S. Individual Income Tax Return statements for the years 2018 to 2023, and a letter from his accountant. He also submitted print outs from salary-related websites indicating the 2024 average salary data for a CEO in Minnesota. Because the Petitioner did not provide any comparison information other than for the year 2024, we will consider the evidence for this criterion based on the Petitioner's salary and other renumeration for the year 2024.

According to the Petitioner's Form W-2 for the year 2024, he earned wages from [redacted] Inc. in the amount of $93,000. His accountant's letter indicates that for the year 2024, the Petitioner earned additional compensation derived from [redacted] Inc. in the amount of $653,321. According to the salary-related data, the average salary for a CEO in Minnesota for 2024 ranged from $120,00 to $166,668 plus $25,000 profit sharing. Based on this evidence, the Petitioner has shown that his

compensation has been significantly higher than the average CEO in Minnesota for 2024, thereby demonstrating his exceptional ability. For these reasons, the Petitioner has shown that he meets this criterion.

C. 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 meet this criterion, the Petitioner submitted a certificate indicating he received the 1996 small business exporter of the year award from the U.S. Small Business Administration. The record includes a local news article and letters from a member of U.S. House of Representatives and a U.S. Senator acknowledging the Petitioner's receipt of the award for his contributions as a small business person and for his support of small business. However, the evidence indicates recognition for his small business contributions as an exporter, instead of for his significant contributions to his industry, the meat industry, as required under the criterion.

The record also includes letters from the Petitioner's clients and colleagues in the domestic and international meat industry describing him as a valued supplier and purchaser of meat products and conveying details of specific services and results the Petitioner achieved for their businesses. His colleagues point out that he has extensive domestic and international industry knowledge and a willingness to explore and produce new meat products, particularly identifying and processing meat items typically considered waste and underutilized for use in various products. The Petitioner's colleagues praise his professional skills and experience, as well as the success of the services he has provided, while generally stating the Petitioner has contributed to the meat and poultry industry. However, they do not suggest that the Petitioner received recognition for achievements and significant contributions to the industry or field, as required under the criterion. Therefore, the Petitioner has not demonstrated he meets this criterion and we withdraw SCOPS determination to the contrary.

D. Final Merits Determination

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). Because the Petitioner did not satisfy the initial evidence requirements, 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, even if we did not withdraw the two criteria, we agree with SCOPS' conclusion in the final merits determination.

Upon review of the record, we agree with SCOPS that the Petitioner has not established that he possesses a degree of expertise significantly above that ordinarily encountered as a meat industry executive. We acknowledge the Petitioner is a very qualified meat industry executive with many years of experience. He mainly relies on his over 30 years of experience as a founder and CEO for his small business in Minnesota. The Petitioner's meat industry colleagues and clients value his professional knowledge and skills and him being perceptive to solving domestic and international client issues with new meat products which has benefited his clients. This alone is insufficient to establish that the Petitioner qualifies as an individual of exceptional ability. His colleagues and clients make broad

statements and limit most of their discussions to how the Petitioner has benefited them and contributed to increasing their revenue, instead of significantly contributing to the meat industry.

As discussed above, the Petitioner has been recognized for his contributions as a small business exporter, but such recognition was not for significant contributions to the meat industry. Moreover, the recognition is not for recent contributions, but instead from 1996, almost 30 years ago. While the Petitioner's income tax returns indicate that his business has been profitable for him, the evidence does not demonstrate based on his profitability that he has a degree of expertise significantly above that ordinarily encountered for meat industry executives. The record does not demonstrate that the Petitioner possesses a degree of expertise as a meat industry executive significantly above that ordinarily encountered in his industry.

III. CONCLUSION

The Petitioner has not shown that he is as an individual of exceptional ability, and he has not asserted that he is an advanced degree professional. Therefore, the documentation in the record does not establish eligibility for the underlying EB-2 classification.

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. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding his eligibility for a national interest waiver. *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).

Because the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, he has not met his burden to establish eligibility for the immigration benefit sought. The appeal will be dismissed for the above stated reasons.

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.