U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 37189356

Date: SEP. 15, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the field of finance, 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).

The Service Center Operations (SCOPS) denied the petition, concluding the record did not establish that the Petitioner is 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 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 U.S. 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. Exceptional Ability Criteria

As indicated above, petitioners 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). In denying the petition, SCOPS stated, without any analysis, that the Petitioner fulfilled three of the six criteria: license to practice the profession or certification for a particular occupation; commanded a salary, or other remuneration for services that demonstrate exceptional ability; and membership in professional associations.[3] However, SCOPS did not proceed to a final merits determination as the Petitioner did not establish he is eligible for a national interest waiver under the *Dhanasar* analytical framework but concludes that it does not find the Petitioner to be an individual of exceptional ability. While we agree with SCOPS' ultimate conclusion, for the reasons discussed below, we disagree that the Petitioner meets at least three of the criteria. On appeal, the Petitioner asserts he is "undeniably a professional of exceptional ability, recognized for his expertise as a ***[Chief Executive Officer (CEO)] in the field of Business***." (Emphasis in original).

#### 1. Ten Years of Experience

This criterion requires "[e]vidence in the form of letter(s) from current or former employer(s) showing that the alien has at least 10 years of full-time experience in the occupation in which he or she is being sought." 8 C.F.R. § 204.5(k)(3)(ii)(B). With the initial petition, the Petitioner provided three employment letters. Notably, two of the letters do not establish ten years of experience as they show start dates of June 2019 and October 2021. While the letter from the Petitioner's partner at [redacted] may state that the Petitioner has held the position of an administrator, chief executive officer (CEO), and chief financial officer (CFO) since 2008, we note serious discrepancies that undermine its

[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] SCOPS stated in the decision that it "will analyze the evidence submitted under each criterion below" but does not provide any.

authenticity. Both the Petitioner's name and the partner's name are misspelled. According to the Petitioner's passport and the letter from the [redacted], the Petitioner and his partner's names are spelled "[redacted]" and not "[redacted]." It is unlikely that the partner (who is the author of the letter) would misspell not only the Petitioner's name, but also his own. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). Without more, the Petitioner has not sufficiently demonstrated that he meets this criterion.

2. License or Certification

This criterion requires evidence of a "license to practice the profession or certification for a particular profession or occupation." 8 C.F.R. § 204.5(k)(3)(ii)(C). In support of this criterion, the Petitioner provided a letter from the [redacted] stating that they approved the "transfer of its corporate control, with the departure of the members, [redacted] and [redacted], and the entry of the members, [redacted] and [the Petitioner]." Moreover, the Petitioner highlighted the following in the letter:

> By virtue of the attributions arising from the governing legislation, we hereby inform that [redacted] and [the Petitioner], signatories of the Quotaholders' Agreement of [redacted], entered into on 05.06.2008, are registered in the registry of the [redacted] as controller of this institution, for all legal effects.

The Petitioner also submitted a printout from the [redacted] website. The Petitioner, however, does not provide any explanation or documentation showing that this letter is a license to practice the profession or a certification for a particular profession or occupation. Nor has he established that the [redacted] is authorized to issue licenses or certifications. Thus, the Petitioner has not established eligibility under this criterion.

3. Salary

This criterion requires "[e]vidence 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). 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] The Petitioner provided a letter from his accountant related to his business in Brazil. In the letter, the accountant references salary information for CEOs and CFOs in Brazil for the year 2023 which he claims is from Glassdoor.[5] Specifically, the accountant states that the average monthly salary for CEOs is R$12,000.00 or US$2,222.00 and for CFOs, it's R$6,425.00 or US$1,189.81. The accountant also provides "the total monthly income (fixed + bonus per performance* -limited to an income maximum ceiling)" for the Petitioner "as both Executive Director and Financial Director," from 2008 to 2018. The accountant concludes that the monthly income received by the Petitioner from 2008 to

[4] *See* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.
[5] The Petitioner did not provide a copy of the referenced salary data from Glassdoor.

2018 "is considering [sic] substantially high considering the average monthly income received for professionals in the same job position in Brazil."

Even if the Petitioner had provided the referenced printouts from Glassdoor, it appears to be limited to the average monthly salaries for chief executive officers and for chief financial officers separately, rather than individuals like the Petitioner who perform the functions of both. Further, the Petitioner's purported monthly income, which has not been substantiated with independent and objective evidence, such as invoices, payroll records, bank statements, and/or tax returns, includes bonuses and is for the years 2008 - 2018, not 2023.

Without more evidence, the Petitioner has not sufficiently demonstrated he has met this criterion.

4. Membership

This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). The regulation at 8 C.F.R. § 204.5(k)(2) defines profession as "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 into the occupation."[6] The Petitioner highlighted his memberships with the [redacted] and the [redacted]. However, the record does not include evidence such as the membership requirements, to demonstrate that [redacted] or [redacted] 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 he meets this criterion.

5. Achievements

This criterion requires "[e]vidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." The record includes four letters from the Petitioner's employers and colleagues commending his work. Although the complimentary letters establish that the Petitioner's work benefitted his employers, their clients, and specific mission objectives, they do not include specific details explaining how performing his job duties qualifies as recognition for achievements and significant contributions to the industry or field. Thus, we conclude the Petitioner has not established eligibility under this criterion.

B. Final Merits Determination

Even though the Petitioner has not established that he meets three of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), we nonetheless have reviewed the record in the aggregate and agree with SCOPS that the record does not establish the Petitioner possesses a degree of expertise significantly above that ordinarily encountered in his field.

[6] The occupations listed in this section are architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

On appeal, the Petitioner states that he "has submitted a comprehensive U.S. Business Plan and Resume that clearly outlines his past and present experiences, showcasing his achievements and underscoring the potential impact of his" proposed endeavor of establishing a company in the "financial technology (fintech) industry" and highlights that he has established two additional companies. Further, the Petitioner states that he "has included evidence of his social media presence, letters of intent, and support letters that attest to his significant contributions to the entrepreneurial landscape."[7]

In reviewing the totality of the evidence in a final merits determination, we consider the quality of the evidence.[8] While we acknowledge the evidence demonstrates the Petitioner has training, experience, and a successful career in the financial industry, this evidence does not establish he possesses expertise significantly above that ordinarily encountered in the field. For example, although the Petitioner provided support letters that discuss his experience and qualifications, they provide little discussion as to how his expertise is significantly above others in the field. Here, the Petitioner has not shown how his expertise through his job experience, and/or professional accomplishments is significantly above that ordinarily encountered in the financial industry.

The record does not establish the Petitioner's eligibility as an individual of exceptional ability as it does not demonstrate that he meets three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) or that he has obtained a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2).[9]

C. National Interest Waiver

The Petitioner has not established that he is eligible for the EB-2 classification. Since this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the remaining issues, including whether he is eligible for a national interest waiver. *See INS v Bagamasbad*, 429 U.S. 24, 25 ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reached"); *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).

## III. CONCLUSION

The Petitioner has not demonstrated that he qualifies as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought.

**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

[7] This evidence was included in response to SCOPS' request for evidence.
[8] *See also* 6 USCIS Policy Manual, *supra*, F.5(B)(2).
[9] *Id.*

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.