U.S. Citizenship and Immigration Services

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

In Re: 32549229

Date: SEP. 25, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chief financial officer (CEO) and logistics manager, 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 Director of the Nebraska Service Center denied the petition, concluding that the record neither establishes that the Petitioner qualifies as an individual of exceptional ability, nor does it establish that the Petitioner is eligible for a national interest waiver as a matter of discretion. The Director subsequently denied combined motions to reopen and reconsider. 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.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

[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] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

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*, provides the framework for adjudicating national interest waiver petitions. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016). *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[3] 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.

*Dhanasar*, 26 I&N Dec. at 889.

## II. ANALYSIS

The Petitioner initially filed his petition as a member of the professions holding an advanced degree. The Director concluded that the Petitioner was not eligible as the record did not establish that the Petitioner has a bachelor's degree and at least five years of progressive experience. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). On appeal, the Petitioner does not address the matter. An issue not raised on appeal is waived. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, we will not address the Petitioner's eligibility for the EB-2 Classification as a member of the professions holding an advanced degree.

The Petitioner asserted in response to the request for evidence, and in subsequent filings, that he is eligible for EB-2 classification as an individual of exceptional ability. The Director concluded that the Petitioner met one of the six criteria under 8 C.F.R. § 204.5(k)(3)(ii); evidence of an official academic record showing he has a degree from a university. However, the Director stated that the Petitioner did not establish 10 years of full-time experience as no letters were included with the filing. The Director also determined that the Petitioner's driver's license did not equate to a license to practice the profession or certification for a particular profession or occupation. The Petitioner had not submitted evidence in furtherance of showing he commanded a salary which demonstrates exceptional ability or evidence of membership in a professional association. Lastly, the Director determined that the recommendation letters do not establish he has been recognized for achievements and significant contributions to the industry or field. The Petitioner subsequently filed a motion to reopen and reconsider with the Nebraska Service Center where he submitted additional evidence regarding his salary; contending that his salary demonstrates exceptional ability. The Director dismissed the motion,

[3] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

for the same reasons as the denial while also concluding that the new evidence regarding his salary was unclear, and he therefore did not meet the criterion under 8 C.F.R. § 204.5(k)(3)(ii)(D).

The Petitioner contends on appeal that the Director erroneously applied the law which led to an inaccurate decision. We note that the Petitioner only addresses the criteria regarding a license to practice the profession and recognition for achievements and substantial contributions to the field. As stated above, an issue not raised on appeal is waived. *See, e.g.*, *Matter of O-R-E-*, 28 I&N Dec. at 336. The Petitioner does not raise the issue of his eligibility for the criteria under 8 C.F.R. § 204.5(k)(3)(ii)(B), (D), or (E); accordingly, those issues are waived. Therefore, our analysis will only address the issues raised on appeal. After de novo review of the evidence, we conclude that the Director's dismissal of the motions was proper and we agree that the Petitioner does not meet at least three of the six required criteria, nor has he established that he possesses a degree of expertise significantly above that ordinarily encountered in his field.

First, the Petitioner claims that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), which requires him to provide evidence of a license to practice the profession, or certification for his profession or occupation. The Director determined that although the Petitioner provided a copy of his commercial driver's license, he did not provide evidence that a license is required for his endeavor, which is in logistics management. The Petitioner contends that it is, "a crucial and mandated step for individuals and companies involved in the operation of commercial motor vehicles. . . ." However, the record describes the Petitioner's profession as CEO and his field of specialty as logistics management. He has not provided a license to practice this profession. He contends that it is mandated for this profession, but he has not provided evidence of this, and therefore, the record does not establish that he has a license to practice his specific profession. The record also includes certificates for additional education courses and trainings the Petitioner completed and while they may enhance his skill set, they do not constitute certifications for a profession or occupation.

Next, the Petitioner claims that he meets the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F), which requires evidence showing that he was recognized for achievements in and significant contributions to his industry; logistics management. The Petitioner contests the Director's conclusion that the submitted letters of recommendation "contain general praise." The Director determined that "[w]hile the letters, generally discuss the work performed by the petitioner, they are not sufficient to establish that he meets this criterion." The Petitioner contends that the letters do highlight the Petitioner's significant contributions to the industry. On appeal, he specifically quotes and resubmits two of the letters in the record. The Petitioner states that the first letter details his job responsibilities and states that this is evidence that he is capable of managing his company since he has experience in the field of the endeavor. The Petitioner asserts that the second letter, which also details his job duties, shows that he has successfully completed a job similar to the endeavor.

As the Petitioner states, both letters attest to his experience in the field and his good work, however, they do not speak to any recognition for achievements or significant contributions to the industry or field as required by 8 C.F.R. § 204.5(k)(3)(ii)(F). The contributions detailed in these recommendation letters are limited to his employers and do not establish contributions to the field as they do not speak to a broader impact. The Petitioner states that with his employment he "[h]as contributed not only to the professional organization he was employed with but also to the governmental entity, namely the military bases stations. . . ." However as stated above, while this letter details his duties and states that

he was a reliable, skilled worker, it does not speak to a broader impact to the field as the Petitioner contends. A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe,* 25 I&N Dec. at 376. While the Petitioner may be experienced in his field, the record does not establish he made significant contributions to the industry and therefore, this criterion has not been met.

For the reasons given above, the evidence does not establish that the Petitioner meets the eligibility requirements as an individual of exceptional ability and therefore does not meet the requirements for EB-2 classification. Because the Petitioner has not established that he meets the minimum required criteria under 8 C.F.R. § 204.5(k)(3)(ii), we need not conduct a final merits determination. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that he possesses a degree of expertise significantly above that ordinarily encountered in his field.

While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety. 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. The Petitioner does not address his eligibility for a national interest waiver on appeal and we decline to reach any further conclusions as it would serve no meaningful purpose. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

## III. CONCLUSION

We conclude that the Petitioner has not established by a preponderance of evidence that he qualifies as an individual of exceptional ability, or that he is otherwise eligible for the underlying EB-2 immigrant visa classification and therefore is not eligible for a national interest waiver as a matter of discretion. The Director properly dismissed the motions and therefore the appeal is dismissed.

**ORDER:** The appeal is dismissed.