U.S. Citizenship and Immigration Services

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

In Re: 13454120

Date: MAR. 13, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as well as a national interest waiver of the job offer requirement attached to this EB-2 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 Petitioner did not qualify for classification as a professional holding an advanced degree or an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in his decision. The Petitioner has the burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

To determine eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations at 8 C.F.R. § 204.5(k)(3)(ii) further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(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 [*sic*] 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.

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act. Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows the petitioner possesses exceptional ability. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be

determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

## II. ANALYSIS

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. For the following reasons, the Petitioner has not demonstrated his eligibility for the EB-2 classification.[4]

### A. Member of the Professions Holding an Advanced Degree

The Petitioner has not established that he is a member of the professions holding an advanced degree. First, he has not established that his occupation meets the definition of a profession. In Part 6 of the Form I-140, "Basic Information About the Proposed Employment," the Petitioner listed his job title as "entrepreneur," but he did not further describe his occupation. His resume indicates that he co-founded Z-, a company involved in "CCTV, telephone systems, alarm systems, networks, intercom, and etc." The resume also reflects that the Petitioner is self-employed as a founder of B-, a company which installs the same products as Z-, as well as computers and servers. The Petitioner maintains that he is "seek[ing] employment in the field of business computing."

To qualify as a member of the professions holding an advanced degree, a petitioner must show that his occupation meets the definition of a profession, and that he holds a qualifying advanced degree. With respect to the Petitioner's occupation meeting the definition of a profession, section 101(a)(32) of the Act does not include entrepreneurs in the list of occupations and he has not established that a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into his

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).
[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] While we may not discuss every document submitted, we have reviewed and considered each one.

occupation. 8 C.F.R. § 204.5(k)(2). Without more, merely identifying a general field in which he will work is insufficient to demonstrate that his occupation meets the definition of a profession.

Second, he has not established that he holds an advanced degree. 8 C.F.R. § 204.5(k)(3)(i)(B) requires a petitioner to present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." In denying the petition, the Director observed that the Petitioner has a bachelor's degree but determined that the record did not establish the requisite five years of progressive post-baccalaureate experience in the specialty.

The record contains the Petitioner's foreign bachelor's degree in business computing. An evaluator for a credential evaluations service to establish claims that the Petitioner has a U.S. equivalent of a master's degree in computer science. However, the Petitioner's reliance on this letter is misplaced. The evaluator first concludes that the Petitioner holds the equivalent of an advanced degree through obtaining "a bachelor's degree followed by more than five years of full-time work experience." As discussed above, 8 C.F.R. § 204.5(k)(3)(i)(B) requires a petitioner to possess "at least five years of *progressive* post-baccalaureate experience in the specialty" (emphasis added) not just five years of full-time work experience following a bachelor's degree. The evaluator further refers to a "3-for-1 Rule," where three years of relevant work experience is equal to one year of education. The evaluator then concludes that "it can be determined that the [B]eneficiary attained sufficient years of specialized training and work experience to equate to the college coursework in computer science."

It appears that the evaluator is confused about the standards upon which he can evaluate education and experience credentials in immigrant visa petition proceedings under section 203(b)(2) of the Act; 8 C.F.R. § 204.5(k)(3)(i)(B).[5] We acknowledge that in nonimmigrant visa petition proceedings under section 214(i)(2) of the Act, the H-1B beneficiary-qualification regulations provide for the application of a "three-for-one" ratio analysis of work experience to education in the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). That provision reserves its application exclusively for USCIS agency-determinations in H-1B nonimmigrant petitions. *Id.* Therefore, the Petitioner may not rely on the evaluator's conclusions to show that he possesses the foreign degree equivalent of a U.S. bachelor's degree.

Turning to the evidence provided regarding the Petitioner's work experience, the evaluator lists "information" about the Petitioner's work experience obtained from the Petitioner's resume. As discussed, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) specifies that the evidence of post-baccalaureate progressive work experience must be "in the form of letters from current or former employer(s)." Moreover, the regulation at 8 C.F.R. § 204.5(g)(1), provides in pertinent part that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s)from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a

[5] To qualify as an advanced degree professional, a petitioner relying on foreign education must have a single, foreign degree that equates to at least a U.S. baccalaureate. The regulations do not allow baccalaureate equivalents based on combinations of lesser educational credentials or of education and experience in Form I-140 immigrant petitions. See *Final Rule for Employment-Based Immigrant Petitions*, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (stating that "both the Act and its legislative history make clear that, in order to ... have experience equating to an advanced degree under the second [preference category], an alien must have at least a bachelor's degree").

specific description of the duties performed by the [individual] or of the training received." The evaluator did not explain how the Petitioner's self-reported employment history meets the regulatory requirements for establishing the requisite years of work experience within the occupation.

Overall, it appears that the evaluator lacks sufficient understanding of the requirements for eligibility for the EB-2 classification to provide a credible evaluation of the Petitioner's qualifications. Therefore, we conclude that the opinion letter provided lends little probative value to the matter here. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.*

The Petitioner also provides letters from various entities located in Uzbekistan which discuss his prior work experience. For instance, an August 2012 letter from I- states that the Petitioner worked there "for more than two years," but does not (1) indicate whether he was employed on a full-time basis, (2) adequately describe his job duties, or (3) provide his dates of employment. Notably, according to his college transcript the Petitioner attended university from 2007 to 2012 and his diploma indicates that he graduated in July 2012. Therefore, it does not appear that the Petitioner's employment with I- qualifies as "post-baccalaureate" employment. Nevertheless, the letter does not describe his specific duties other than noting that the Petitioner first worked with the "'DUET' Plastic Cards system," then was later "promoted to management and modification of bank's website and working with Oracle 10g database."

The record also contains letters from two other employers, dated May 13, 2019, who each state:

> [We] expresses gratitude for the collaboration and quality work in organization of servicing automated workplaces and mobile placement of personal, server infrastructure, network equipment, software, peripheral and office technology at the company's office.
>
> [The Petitioner's] expertise allowed [us] to solve several tasks in the sphere of Information Technology infrastructure and increase quality in user experience.

The identical language in the submitted letters undermines their probative value. Identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. U.S. Dep't of Homeland Security*, No. 19-2534, 2021 WL 2338316 at *8, n.3 (D.D.C. June 8, 2021). Further, as a general concept, when a petitioner has provided material from different entities, but the language and structure contained within it is notably similar, the trier of fact may treat those similarities as a basis for questioning a petitioner's assertions. *See Matter of O-M-O-*, 28 I&N Dec. at 195 (BIA 2021).[6] When affidavits (or in this case, work experience letters) contain such similarities, it is reasonable to infer that the petitioner who submitted the strikingly similar documents is the actual source from where the similarities derive.[7] Given the unique similarities in the letters that the Petitioner presented as evidence, he has not

[6] *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006).
[7] *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007).

established, by a preponderance of the evidence, that these work experience letters originated from his previous employers. *Matter of Chawathe*, 25 I&N Dec. at 376.

Further, the submitted letters collectively present inconsistent and ambiguous information. For example, the certificate from B- shows that he was employed as a "department manager of marketing and sales" from August 2015 to May 2018, and as a "server administrator" from June 2018 to September 2018. The certificate from K- states he was employed as a "manager" from February 2017 to September 2018. The document from A- reflects his employment in various positions there from July 2010 to November 2018.[8] The evidence in the record suggests the Petitioner was simultaneously employed by B-, K-, *and* A- in 2017 and 2018. In contrast, the Petitioner presents his employment with these entities in other documents in sequential order and does not indicate that he was employed by these three companies at the same time. Also, the amount of time that the Petitioner devoted to each work assignment and the substantive nature of the duties performed therein is not apparent from the documentation provided. The Petitioner must resolve these inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. Doubt cast on any aspect of the Petitioner's [evidence] may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the foregoing reasons we determine that the Petitioner's submitted employment letters do not credibly and sufficiently describe the Petitioner's specific job duties, indicate whether he was employed on a full-time basis, or substantiate his period(s) of employment. Based on this evidence, we cannot discern whether the Petitioner has the requisite five years of post-baccalaureate progressive work experience.

For these reasons, the Petitioner has not established eligibility for the EB-2 classification under 8 C.F.R. § 204.5(k)(3)(i)(B).

B. Exceptional Ability

The Director concluded in the denial that the Petitioner did not satisfy the plain language requirements of at least three criteria. Specifically, the Director determined that the Petitioner fulfilled only the degree criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A) and the membership in professional associations criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). On appeal, the Petitioner contends that he meets four of these criteria and possesses "exceptional ability in the field of computer science."

> *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.* 8 C.F.R. § 204.5(k)(3)(ii)(A).

The Petitioner has submitted a copy of his college transcript and diploma. We agree with the Director's determination that the Petitioner met this criterion.

[8] It is not apparent why the document from A- states that he commenced employment with them in July 2010, but then indicates his initial date of hire was in January 2013. The Petitioner has not explained this inconsistency in the evidence. *Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

*Evidence in the form of letter(s) from current or former employer(s) showing that the [individual] 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).

As previously discussed, the record does not clearly define the Petitioner's occupation. The Petitioner asserts on appeal, and in response to the Director's request for evidence (RFE), that he has "over 20 years of full-time experience in his field." Notably, he was 30 years old at the time of his 2020 response to the RFE and would have had to start working in the computer science field at the age of 10 should his assertion be accurate. In other evidence the Petitioner states that he commenced his work career in 2010, when he was 20 years old. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Considering the material provided about the Petitioner's work experience, we incorporate our previous discussion about the inadequate evidence submitted in support of his asserted eligibility for the EB-2 classification as a professional holding an advanced degree under 8 C.F.R. § 204.5(k)(3)(i)(B). The record lacks credible evidence to substantiate the Petitioner's assertion that he has at least ten years of full-time experience in his prospective occupation. This criterion has not been met.

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

The Director determined that the Petitioner met this criterion. However, we withdraw the Director's determination as the evidence does not show that he belonged to a professional association at the time of filing the petition. The Petitioner states that he is a "member of the [I-] technical societies." As evidence of his I- membership he submitted an undated invoice for his I- membership fee, along with copies of pages from I-'s website which appear to have been printed in May 2020, 10 months after the filing of the petition. A petitioner must establish eligibility at the time of filing a nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). Here, the record does not show that the Petitioner held membership in I- or any other professional association at the time of filing the petition. This criterion has not been met.

*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).

On appeal, the Petitioner asserts that he "provided in the original submission extensive documentation clearly establishing recognition for [his] achievements and [his] significant contributions to the field," alleging that he has "made and continues to make significant scientific contributions in the field of [b]usiness [c]omputing." However, he did not specifically identify this evidence in the appeal. The initially submitted evidence includes the previously discussed documentation about his academic pursuits and his work experience, as well as two certificates. The 2007 "acknowledgement of achievement" from W- recognized his results in a keyboard touch typing test in which he typed 75 characters per minute with a 69.2% error rate. This certificate reflects the Petitioner's typing proficiency in 2007, not his scientific contributions. He also submitted an undated "certificate of achievement" from UCD Micros, entitled, *Theory of Databases. Introduction to SQL and PL/SQL*, which serves to document that he completed a computer training course.

Importantly, the Petitioner has not explained the nature of his specific scientific contributions to the computer science field, supported by documentary evidence. Instead, the record contains letters from authors who offer general praise about his abilities such as the letter from B- who indicates that the Petitioner has a "wide range of knowledge in his specialization and stays on top of the industry news and innovations. He is a master of business negotiations." The letter does not support the Petitioner's assertions that he has made "significant scientific contributions in the field of [b]usiness [c]omputing." Therefore, we agree with the Director the record does not demonstrate the Petitioner has received "recognition for achievements and significant contributions to the industry or field." This criterion has not been met.

Accordingly, the Petitioner has not shown that he satisfies the plain language of at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii). Therefore, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the required level of expertise required for the exceptional ability aspect of the EB-2 classification.

C. National Interest Waiver

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. As discussed, to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. Further analysis of his eligibility would serve no useful purpose.[9]

## III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as an advanced degree professional or as an individual of exceptional ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

[9] It is unnecessary and would be an unwise use of the government's time and resources to analyze the remaining independent grounds when another is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).