



**U.S. Citizenship
and Immigration
Services**

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

In Re: 27459550

Date: AUG. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a correctional officer and former member of the Brazilian Army, seeks classification as an individual of exceptional ability in the sciences, arts, or business. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner's eligibility for the requested EB-2 classification or that he merits a national interest waiver. 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.

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 We will then conduct a final merits determination to decide whether the evidence in its totality shows

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 aliens of exceptional ability. *See generally*, 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *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 discretion³, 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.

II. ANALYSIS

Because he has not indicated or established that he qualifies as a member of the professions holding an advanced degree, the primary issue to be addressed is whether the Petitioner established his eligibility for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

A. Nature of Occupation and Proposed Endeavor

To qualify for the EB-2 classification as an individual of exceptional ability, the Petitioner must submit evidence within the context of his profession or occupation to show that he satisfies at least three of six regulatory criteria to meet the initial evidence requirement, and ultimately to demonstrate that he has a degree of expertise significantly above that ordinarily encountered in his field. Section 203(b)(2) of the Act and 8 C.F.R. § 204.5(k).

The record reflects that the Petitioner served as a noncommissioned officer in the Brazilian Army from 2006 until 2019. In the Form ETA 750B, Statement of Qualifications of Alien, the Petitioner provided that his military duties included updating and auditing personnel databases and protecting electronic communications systems information. He also indicated that since August 2021 he has worked for the [REDACTED] in New Hampshire as a correctional officer, and worked previously (between June 2020 to September 2021) for [REDACTED] providing security services.

He indicated on the Form I-140, Immigrant Petition for Alien Worker, that he proposes to work as a “military officer special and tactical operations” in the United States and he later stated that his occupation will be that of a “security expert.” He submitted a business plan which indicates he intends to work in the security services field as a consultant and trainer, combining his experience in the military, law enforcement, and security services fields.

³ 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).

B. Evidentiary Criteria

In evaluating the Petitioner's eligibility as an individual of exceptional ability, the Director determined that the Petitioner submitted evidence related to the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E), and (F), and concluded that he satisfied only one criterion. Specifically, the Director concluded that the Petitioner met the criterion related to ten years of full-time experience under 8 C.F.R. § 204.5(k)(3)(ii)(B).

On appeal, the Petitioner contends he satisfies three additional criteria.⁴ For the reasons discussed below, we conclude that the Petitioner has not satisfied at least three of the initial evidentiary criteria for EB-2 classification as an individual of exceptional ability.

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

As evidence of his license to practice his profession or occupation, the Petitioner presented a copy of his Brazilian Army identification card. The Director determined that the Petitioner did not meet this criterion because he did not establish that the document he submitted is a license or certification for the practice of a particular professional or occupation.

On appeal, the Petitioner refers to the previously submitted evidence and asserts that "we submitted a Brazilian Army membership card." He does not acknowledge or contest the Director's basis for determining that he did not meet this criterion. In addition, the Petitioner has not shown that he has or requires a license or certification to practice his intended profession or occupation in the United States as a military officer or security services consultant and trainer. We agree with the Director's determination that the Petitioner has not submitted evidence that meets this criterion.

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

On appeal, the Petitioner maintains that he submitted evidence sufficient to establish that his membership in the Brazilian Army satisfies the requirements of this criterion.⁵ The Petitioner's original submission included the above-referenced copy of his Brazilian Army identification card and an online printout from Eb.mil.br which provides a mission and vision statement for the Brazilian Army. Specifically, it indicates the army's mission is to help guarantee national sovereignty, constitutional powers, and law and order, and its vision is to have adequate resources and highly prepared personnel. The Petitioner did not provide any additional information or evidence regarding

⁴ On appeal, the Petitioner does not dispute the Director's finding that he had not established eligibility under the official academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). Additionally, the Petitioner did not claim eligibility under 8 C.F.R. § 204.5(k)(3)(ii)(D) before the Director or on appeal. As the Petitioner provides no evidence or arguments addressing these criteria, we consider these issues to be abandoned. *See Matter of R-A-M-* 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005) (citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998)).

⁵ On appeal, the Petitioner does not pursue his previous claim that his membership in the [redacted], a non-profit private organization founded by military reservists in [redacted] Brazil, is a qualifying membership under 8 C.F.R. § 204.5(k)(3)(ii)(E).

this association, its purpose, or its membership requirements in support of his claim that he is a member of a professional association.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E) requires “[e]vidence of membership in professional associations.”⁶ Here, the Petitioner did not establish that his membership with the Brazilian Army is tantamount to his membership in a “professional” association. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: “Profession means 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 in the occupation.”⁷ In this case, the Petitioner did not show the Brazilian Army qualifies as a professional association. The documentation does not reflect that the Brazilian Army has a membership body comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that the organization otherwise constitutes a professional association consistent with this regulatory criterion. Accordingly, the Petitioner did not demonstrate that he fulfills the regulatory requirements for this criterion.

III. CONCLUSION

The Petitioner did not establish that he meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(C) and (E). Although the Petitioner claims eligibility for an additional criterion on appeal relating to recognition for achievements at 8 C.F.R. § 204.5(k)(3)(ii)(F), we need not reach this further claim, as well as the favorable finding of the Director for 8 C.F.R. § 204.5(k)(3)(ii)(B), as he cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(k)(3)(ii). Moreover, we need not provide a final merits determination to evaluate whether the Petitioner has achieved the level of expertise required for exceptional ability classification. In addition, we need not reach a decision on whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve these issues.⁸ 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.

⁶ See also 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

⁷ Section 101(a)(32) of the Act defines “the term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

⁸ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).