



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

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

In Re: 28089582

Date: AUG. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft mechanic, seeks second preference immigrant classification as a member of professions holding an advanced degree and an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established eligibility for the underlying EB-2 visa classification and 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. 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.

To establish eligibility for a national interest waiver, a petitioner must also 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. On appeal, the Petitioner solely argues his eligibility for a national interest waiver. He does not address or contest the Director's specific findings regarding the underlying EB-2 visa classification.¹ Accordingly, we deem this ground to be waived. 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)).

Moreover, we need not reach, and therefore reserve the Petitioner's appellate arguments regarding his qualification for a national interest waiver. *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

¹ Although he presents previously submitted documentation on appeal, the Petitioner does not explain how the evidence shows an erroneous conclusion of law or statement of fact in the Director's decision of the underlying EB-2 visa classification. *See* 8 C.F.R. § 103.3(a)(1)(v).

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 applicants do not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.