



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

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

In Re: 24844910

Date: FEB. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a helicopter pilot, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the underlying visa classification or merits a discretionary waiver of the job offer requirement “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 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 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 a degree of expertise significantly above that ordinarily encountered in the field.

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

Once a petitioner demonstrates eligibility for the underlying classification, 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.

On appeal, the Petitioner generally repeats previous assertions. For example, he references his years of experience, “advanced knowledge,” satisfaction of three of criteria, and “excellent relationships” to establish that he qualifies as an individual of exceptional ability.

The Director determined that, although the Petitioner satisfied three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (C), he had not established that the evidence in its totality shows that he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. For the reasons discussed below, we must withdraw the Director’s conclusion regarding the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A).

The regulation requires “[a]n 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.” Here, the Petitioner relies on two certificates from [redacted] Aviation School in Brazil which state that he “[s]uccessfully completed the Commercial [and Private] Helicopter Pilot Course[s]” with “240 course hours” each. It is not readily apparent that these certificates meet the plain language of the regulation. Without additional evidence, the Petitioner has not sufficiently established that [redacted] qualifies as a “college, university, school or other institution of learning” or that the certificates are “an official academic record.”⁴

Further, even if we did not withdraw this criterion, we agree with the Director’s conclusion and reasoning in the final merits determination, and, therefore, we adopt and affirm it. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case).

Because the Applicant has not demonstrated eligibility for the underlying classification, we need not consider whether he merits a discretionary waiver of the job offer requirement “in the national interest” and, therefore, reserve the issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they

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).

⁴ For example, we are unable to determine whether the “240 course hours” were limited to flight time alone.

reach”); *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 has not otherwise met their burden of proof). The petition will remain denied.

ORDER: The appeal is dismissed.