



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

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

In Re: 23069339

Date: MAR. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an electrical engineer in the field of industrial automation, 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 is either a member of the professions holding an advanced degree or an individual of exceptional ability. The Director also concluded that the Petitioner has not demonstrate that his proposed endeavor to work as the Director of his own company, [REDACTED]<sup>1</sup> holds national importance or that, on balance, it would be beneficial to waive the requirement of a job offer and thus of a labor certification. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Director applied a stricter standard when adjudicating his petition and that evidence provided was not considered in its totality.

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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent

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<sup>1</sup> The business plan of [REDACTED] states that the company was formed in [REDACTED] 2019 in Georgia and focuses on the development of industrial automation systems, integrating them into client facilities, developing specific plans, projects, application software, manufacturing control systems, and installing and maintaining those systems.

degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Profession is defined as one of the occupations listed in section 101(a)(32) of the Act as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.<sup>2</sup> 8 C.F.R. § 204.5(k)(2).

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).<sup>3</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>4</sup> 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.

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 discretion<sup>5</sup>, 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

### A. Advanced Degree Professional

The Petitioner initially claimed that he is a member of the professions holding an advanced degree in electrical engineering because he holds the equivalent of a U.S. bachelor's degree in electrical engineering and because he had over 10 years of full-time experience. The Director determined that the Petitioner is ineligible for classification as a member of the professions holding an advanced degree, and we agree.

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<sup>2</sup> Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

<sup>3</sup> 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).

<sup>4</sup> 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>.

<sup>5</sup> *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).

The Petitioner submitted (1) a course certificate from [ ] School for the completion of course on “industrial learning II,” (2) vocational training certificates from [ ] School for the completion of training on “maintenance and repair of pneumatic circuit” and “maintenance and repair of hydraulic circuit,” (3) a school history from [ ] School for the completion of industrial learning course on “maintenance electrician,” (4) a school history from [ ] School for the completion of high school education, and (5) an expert opinion evaluation from a professor of electrical engineering and computer science at [ ] University. The professor states that the Petitioner has attained the equivalent of a bachelor of science degree in electrical engineering from an accredited institution of higher education in the United States based on his 29 years of work experience in electrical engineering and related areas.

In response to the request for evidence (RFE), the Petitioner submitted letters from his current and former employers. A letter from the Director of Finance and Administration of [ ] Corporation, a subsidiary of a multinational engineering and software company, states that the Petitioner has worked for the company as a senior controls engineer since November 2020. A letter from an accountant for [ ] an industrial automation company, states that the Petitioner worked for the company as its CEO and an electrical engineer from 1997 to 2019. The record also includes a letter from the representative of Human Resources Department at [ ] a machine builder and industrial automation company, which states that the Petitioner worked for the company as a systems manager from 1999 to 2014. While the Petitioner has extensive work experience as a systems manager, a CEO, an electrical engineer, and a senior controls engineer, the record does not reflect that the Petitioner holds a U.S. bachelor’s degree or a foreign equivalent degree. An individual who does not possess at least a U.S. bachelor’s degree or a foreign equivalent degree is ineligible for EB-2 visa classification. The Petitioner has not demonstrated that he is a member of the professions holding an advanced degree.

#### B. Individual of Exceptional Ability

As indicated above, the Petitioner must first meet at least three of the regulatory criteria for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). In denying the petition, the Director determined that the Petitioner did not meet at least three of the six criteria. On appeal, the Petitioner maintains that he meets at least four of the six criteria. After reviewing the evidence in its totality, we conclude that the record does not support that he meets at least three criteria.

*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 Director determined that the Petitioner established eligibility for this criterion. Based on the course certificate from [ ] School for the completion of course on “industrial learning II” and vocational training certificates from [ ] School for the completion of training on “maintenance and repair of pneumatic circuit” and “maintenance and repair of hydraulic circuit,” the evidence of record establishes that the Petitioner meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A). Accordingly, he meets this criterion.

*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. 8 C.F.R. § 204.5(k)(3)(ii)(B).*

The Director determined that the Petitioner established eligibility for this criterion. The Petitioner submitted a letter from the representative of Human Resources Department at [REDACTED] which states that the Petitioner worked for the company as a systems manager from 1999 to 2014. The Petitioner also submitted a letter from an accountant for [REDACTED] which states that the Petitioner worked for the company as its CEO and an electrical engineer from 1997 to 2019. The record also includes a letter from the Director of Finance and Administration of [REDACTED] Corporation, which states that the Petitioner has worked for the company as a senior controls engineer since November 2020. The evidence of record establishes that the Petitioner meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(B). Accordingly, he meets this criterion.

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

The Director determined that the Petitioner did not establish eligibility for this criterion. On appeal, the Petitioner acknowledges that he did not submit evidence for this criterion and does not offer new evidence. Accordingly, the Petitioner does not meet this criterion.

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D).*

The Director determined that the Petitioner did not establish eligibility for this criterion. A review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(D) for the reasons outlined below.

The Petitioner submitted a letter from [REDACTED] which states that during his employment from 1999 to 2014, the Petitioner earned a higher salary than any of its systems engineers because of his expertise in the field. [REDACTED] also states that the Petitioner was paid a base salary of \$3,913 and bonus of \$3,248 per month, earning a total of \$85,932 per year. However, the record does not contain evidence of an average monthly salary, monthly bonuses, or annual salary of systems engineers in the field of industrial automation in Brazil during this period or other sufficient evidence to establish that the Petitioner's salary and bonuses from [REDACTED] were indicative of his claimed exceptional ability relative to others working in the field. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without sufficient corroborating evidence, the Petitioner did not demonstrate that he commanded a salary or bonuses for his services, which demonstrates exceptional ability. Accordingly, the Petitioner does not meet this criterion.

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

The Director determined that the Petitioner did not establish eligibility for this criterion. A review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(E) for the reasons outlined below.

The Petitioner claims eligibility for this criterion based on his membership with [ ] the Brazilian Association of the Industry of Machinery and Equipment. A letter from the executive director of [ ] states that the Petitioner is the representative of a member organization, [ ]. However, as the Director noted, the bylaws of [ ] do not establish that an individual can be a member of the association; rather, it is companies (manufacturers of machine, equipment, their components and accessories, and production services providers to these manufacturers) that are members of this association.

On appeal, the Petitioner contends that he is the owner and representative of [ ] and that a company is nothing without people. The Petitioner also contends that he effectively participated in one of the working groups of [ ]. While the Petitioner may be the owner and representative of [ ] a corporation and an individual are two separate legal entities. *Matter of Soffici*, 22 I&N Dec. at 162. This is true even if the individual is the sole shareholder of the business. *See id.* at 161-63. The record reflects that the Petitioner's claimed company, [ ] is a member of [ ]. However, the evidence of record does not establish that the Petitioner is a member of a professional association. Accordingly, the Petitioner does not meet this criterion.

*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).

The Director determined that the Petitioner did not establish eligibility for this criterion. A review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F) for the reasons outlined below.

The Petitioner submitted various internet articles and articles published in Brazilian magazines. For example, he submitted an article from miriangasparin.com.br titled [ ] an article from *TI*, a Brazilian magazine, titled [ ] and an interview article from *Siderurgia Brasil*, a Brazilian steel industry magazine, titled [ ]

[ ] These articles generally discuss the importance of the Brazilian industrial development and contain quotes from the Petitioner regarding this topic. In these articles, the Petitioner explains about the fourth industrial revolution, the importance of industrial automation in the Brazilian industry to increase its competitiveness in the global market, and future training needs. These articles do not talk about the Petitioner's achievements or significant contributions to the industry.

The Petitioner submitted a letter of recommendation from a mechanical engineer at [ ] which states that the Petitioner developed a programming technique that was disseminated to multiple

companies in the industry to train employees. The Petitioner also submitted a letter of recommendation from an industrial engineering supervisor at [REDACTED] which states that the Petitioner introduced him to an outstanding standard software that was developed by the Petitioner, used by the companies the Petitioner was in charge of, and solves the integration of devices in every size of automation process. However, these letters do not provide further details regarding the programming technique or software, the Petitioner's role in the development, or significant contributions of the programming technique or software in the field of industrial automation. The record also does not contain license agreements, distribution agreements, or other sufficient evidence to corroborate claims in the record. Without sufficient corroborating evidence, these letters do not sufficiently demonstrate recognition for the Petitioner's achievements and significant contributions to the industry or field by his peers.

The Petitioner submitted a schedule of lectures about automation at [REDACTED] University in Brazil in 2018, two email messages, and photographs of the Petitioner at the university. The documents show that the Petitioner provided a lecture about automation at the university in 2018. The email invitation from an engineering professor at the university states: "We are inviting professors and lectures that can talk about relevant topics in Engineering, such as Robotics. It would be extremely enlightening if you could share practical examples so students can get in contact with the market reality." However, as the Director noted, the record does not sufficiently demonstrate that the Petitioner was invited to provide a lecture at the university as recognition for his achievements and significant contributions to the industry or field.

Lastly, the Petitioner submitted a printout from [amazon.com.br](https://www.amazon.com.br) showing a book authored by the Petitioner and titled [REDACTED]. The website states that the book is "aimed at showing the importance of the internship, the intern, and the advisor." It appears that the book was written as a guide to career success by participating in internship opportunity. This book about a career guide authored by the Petitioner does not establish that the Petitioner was recognized for his achievements and significant contributions to the industry or field by peers, governmental entities, or professionals or business organizations. Accordingly, the Petitioner does not meet this criterion.

*If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.*  
8 C.F.R. § 204.5(k)(3)(iii).

The record supports the Director's finding that the Petitioner did not meet at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). On appeal, the Petitioner states that he may submit other comparable evidence of eligibility and submitted articles, a book he has written, interviews, and lectures summary with pictures and panels. In this case, the Petitioner has not demonstrated that the standards at 8 C.F.R. § 204.5(k)(3)(ii) are not readily applicable to his occupation or that any of his documentation is "comparable" to the specific objective evidence required at 8 C.F.R. § 204.5(k)(3)(ii)(A) – (F).

### III. CONCLUSION

The Petitioner did not establish that he is a member of the professions holding an advanced degree. The Petitioner also did not establish by a preponderance of the evidence eligibility for at least three of the six criteria. Since the Petitioner did not establish eligibility for at least three of the six criteria, we

need not provide a final merits determination to evaluate whether the Petitioner has achieved the level of expertise required for exceptional ability classification. Moreover, we need not reach a decision on whether, as a matter of discretion, he is eligible for and otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Therefore, we will reserve these issues.<sup>6</sup>

The appeal will be dismissed for the reasons stated above, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>6</sup> 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 reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).