



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

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

In Re: 28424734

Date: OCT. 5, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a karting distributor, seeks second preference immigrant classification for the Beneficiary as an individual of exceptional ability, 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 Texas Service Center denied the petition, concluding that the Beneficiary did not qualify for classification as an individual of exceptional ability.¹ The matter is now before us on appeal.

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.²

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. *See* Section 203(b)(2) 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 the beneficiary satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.³ If a beneficiary does so, we will then conduct a final merits

¹ The Director’s decision did not consider if the Beneficiary meets the requirements for a national interest waiver.

² On appeal, counsel indicates that the Petitioner previously received ineffective assistance from a non-attorney who prepared its Form I-140 petition. Nonetheless, the Petitioner’s appeal provides it an opportunity to address the Director’s adverse findings, and we review the record on a de novo basis. *See Matter of Christo's, Inc.*, 26 I&N Dec. at 537 n.2.

³ “[T]he 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.

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.⁴

If a petitioner demonstrates the beneficiary's eligibility for the underlying EB-2 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 discretion⁵, 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. Exceptional Ability

The Petitioner asserted that the Beneficiary satisfies at least three of the regulatory criteria for classification as an individual of exceptional ability. In denying the petition, the Director determined that the Beneficiary fulfilled only the ten years of full-time experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) and the membership in professional associations criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E). On appeal, the Petitioner contends that the Beneficiary also meets the academic record criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), the salary criterion at 8 C.F.R. § 204.5(k)(3)(ii)(D), and the recognition for achievements and significant contributions criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F). After reviewing the evidence, we agree with the Director that the record does not support a finding that the Beneficiary satisfies the requirements of 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).

In the appeal brief, the Petitioner states that "[the Beneficiary], having completed his high school education satisfactorily in Scotland in December 2000, immediately commenced his successful career in the industry of competitive Karting in Europe in January 2001 as the Head Mechanic of the [redacted] racing team in the United Kingdom." While the record includes the Beneficiary's resume listing his graduation from [redacted] High School in 2000, the Petitioner did not provide an official academic record showing that the Beneficiary received his degree, diploma, certificate, or similar award from the school. Nor has the Petitioner shown that the Beneficiary's degree, diploma, certificate, or similar award from [redacted] High School is in competitive karting.

⁴ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 USCIS Policy Manual F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

⁵ 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 further contends that the Beneficiary has “obtained specialized training as a race car mechanic that does not appear on his resume and that a professional evaluation of his training and experience could establish that his sophisticated technical knowledge and abilities and his many years of experience are equivalent to a qualifying degree in his field of expertise.” This criterion, however, requires an official academic record showing that the Beneficiary has a degree from a college, university, school, or other institution of learning relating to the area of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii)(A) does not state that occupational experience and job training are acceptable in lieu of an official academic record showing that the individual has a relevant degree.⁶ Accordingly, we agree with the Director that the Petitioner has not shown the Beneficiary 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)

We withdraw the Director’s determination that the Beneficiary meets this criterion.⁷ As evidence of the Beneficiary’s ten years of experience as a karting commercial research and business development manager, the Petitioner submitted letters from [] stating that the Beneficiary has worked for the company since 2010 and a letter from [] indicating that he was employed there from 2003 until 2009. These letters from both the Beneficiary’s current and former employer, however, do not state that the Beneficiary’s experience was “full-time” as a karting commercial research and business development manager. Without evidence demonstrating that the Beneficiary has at least ten years of “full-time” experience in the occupation sought, the Petitioner has not established that he meets the requirements of this regulatory 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).

In response to the Director’s request for evidence (RFE), the Petitioner submitted the Beneficiary’s 2022 Form W-2, Wage and Tax Statement, showing earnings of \$18,000. The Petitioner stated that the Beneficiary “received \$18,000 for the months of October, November, and December 2022” and that he “commands a monthly wage of \$6,000, which equates to \$72,000 annually.” With the appeal, the Petitioner provides earnings statements for the Beneficiary dated October and November 2022 showing that he received “gross pay” of \$3,000 bimonthly. The aforementioned salary evidence post-dates the filing of the petition.⁸ Eligibility must be demonstrated at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1), (12). The Petitioner’s RFE response also included information from Talent.com listing the “median” salary for business development managers in [] at \$90,000 and their “high” salary at \$125,000.⁹ Even if we were to consider the Beneficiary’s earnings from the fourth quarter of 2022 (which were received after the petition was filed), his yearly salary of \$72,000 is well below the median in his occupation based on the information from Talent.com. Accordingly, the Petitioner has not demonstrated that the Beneficiary has commanded a salary that demonstrates his exceptional ability.

⁶ The Petitioner’s job experience is relevant to the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

⁷ The Director’s decision stated that the Beneficiary “meets this criterion,” but it did not identify the qualifying evidence.

⁸ The Form I-140 petition in this matter was filed in April 2022.

⁹ This salary survey was “based on 649 salaries.”

With regard to the Beneficiary's other remuneration for services, the Petitioner submitted a January 2020 letter from V-T-[redacted] chief executive officer (CEO), to the Beneficiary advising him that he would receive "transportation support in the United States through the lease of an automobile for up to US\$1,000 per month, as well as the payment of real estate rent for up to US\$4,000 per month." The record, however, does not show the actual amount of remuneration received by the Beneficiary for his automobile and housing expenses from January 2020 until April 2022. Regardless, to satisfy this criterion, the evidence must show that an individual has commanded remuneration for services that is indicative of their claimed exceptional ability relative to others working in the field.¹⁰ Here, the Petitioner has not offered documentation showing that his remuneration for automotive and housing expenses demonstrates exceptional ability relative to others in the field.

In the appeal brief, the Petitioner contends that "[r]eceiving a salary or other remuneration for work performed in the position of Racing Team Manager for a leading international team that accumulated numerous European and international championships . . . is evidence that the individual possesses the necessary exceptional abilities and that the evidence of remuneration is qualifying and meets the requirements at 8 C.F.R. § 204.5(k)(3)(ii)(D)." While the Beneficiary's resume indicates that he served as [redacted] Racing Team Manager from October 2010 until December 2014, the Petitioner did not present evidence of the Beneficiary's salary or remuneration from that period. Nor has the Petitioner demonstrated that the Beneficiary's earnings during that period were indicative of his exceptional ability relative to other racing team managers working in the motorsports industry.

Based on the foregoing, we agree with the Director that the Petitioner has not demonstrated the Beneficiary meets this regulatory criterion.

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

We withdraw the Director's determination that the Beneficiary meets this criterion.¹¹ The Petitioner has not presented evidence showing that the Beneficiary holds membership in professional associations.¹² As such, the Petitioner has not established that the Beneficiary meets 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).

On appeal, the Petitioner contends that the Beneficiary "has received recognitions for achievements both as a racing team manager and an expert in the design and performance of the vehicles to support drivers and leading them to victory, among other accomplishments and contributions."

As evidence for this criterion, the Petitioner provided letters of support from the Beneficiary's racing associates, business clients and collaborators, and employers discussing his commercial projects and his promotional, developmental, technical, and managerial expertise at [redacted] For

¹⁰ See 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

¹¹ The Director's decision stated that the Beneficiary "meets this criterion," but it did not identify the qualifying evidence.

¹² While the Beneficiary's resume has a section entitled "Academic Qualifications & Memberships," there are no professional association memberships listed.

example, B-L-, [redacted] Head of R&D, indicated that the Beneficiary provided service “to our customers in [redacted] where together with me it was crucial having a guy like him dealing with our clients and at the same time trying to deliver the best possible solutions available at the moment.” Similarly, R-E-, Manager Associate, [redacted], stated: “I had the opportunity to work with [the Beneficiary] for more than 15 years, both we were part of a team in some technical and commercial projects and we work together in successful achievements, such as initiating the project of recreational carting tracks in Mexico.” Likewise, L-I- of [redacted] asserted that he and the Beneficiary “worked on many projects together and I was impressed about his leadership and his extraordinary skills.” In addition, V-T-, [redacted] CEO, noted that the Beneficiary’s team leader experience included guiding “race teams to multiple championships including World and European successes in many categories, such as 2013 KZ Category’s World and European Championship and 2013 KF Category’s European Championship of [redacted]”¹³

The Petitioner also offered more than a dozen Certificates of Achievement presented to the Beneficiary by his employer [redacted] for company projects such as “technical development,” “racing team building,” “development in worldwide sales,” “development of new products,” “promotion of our brand,” and “excellence training.” These certificates reflect internal recognition from the Beneficiary’s employer and therefore they do not rise to the level of “achievements and significant contributions to the industry or field.” For instance, the Petitioner’s evidence was unaccompanied by documentation indicating that the Beneficiary’s technical development work has significantly affected the motorsports racing industry or the sport of karting. Additionally, the Petitioner submitted articles about drivers [redacted] and their racing results, but these articles do not discuss the Beneficiary’s specific achievements and significant contributions to the industry or field.¹⁴

While the letters of support, Certificates of Achievement from [redacted] and racing results articles show that the Beneficiary’s work has helped contribute to the success of [redacted] and their racing teams, the evidence does not show that his specific work has had an impact beyond his employers, their karting clientele, and their particular projects at a level indicative of achievements and significant contributions to the industry or field. Accordingly, we agree with the Director that Petitioner has not demonstrated the Beneficiary fulfills this criterion.

For the above reasons, the Petitioner has not established that the Beneficiary meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification.

B. 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 previously outlined, in order to qualify for a national interest waiver, the Petitioner must first show that the Beneficiary qualifies for EB-2 classification as an individual of exceptional ability. The Petitioner has not shown that the Beneficiary satisfies at least three of the regulatory criteria and has achieved the level of expertise required for

¹³ While the company’s drivers won awards at these racing events, the Petitioner has not shown that the Beneficiary was singled out for recognition by the race organizers or independent news media.

¹⁴ Many of the submitted articles are press releases prepared by [redacted]

exceptional ability classification. As the Petitioner has not established the Beneficiary's eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot.

III. CONCLUSION

The Petitioner has not established that the Beneficiary satisfies the regulatory requirements for classification 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.