



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 13904096

Date: AUG. 11, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physical therapist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, 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, noting that “[a]fter the [P]etitioner has established . . . eligibility for second preference classification under section 203(b)(2)(A) of the [Act], [U.S. Citizenship and Immigration Services] may grant a national interest waiver if the [P]etitioner demonstrates by a preponderance of evidence that [the criteria established in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), have been satisfied].” The Director proceeded to conduct a *Dhanasar* analysis without first concluding whether the Petitioner qualifies for a second preference classification as a member of the professions holding an advanced degree.¹

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review. As presently constituted, the record does not establish whether the Petitioner qualifies as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act.

Accordingly, the matter will be remanded to the Director to conduct a final merits determination of the advanced degree issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.

¹ Similarly, in a prior request for evidence (RFE), the Director noted that “[i]n order to establish eligibility, the [P]etitioner must establish that . . . [she] qualifies for the requested classification; and [a]n exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States.” However, the Director did not comment in the RFE whether the Petitioner qualifies for the requested second preference classification.