



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

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

In Re: 12263096

Date: AUG. 13, 2021

Appeal of Texas Service Center Decision

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

The Petitioner 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.<sup>1</sup> *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 he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Additionally, the Director put forth conflicting determinations in denying the petition regarding whether the Petitioner qualified for classification as a member of the professions holding an advanced degree. On appeal, the Petitioner submits a brief asserting that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

When denying a petition, the Director must fully explain the reasons for denial to allow the Petitioner a fair opportunity to contest the decision and provide the AAO an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, the Director shall explain in writing the specific reasons for denial.

Here, we conclude that the Director's decision does not sufficiently explain the basis for denying the petition. Specifically, the Director made conflicting statements regarding whether the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree, a threshold determination in national interest waiver cases.

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<sup>1</sup> The Petitioner seeks to establish his eligibility for the EB-2 visa classification based solely upon his qualifications as a member of the professions holding an advanced degree.

For example, the Director concluded that the Petitioner's foreign bachelor of science degree in physics was a three-year degree based upon five semesters of coursework when the record reflects that the Petitioner has eight semesters of coursework. Then, the Director observed that the education credentials evaluation and the Petitioner's U.S. professional master's degree were obtained after the date of filing the petition, and concluded that the Petitioner did not have at least a bachelor's degree or a master's degree at the time of filing. However, the Director then concludes that "the Petitioner *has* established that he qualifies for the requested classification" (emphasis added).

On appeal, the Petitioner highlights the inconsistencies within the Director's determinations, indicating "[w]hile the denial of the I-140 visa petition concludes that the [Petitioner] holds an advanced degree on page 2 of the attachment to the decision, the proceeding content belies that conclusion." The Petitioner asserts on appeal that as of the date of filing, the Petitioner "held a four-year degree . . . had over ten years of progressively more responsible work experience. . . [and] had also completed 1.5 years of [m]aster's level education. . . ." The Petitioner also references the education credential evaluations in the record which conclude that the Petitioner holds an advanced degree based upon "his education, training, and work experience all acquired prior to the filing of the visa petition."

The Director should clearly explain why the Petitioner does not qualify as a member of professions holding an advanced degree, including why the documents in the record do not establish eligibility. We therefore are remanding the case to the Director for further review and to provide accurate and sufficient explanation of the grounds of denial regarding the evidence in this particular case so that the Petitioner more fully understands the Director's concerns.

The Director may request any additional evidence considered pertinent to the new determination and any other issues. 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.