



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

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

In Re: 11773204

Date: JUNE 9, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a structural engineer, 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 Nebraska 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.<sup>1</sup>

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.<sup>2</sup> *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

---

<sup>1</sup> Similarly, in a prior request for evidence (RFE), the Director noted that “[i]n order to establish eligibility, the [P]etitioner must establish that . . . [he] 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.

<sup>2</sup> We note that, in the RFE, the Director mischaracterized the criterion under which the Petitioner sought eligibility. The RFE states, “Reference is made to this Form I-140, Immigrant Petition for Alien Worker, seeking an alien of exceptional ability seeking to waive the job offer requirement . . . .” However, at the time of filing the Petitioner stated that he sought “classification as a member of the professions holding an advanced degree requesting a national interest waiver of the requirement of a job offer.”

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.