



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

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

In Re: 13742860

Date: JUNE 21, 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 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 Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that she is eligible for a national interest waiver.

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.

## 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

*Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, to demonstrate eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Petitioner's proposed endeavor is to be the chief executive officer "primarily responsible for coordinating the operational, commercial, and financial strategies of" a company which distributes [redacted] products. Upon review of the record, we withdraw the Director's conclusions that the Petitioner established that she is an advanced degree professional and well positioned to advance the proposed endeavor.

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. In addition to the definition of "advance degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty."

First, the Petitioner has not established that she holds the equivalent of a U.S. bachelor's degree.<sup>4</sup> For example, the Petitioner has not demonstrated the length of her bachelor's degree program. In addition, although the Petitioner claimed to have submitted a copy of her transcript, the provided document appears to be a copy of course offerings. The Petitioner's name does not appear anywhere on the document, nor does it include dates of attendance or grades received.

Second, the evaluator of the Petitioner's degree and experience states that the "evaluation relies upon the copies of the original documents of the diplomas, transcripts, and resume provided by" the Petitioner, with no mention that he reviewed any letters, as required by 8 C.F.R. § 204.5(k)(2).<sup>5</sup> It is also unclear whether the evaluator reviewed the Petitioner's actual transcripts or only the submitted list of course offerings.

Third, the Petitioner has not established her field of study. Although the diploma accompanying the certified translation indicates that the Petitioner's degree is in "business administration," the original document appears to indicate that the degree is in "administration," without any additional specialty. Neither the evaluator, nor the translator, provides any explanation for the discrepancy.

The Petitioner must resolve these discrepancies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> Although we acknowledge the Petitioner's receipt of a diploma from [redacted], the record contains no evidence that this diploma is a bachelor's level degree.

<sup>5</sup> The section regarding her professional experience is copied directly from her resume.

If the Director determines that the Petitioner has sufficiently established that she holds the foreign equivalent of a U.S. bachelor's degree, the Director must then consider whether the submitted letters from current or former employer(s) demonstrate, at a minimum, five years of progressive post-baccalaureate experience in the specialty.

In addition, while we agree with the Director that the Petitioner has not established that she merits a national interest waiver, we must also agree with the Petitioner that the Director's decision does not provide adequate analysis under the three prong *Dhanasar* framework.<sup>6</sup> The Director should review the evidence anew under each prong and, if he determines that the evidence is insufficient, provide a discussion of its deficiencies.

### III. CONCLUSION

In light of the above, we are remanding the petition for the Director to first determine whether the Petitioner qualifies for EB-2 classification, the threshold determination in national interest waiver cases. If the Director concludes that the Petitioner is qualified for the requested classification, he should then address whether the Petitioner established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

**ORDER:** The matter is remanded for the entry of a new decision consistent with the foregoing analysis, which, if adverse, shall be certified to us for review.

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<sup>6</sup> The Director's decision simply states that "[t]he [P]etitioner has provided education and experience that she is well positioned to advance her proposed endeavor," without any additional explanation or discussion of the evidence he relied on to make such a determination.