U.S. Citizenship and Immigration Services

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

In Re: 10145221

Date: MAR. 30, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, an oral and maxillofacial surgeon, 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, concluding that the Petitioner did not qualify for classification as a member of the professions holding an advanced degree, nor had she 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 submits additional documentation and a brief asserting her eligibility 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* (emphasis added), 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. –
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> (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.
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> (B) Waiver of job offer –
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> (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 definition:

> *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* (emphasis added).

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).[1] *Dhanasar* states that *after a petitioner has established eligibility for EB-2 classification* (emphasis added), U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] grant a national interest waiver if a petitioner demonstrates: (1) that 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)

[1] 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*).

[2] *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).

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.[3]

## II. ANALYSIS

As noted above, the Director concluded that the Petitioner did not qualify for EB-2 classification as a member of the professions holding an advanced degree.[4] Specifically, the Director raised concerns with the submitted employment letters and ultimately concluded that they did not establish that the Petitioner had at least five years of progressive post-baccalaureate experience. While we may agree with the Director's determination that the letters did not establish the progressive nature of her experience, the Petitioner's profession is dentist, orthodontist, and maxillofacial oral surgeon.[5] As stated above, the definition at 8 C.F.R. § 204.5(k)(2) clearly states, in pertinent part, that "[i]f a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." In other words, the regulation does not allow for a combination of education and experience if "a doctoral degree is customarily required by the specialty."

The original filing includes an "expert opinion letter" from [redacted] senior evaluator at [redacted], who concludes that, based upon the Petitioner's academics and "approximately ten years and a month's work of practical experience and clinical application in oral and maxillofacial surgery and care, orthodontics, and related dental healthcare areas, [the Petitioner] is the equivalent of an Oral and Maxillofacial Surgeon with a Bachelor's Degree in Dentistry/Dental Surgery, and a Master's Degree in Oral and Maxillofacial Surgery, from an accredited institution of higher education in the United States." According to the evaluator:

> [T]he occupation of a 29-1022 Oral and Maxillofacial Surgeon is a specialist profession from the broad category of 29-1020 Dentists, because the position entails the application of a body of specialized technical knowledge in dentistry and orthodontics. The attainment of a degree in dentistry [i]s a minimum requirement for admission to learning and speciali[z]ing in oral and maxillofacial care. To be qualified to reasonably perform the duties of an Oral and Maxillofacial Surgeon, the attainment of a bachelor's degree and passing the licensure exam for clinical practice in dentistry is the minimum requirement, followed by further education and residency in orthodontic care and maxillofacial surgery.

In response to the Director's request for evidence, the Petitioner provided an "Evaluation of Training, Education, and Experience" from [redacted], written by [redacted], senior evaluator at [redacted], who states that (note: emphasis in original):

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[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] Although the Director's decision also determined that the Petitioner did not qualify as an individual of exceptional ability, and we agree, we note that the Petitioner's original filing was limited to her claim to be a member of the professions holding an advanced degree.

[5] In the initial filing, the Petitioner indicates that she (note: errors appear in original text) "is petitioning for a second employment-based preference immigrant status (EB-2 National Interest Waiver, hereinafter 'NIW'), as an alien member of clinical field of oral and maxillofacial surgery." The Petitioner further states that "it is reasonable to conclude that [she] qualifies as an alien who is a member of the clinical field of oral and maxillofacial surgery holding an advanced degree."

> Considering that a Bachelor's Degree, followed by more than five years of full-time work experience in the field of Prosthetic Dentistry is equivalent to a Doctor of Dental Medicine, it is my expert opinion that [the Petitioner], with a Bachelor's Degree in Dental Surgery, a Specialization in Prosthetic Dentistry, and **13 years of qualifying experience**, has no less than the equivalent of a **Doctor of Dental Medicine**."

Neither evaluator claims that the Petitioner' holds the foreign equivalent of a doctoral degree, nor do they address the information below.

According to the "How to Become a Dentist" section of the *Occupational Outlook Handbook* (*OOH*) entry for Dentists (SOC code 29-1020)[6]:

> Dentists must be licensed in the state in which they work. Licensure requirements vary by state, although *candidates usually must have a Doctor of Dental Surgery (DDS) or Doctor of Medicine in Dentistry/Doctor of Dental Medicine (DMD) degree from an accredited dental program and pass written and clinical exams. Dentists who practice in a specialty area must complete postdoctoral training* (emphasis added).
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> . . . .
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> All dental specialties require dentists to complete additional training before practicing that specialty. This training is usually a 2- to 4-year residency in a CODA-accredited program related to the specialty, which often culminates in a postdoctoral certificate or master's degree. *Oral and maxillofacial surgery programs typically take 4 to 6 years and may result in candidates earning a joint Medical Doctor (M.D.) degree* (emphasis added).

For all of these reasons, the Petitioner has not demonstrated that she holds the foreign equivalent degree of a DDS or DMD degree, and therefore, has not established that she is a member of the professions holding an advanced degree consistent with the regulatory definition at 8 C.F.R. § 204.5(k)(2).

We would also note that, regarding the Petitioner's remaining claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions. For example, regarding the national importance portion of the first prong, although the Petitioner's statements reflect her intention to continue working in her field in the United States, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Similarly, the record in this matter does not demonstrate that the Petitioner's proposed endeavor stands to sufficiently impact U.S. interests or the dental industry more broadly at a level commensurate with national importance. In addition, she has not demonstrated that her specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

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[6] *See* https://www.bls.gov/ooh/healthcare/dentists.htm#tab-4 (last accessed Mar. 22, 2021).

For the reasons discussed above, we are remanding the petition for the Director to consider anew whether the Petitioner qualifies for EB-2 classification, the threshold determination in national interest waiver cases. The Director may request any additional evidence considered pertinent to the new determination.

**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.