



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

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

In Re: 19804780

Date: APR. 18, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a pharmacist, 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 qualified for classification as a member of the professions holding an advanced degree but 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. The matter is now before us on appeal.

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

At this time, we are unable to address the merits of this case because the record is incomplete. The record reflects that the Director issued a request for evidence (RFE) on November 5, 2020. While the Director acknowledged that the Petitioner submitted a timely response to the RFE, the Petitioner's original response has not been incorporated into the record of proceeding. We cannot determine whether the Director considered the full RFE response, nor can we base our own decision in this case on an incomplete record.

The Director bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by U.S. Citizenship and Immigration Services in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). Accordingly, we will withdraw the Director's decision and remand this matter for the inclusion of the missing record materials and further consideration.

Upon remand, the Petitioner should have the opportunity to supplement the record. In addition, we note that the Petitioner has submitted a brief on appeal which may be relevant to her eligibility as of the date of filing. The Director is the more appropriate party to consider the impact of the appeal brief on the Petitioner's eligibility, as we cannot adjudicate the appeal based on the incomplete record.

The Director should issue a new decision based on a review of the complete record, including the brief submitted on appeal. In doing so, the Director should ensure that the Petitioner's complete RFE response is in the record. Further, the Director should consider whether the Petitioner has established eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1).

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