



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

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

In Re: 21581977

Date: AUG. 5, 2022

Appeal of Nebraska 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 Nebraska 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 submits a brief asserting that he is eligible for a national interest waiver.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the [individual] 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 [individual] has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

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

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*).

established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the 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) 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

A. Eligibility for the Requested Classification

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. The Petitioner does not assert nor does the record establish that he is an individual of exceptional ability. The Director concluded that the Petitioner qualified for the underlying visa classification because he "submitted evidence of an advanced degree." For the reasons discussed below, we withdraw the Director's conclusion on this issue.

1. Education Credentials

The Petitioner submitted documentation relating to his 2017 master of economics and business degree from [REDACTED] and his 2016 bachelor of mechanics degree from [REDACTED] which the Petitioner asserts he obtained in Kazakhstan. Some of the submitted evidence appears to be education credentials that are foreign language documents without English translations, while other documents - such as the Petitioner's course transcripts, appear to be English language translations of foreign language documents. The Petitioner has not submitted evidence sufficient to show that this documentation meets the evidentiary requirements for "official academic record[s]" in order to demonstrate that the Petitioner's eligibility for the EB-2 classification. 8 C.F.R. § 204.5(k)(3)(i).

Further, "[a]ny document in a foreign language must be accompanied by a full English language translation." 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* The Petitioner has not provided the requisite full, certified English language translations of the foreign language documents submitted in support of the petition. With any request for additional evidence (RFE) or notice of intent to deny (NOID), the Director should request a complete copy of the Petitioner's official academic records, accompanied by full and complete English translations to support the Petitioner's assertions regarding the U.S. equivalency of his foreign academic credentials.

The Petitioner also submitted a 2021 education credential evaluation by [G-] Evaluation Services which concludes that the Petitioner's foreign master's degree is equivalent to a U.S. master's degree

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).

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

in economics from a regionally accredited educational institution in the United States, and that the Petitioner's admission to this degree program was based on his bachelor's degree. G- also opines that the Petitioner's foreign bachelor's degree is equivalent to a U.S. bachelor's degree in mechanics from a regionally accredited educational institution in the United States, and that his admission to this degree program was based on his high school diploma.

However, the conclusory determinations reached by G- lack specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which it concluded that the Petitioner's foreign master's and bachelor's degrees are respectively equivalent to a United States advanced degree and a United States baccalaureate degree. Other than providing a list of references, such as the American Association of Collegiate Registrars and Admissions Officers' (AACRAO) 1992 report entitled, *The Soviet System of Education*,⁴ a link to Kazakhstan's country overview in AACRAO's Electronic Database for Global Education (EDGE) database,⁵ and the U.S. Department of Labor's 2000 report entitled, *Occupational Projections and Training Data*, G- does not discuss the relevant research, studies, or authoritative publications it relied upon as part of its review of the Petitioner's education credentials, nor did it explain how the reviewed materials served as the foundation for its opinions.

Additionally, considering the content of the Petitioner's education credentials in the record, the information provided through EDGE does not support G-'s conclusions. For instance, the educational background noted in the documentation for entry into the Petitioner's master's degree program is a "diploma in higher education." While EDGE provides detailed credential information for academic degrees in Kazakhstan, a credential entitled "diploma in higher education" is not among them. Similarly, G- indicates in the evaluation that the basis for the Petitioner's admission into his bachelor's degree program was a "high school diploma," but the information provided in EDGE does not indicate that a "high school diploma" is an education credential used to admit students into bachelor's degree programs within the context of the Kazakhstan education system.⁶

As discussed, some of the education credential documentation submitted in support of the petition appears to be English translations of foreign language documents, not an *official academic record* of the Petitioner's foreign education. 8 C.F.R. § 204.5(k)(3)(i). G- avers that it based its evaluations "on the original documents issued in Kazakh, Russian and English by the institutions attended," but without more, G-'s conclusory evaluation and the submitted education credentials do not substantiate that the basis for the Petitioner's admission to his foreign master's degree program was the foreign degree equivalent of a U.S. bachelor's degree.

Additionally, open-source information does not confirm that the Petitioner's master's degree program at [redacted] was accredited by Kazakhstan's Independent Agency for Quality Assurance in Education (IQAA).⁷ According to IQAA's website, [redacted] was an accredited institution of higher learning in

⁴ AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." <http://www.aacrao.org/who-we-are>.

⁵ EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>.

⁶ <https://www.aacrao.org/edge/country/kazakhstan>.

⁷ IQAA is identified in EDGE as a "key resource" in making Kazakhstan-based education credential determinations.

Kazakhstan from May 2017 through May 2020, and was accredited to offer ten master's degree programs during that time period.⁸ However, the Petitioner's program of study, economics and business, was not among them. Further, media articles reported that in 2020 Kazakhstan's Ministry of Education revoked [redacted]'s license to operate as a University due to "gross violations' in admissions – accepting students that hadn't taken the correct exams, hadn't provided originals of the ENT (nationwide university admission exam) certificate, and so on – as well as in teaching, where it was found that published timetables for classes were not being adhered to."⁹ Notably, G-'s 2021 evaluation does not address whether the Petitioner's master's degree program was accredited in Kazakhstan when the degree was conferred, which is concerning given G-'s determination that the Petitioner's foreign master's degree in economics and business is equivalent to a U.S. master's degree in economics.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.* For the foregoing reasons, the Director should consider whether G-'s evaluation of the Petitioner's foreign education credentials is probative evidence in this matter. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376.

Based on the foregoing, the Director should consider anew whether the record establishes that the Petitioner's master's degree qualifies as a foreign equivalent degree above that of a U.S. baccalaureate degree. 8 C.F.R. § 204.5(k)(2).

The Director should also determine whether the Petitioner has sufficiently demonstrated that he holds the foreign degree equivalent of a U.S. bachelor's degree. If the Director concludes that the Petitioner has provided independent, objective evidence to establish receipt of such a degree, he should then determine whether the Petitioner has submitted employment letters which establish "at least five years of progressive post-baccalaureate experience in the specialty." The definition of advanced degree at 8 C.F.R. § 204.5(k)(2) requires the experience to be "*in the specialty.*" The Petitioner must demonstrate such experience at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1).

2. Inconsistent Work Experience

As discussed, a petitioner may present "evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B). Moreover, the regulation at 8 C.F.R. § 204.5(g)(1), provides in pertinent part that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received." The Petitioner has not submitted evidence, such as letters from current or

According to its website, IQAA is a "non-governmental institution [established] in 2008 and is the first Kazakhstani non-profit, non-governmental organization in the field of assessing the quality of educational organizations and educational programs. *See* <https://iqaa.kz/o-nas/iqaa>.

⁸ *See* generally <https://iqaa.kz/en/higher-education/register-of-decisions-and-reports>.

⁹ *See* <https://emmasabzalieva.com/2020/03/02/going-going-gone-kazakhstans-innovation-university-is-shut-down/>.

former employer(s), to establish that he possessed at least five years of progressive post-baccalaureate experience in the specialty at the time of filing the petition. The Director should consider requesting such evidence.

While not discussed by the Director, we also observe that the Petitioner has presented inconsistent evidence about his work experience in support of the petition and in his nonimmigrant visa application filed with the United States Department of State (DOS).¹⁰ The Beneficiary applied for a nonimmigrant visa in 2019 and entered the United States utilizing that nonimmigrant visa in 2020.¹¹ The application for that visa requested the Beneficiary’s work history for the previous five years, which he provided as follows:

Dates of Employment	Employer	Job Title and Duties
06/2019 to 12/2019	[Redacted] Burgers	[Owner] I have a business with my partner, we have two locations.
04/2018 to 05/2019	[Redacted]	Supervisor of marketing department. Promoting products, ideas and missions of the enterprise, finding new customers....
06/2016 to 02/2018	[Redacted]	Economist. Analyzing market trends, advising businesses on economic decisions.

In contrast, the Petitioner submitted an Application for Alien Employment Certification (ETA 750) Part B, which he signed in 2020 under penalty of perjury, and reflects the Petitioner’s work history, as follows:¹²

Dates of Employment	Employer	Job Title and Duties
01/2018 to 12/2019	[Redacted]	Marketing manager
06/2017 to 01/2018	[Redacted] Bank	Credit Manager
01/2016 to 06/2017	Visit	Owner

Importantly, the Petitioner’s business plan in the petition confirms his intentions to operate a business “offering a range of freight trucking services to customers across the United States.” According to his personal statement, he is a “successful business owner [who] worked as the head of marketing, operations manager, truck driver, and dispatcher, and completed other various functions in the freight

¹⁰ The Petitioner signed Form I-140, Immigrant Petition for Alien Worker, certifying under penalty of perjury that the visa petition and the submitted evidence are all true and correct. See section 287(b) of the Act, 8 U.S.C. § 1357(b); see also 8 C.F.R. § 103.2(a)(2).

¹¹ DOS clearly advises visa applicants that, by submitting applications, they certify under penalty of perjury that they have read and understood the applications’ questions and that their answers are true and correct to the best of their knowledge and beliefs. See, e.g., DOS, “DS-160: Frequently Asked Questions,” <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html>.

¹² The Petitioner also submitted a resume, a statement of background, and a business plan which provide varying accounts of his work history, which for the sake of brevity we will not discuss in detail.

trucking industry” in Kazakhstan. However, the Petitioner omitted mention of being employed within the freight trucking industry in his nonimmigrant visa application and presented a work history in support of that application which substantially differs from the information provided in the instant petition.

Here, the Petitioner has submitted inconsistent evidence purporting to show his qualifying work experience and of his position to advance his proposed endeavor, which is material to meeting the requirements of the EB-2 classification and eligibility under the *Dhanasar* analytical framework. The Petitioner must resolve the above inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

B. *Dhanasar* Analysis

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 his intention to continue working in his field in the United States, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his 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 extend beyond his future employer(s) and clients such that it would impact U.S. interests or the financial industry more broadly at a level commensurate with national importance. In addition, he has not demonstrated that his specific proposed endeavor has significant potential to employ U.S. workers or otherwise offer substantial positive economic effects for our nation.

III. CONCLUSION

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.