



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

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

In Re: 19582775

Date: FEB. 22, 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 brand consultant and chief executive, 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, 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 the underlying EB-2 visa classification.

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 or an alien of exceptional ability. *See* section 203(b)(2) of the Act.

In his initial submission, the Petitioner claimed to be eligible as a member of the professions holding an advanced degree, and submitted evidence in support of this claim. In a request for evidence, the Director mischaracterized the criterion under which the Petitioner sought eligibility, and requested evidence in support of the Petitioner’s qualification as an individual of exceptional ability without addressing or acknowledging the Petitioner’s claimed eligibility as an advanced degree professional. In response, the Petitioner noted the Director’s error and reasserted his eligibility as an advanced degree professional, but also complied with the Director’s request and supplemented the record with evidence in support of his eligibility under the alternate criterion.

In denying the petition, the Director did not state in his decision whether he had concluded that the Petitioner was eligible for the underlying EB-2 visa classification, and did not provide any analysis of the evidence submitted in support of the Petitioner’s eligibility as either an advanced degree

professional or an individual of exceptional ability. We are therefore remanding this matter to the Director to issue a new decision which includes a conclusion regarding the Petitioner's eligibility for the underlying EB-2 visa classification, the threshold determination in national interest waiver cases, as well as an analysis of the evidence to support that conclusion. The Director may request any additional evidence considered pertinent to the new determination. 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.