



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

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

In Re: 26400001

Date: APR. 07, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (National Interest Waiver)

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this 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 record did not establish that the Petitioner was eligible as an individual of exceptional ability. In addition, the Director determined that the Petitioner was not eligible for, and did not otherwise merit, a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).¹ Meeting

¹ If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

A. Eligibility for the EB-2 classification

The Petitioner states that his proposed endeavor is to work as a general and operations manager, and submitted business plans for two different companies (a soccer club initially, then an events production business) that he proposes to found and direct as an entrepreneur. In his initial filing, he indicated that he was petitioning as either an advanced degree professional or an individual of exceptional ability, but focused solely on the latter when responding to the Director’s notice of intent to deny (NOID). Accordingly the Director analyzed the criteria and overall standard relating to the Petitioner’s claim of exceptional ability in his decision, concluding that the standard was not met. On appeal, he states that he seeks to be classified as a member of the professions holding an advanced degree, but he does not offer additional arguments in support of his eligibility. We note that, as the Director stated in his NOID, the Petitioner did not establish that he possessed a foreign degree equivalent to a bachelor’s degree from a college or university in the United States, and therefore could not qualify as an advanced degree professional regardless of his experience in his field of endeavor. Further, the Petitioner does not challenge the Director’s conclusion that he is not eligible as an individual of exceptional ability.

In general, we will not address issues that were not raised with specificity on appeal. The Petitioner did not contest the findings of the Director regarding his eligibility for the EB-2 classification or offer additional arguments in his appeal brief. We will therefore consider this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

³ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

B. National Interest Waiver

As the Petitioner has not contested the Director's decision that he is not eligible for the EB-2 classification, he is not eligible for a national interest waiver. We therefore need not determine whether he meets the three prongs under the *Dhanasar* analytical framework, or whether he merits a national interest waiver as a matter of discretion. Nevertheless, we will briefly note that in asserting his qualification under the first prong on appeal, the Petitioner refers to himself as a respected leader and focuses solely on his work experience and skills as a business manager. However, the first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake, not the individual themselves. *Dhanasar*, 26 I&N Dec. at 889. The Petitioner's arguments focusing on his skills and experience would be more appropriate in the second prong of the *Dhanasar* framework, where we consider whether an individual is well placed to advance their endeavor. As the Petitioner has not sufficiently challenged the Director's decision regarding the first prong, he would not be eligible for a national interest waiver even if he had established his eligibility for the EB-2 classification, and we need not consider whether he meets the second and third prongs.

III. CONCLUSION

The Petitioner does not challenge the Director's adverse decision regarding his eligibility for the EB-2 classification, and this issue is therefore considered waived. Because he has not established his eligibility for this underlying classification, he is not eligible for a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.