



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

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

In Re: 25679841

Date: FEB. 21, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an international trade company, seeks second preference immigrant classification for the Beneficiary, its import and export manager, 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. 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 a [B]eneficiary’s 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 a second preference classification as a member of the professions holding an advanced degree. The matter is now before us on appeal. 8 C.F.R. § 103.3.

While we conduct de novo review on appeal, *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), 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. See section 203(b)(2) of the Act.

In this matter, neither the Director’s decision nor the request for evidence (REE) renders a finding as to whether the Petitioner qualifies as an advanced degree professional.<sup>1</sup> We further note that the Director’s decision does not render findings as to whether the proposed endeavor has substantial merit, or whether the evidence satisfies prongs two and three of the *Dhanasar* analytical framework.<sup>2</sup>

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<sup>1</sup> The Director’s RFE focused exclusively on whether the Beneficiary was well-positioned to advance the proposed endeavor under *Dhanasar*’s second prong. The Petitioner’s response to the RFE was not acknowledged or discussed in the Director’s decision.

<sup>2</sup> The sole basis for the Director’s denial was that the record did not establish that the proposed endeavor has national importance.

We are therefore remanding this matter to the Director to issue a new decision which includes a conclusion regarding the Beneficiary'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 and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

**ORDER:** The Director's decision is withdrawn.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