



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

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

In Re: 24993580

Date: FEB. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing and data analytics consultant, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish eligibility for a waiver of the job offer requirement in the national interest. 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). 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. The Director did not make clear findings as to each of the eligibility requirements for a national interest waiver petition. Moreover, the decision lacks sufficient analysis and discussion of the evidence in the record. We will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. Section 203(b)(2)(B)(i) of the Act. We note, however, that the Director did not make a finding as to whether the Petitioner qualifies for the underlying EB-2 classification.

The Petitioner claims to qualify for the EB-2 classification as an advanced degree professional based upon her education in Brazil. The record contains an evaluation of the Petitioner's academic credentials concluding that she has obtained the equivalent of U.S. master of business administration (MBA) degree in management from a regionally accredited college or university in the United States

based upon her completion of a “*Pos-Graduacao Lato Sensu*” course from the [redacted] [redacted] in Brazil.

However, according to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),¹ “[p]rofessional development and specialization programs are considered *lato sensus* (wide sense graduate-level programs) and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees.”² The database contrasts this with “*strictu sensus* (strict sense graduate-level programs)” that follow minimum national guidelines and do lead toward graduate degrees.³

The evaluator acknowledges that the database does not specifically discuss the Petitioner’s degree, but states that the equivalence finding is supported by the fact that other graduate programs of similar duration are found to represent a level of education comparable to a master’s degree in the United States. However, regardless of the length of the program, the evaluator does not address the distinction between *lato sensus* and *strictu sensus* programs in Brazil nor explain why this *lato sensu* course should be considered equivalent to a U.S. master’s degree.

In addition to the evaluation, the Petitioner submitted other information regarding the university and its programs. On remand, the Director should consider whether this evidence establishes that the Petitioner has obtained the equivalent of an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(3)(i)(A) or has otherwise established eligibility for the underlying visa classification as an advanced degree professional or an individual of exceptional ability.

Once a petitioner demonstrates eligibility as either an advanced degree professional or an individual of exceptional ability, 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 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 USCIS may, as a matter of discretion,⁴ 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.

As to the Petitioner’s eligibility for the national interest waiver, the Director did not identify nor describe the Petitioner’s proposed endeavor in his decision. He also did not make a finding as to

¹ We consider EDGE to be a reliable source of information about foreign credential equivalencies. See *Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also *Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

² See <https://www.aacrao.org/edge/country/brazil> for information regarding the education system in Brazil.

³ *Id.*

⁴ 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).

whether the proposed endeavor has substantial merit, as part of the first prong of the *Dhanasar* framework. Further, although it appears that he intended to find that the Petitioner meets the second prong of *Dhanasar* - that she is well-positioned to advance her proposed endeavor - he did not clearly do so, and he did not discuss or analyze any of the evidence in the record regarding this prong.

The Director did make the finding that the Petitioner did not establish eligibility under either the third prong of *Dhanasar* or the national importance element of the first prong. However, he did not sufficiently analyze or discuss the evidence in the record in making these findings. As to the national importance of the proposed endeavor, other than stating that the Petitioner “submitted approximately 30 articles,” the Director did not discuss the evidence at all. Similarly, as to the third prong of *Dhanasar*, the Director stated the law and the relevant considerations in performing the third prong’s balancing analysis and concluded that “[t]he record does not demonstrate the widespread benefits associated with work aimed at being a Market Research Analyst.” However, the Director did not discuss the evidence he weighed in balancing those considerations nor address the Petitioner’s specific claims, if any, as to the third prong.

An officer must fully explain the reasons for denying a visa petition to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Therefore, we will withdraw the Director’s decision based on this deficiency. On remand, the Director should review the entire record in considering whether the Petitioner has sufficiently identified her proposed endeavor and whether she has established eligibility under each of the three prongs of the *Dhanasar* framework.

Accordingly, the matter will be remanded to the Director to determine if the Petitioner has established eligibility for the underlying classification and for a national interest waiver and to enter a new decision. 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 Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.