



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

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

In Re: 23671680

Date: JAN. 4, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business manager, 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. 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 a second preference classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. However, in a prior request for evidence, the Director stated that the Petitioner “submitted evidence with Form I-140 which establishes the [Petitioner] holds [a] Bachelor’s Degree in Mechanical Engineering or a foreign equivalent degree followed by at least five years of progressive experience in the specialty and thus qualifies as a member of the professions holding an advanced degree.”

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.

We note that, although the record contains an evaluation of the Petitioner’s academic credentials, the evaluation addresses the Petitioner’s foreign degree in mechanical engineering, a specialty that appears to be dissimilar to business administration, the focus of the proposed endeavor. *See* 8 C.F.R. § 204.5(k)(2) (requiring a qualifying degree and experience to be “in the specialty”); *see also* 8 C.F.R. § 204.5(k)(3)(ii)(A) (requiring an official academic record establishing that the noncitizen has a degree or similar award from a college, university or other institution of learning “relating to the area of exceptional ability” to satisfy that criterion). Specifically, the English translation of the Petitioner’s

academic transcript lists many courses unrelated to business administration, including courses in art, language, physics, materials science, and engineering. We also note that the evaluation addresses a post-graduate certificate in business administration the Petitioner received. However, the regulations contemplate a singular “United States baccalaureate degree or foreign equivalent degree followed by at least five years of progressive experience in the specialty” to be equivalent to an advanced degree, not a bachelor’s degree in an unrelated field combined with a post-graduate certificate in a related field, followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(2).

Accordingly, the matter will be remanded to the Director to determine if the Petitioner has established eligibility for the underlying classification as a member of the professions holding an advanced degree and to enter a new decision. 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.