



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

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

In Re: 24217759

Date: JAN. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a former military officer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and as 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 the Petitioner's eligibility for the EB-2 classification or that he merited 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

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.

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 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree 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 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. EB-2 CLASSIFICATION

The Petitioner asserts that he is eligible for the EB-2 classification as both an advanced degree professional and an individual of exceptional ability. Per the analysis below, we agree with the Director that he qualifies as neither.

A. Member of the Professions Holding an Advanced Degree

The Petitioner submitted a diploma and transcripts showing that after three years of study at F-T-E-S-M- (and one semester of transfer credits from previous study at a different school), he earned a bachelor’s degree in administration. He also submitted an academic evaluation which concluded that he had completed requirements substantially similar to those of a bachelor’s degree program in business administration from an accredited institution in the United States. In addition, a letter from an official of F-T-E-S-M- confirms that at the time of the Petitioner’s graduation in 2005, the business administration degree program “was offered in three and a half years,” and notes that the National Council of Education in Brazil had not yet standardized the duration of bachelor’s degree programs.

The Director considered this evidence but concluded that the Petitioner’s diploma was not the foreign equivalent of a United States baccalaureate degree as required. Specifically, he noted that United States bachelor’s degrees typically require four years to complete. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm’r 1977). In addition, the Director referred to material regarding the Brazilian educational system found in the Electronic Database for Global Education (EDGE) created by the American

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).

Association of Collegiate Registrars and Admissions Officers (AACRAO), noting that bachelor's degrees are awarded after three to five years of study.⁴

On appeal, the Petitioner asserts that the letter from the official at F-T-E-S-M- indicates that he graduated from an accelerated program. However, the letter does not state that this was an accelerated program, only that the course length was three and a half years. As the Petitioner has not established that he holds the equivalent of a baccalaureate degree from an accredited college or university in the United States, he is not eligible as a member of the professions holding an advanced degree.

B. Individual of Exceptional Ability

The Director concluded that the Petitioner met two of the evidentiary categories under 8 C.F.R. § 204.5(k)(3)(ii), those relating to a degree, diploma or similar award relating to his area of exceptional ability, and evidence of 10 years of full-time experience in the occupation sought. However, we disagree that the evidence establishes that he meets the requirements of the second of these categories.

The Petitioner initially indicated that his proposed endeavor would be to work as a military instructor in the United States, but provided conflicting details regarding this endeavor. He initially noted that “whether slogging through basic training with a pack of new recruits or teaching prospective second lieutenants about the finer points of warfare, instructors are important and necessary fixtures.” However, when further describing this endeavor, he indicated that he would “provide expert advice and guidance regarding personnel management, cross-border maritime transactions, naval electronics and military IT systems, and investment opportunities for U.S. maritime and shipbuilding companies.” In response to the Director’s request for evidence (RFE), he submitted a business plan for a proposed company which would “provide sales consultancy services” to U.S. companies selling weapons and other goods to the Brazilian military. Leaving aside the issue of this significant change in his proposed endeavor, the record does not show that the Petitioner has 10 years of full-time experience as a military instructor, an entrepreneur or a sales consultant, the occupations in which he has alternatively sought to be engaged. The experience letters rather document his experience as a military officer in a variety of administrative roles, with the N-E-C- from August 2002 to September 2009, and with the N-H-M-D- from October 2009 to May 2014 and again from March 2015 to July 2017, much of which involved human resources functions. So we disagree with the Director regarding the Petitioner’s satisfaction of the category at 8 C.F.R. § 204.5(k)(3)(ii)(B) and retract that part of his decision.

On appeal, the Petitioner asserts that the record shows that he also meets the evidentiary categories regarding a license to practice his occupation and recognition for his achievements and significant contributions to his industry or field. But he does not identify specific evidence in the record to support these assertions, or specific errors in the Director’s analysis. He also did not respond to the RFE with additional evidence or arguments about meeting either of these categories, despite the Director’s notification that he did not meet them, and stated in his initial submission that he was not submitting evidence of licenses or certifications.

⁴ EDGE further indicates that a bachelor’s degree earned after three years of study at a Brazilian institution of higher education is the equivalent of three years of study towards a bachelor’s degree from an institution in the United States, and that degrees earned after four or five years of study at a Brazilian institution are the foreign equivalent of a United States bachelor’s degree.

In addition, the evidence of military medals received by the Petitioner are acknowledgment of his service as a military officer and do not reflect recognition for achievements and significant contributions to the fields of military instruction, entrepreneurship, or sales. Similarly, the letters describe his successful completion of a variety of administrative projects or tasks for the organizations that employed him, but do not demonstrate recognition for achievements or significant contributions to the fields encompassing his disparate proposed endeavors.

The Petitioner has not established that he meets three of the evidentiary categories under 8 C.F.R. 204.5(k)(3)(ii), and so has not met the initial requirement to demonstrate his eligibility as an individual of exceptional ability. We thus need not conduct a final merits determination of whether he is recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

III. NATIONAL INTEREST WAIVER

The Petitioner has not established his qualification for the EB-2 classification under either of the two categories, and is therefore ineligible for a national interest waiver. While he asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework, we will reserve these issues.⁵ The petition will remain denied.

ORDER: The appeal is dismissed.

⁵ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).