



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

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

In Re: 26953583

Date: MAY 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur seeking to sell pharmaceutical products, 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, 8 U.S.C. § 1153(b)(2)(B)(i). 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 record did not establish that the Petitioner (1) is a member of the professions holding an advanced degree and (2) qualifies for the 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To qualify for a national interest waiver, a petitioner must first show eligibility 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).

"Profession" is defined as of the occupations listed in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. 8 C.F.R. § 204.5(k)(3).

Once a petitioner demonstrates EB-2 eligibility, 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 USCIS may, as matter of discretion,¹ 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.

When denying a petition, the Director must explain the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). In this instance, the Director did not sufficiently explain the reasons for the denial of the petition.

With regard to the underlying EB-2 classification, the Director stated:

In the instant case, the petitioner did not submit sufficient evidence with Form I-140 to establish that the beneficiary’s academic record is that of an advanced degree, and therefore is seeking classification as an alien of exceptional ability. As such, USCIS will evaluate whether the beneficiary qualifies as an alien of exceptional ability.

The decision includes no evaluation of exceptional ability (which the Petitioner did not claim). Instead, the next sentence reads: “As such, the beneficiary does not qualify as a member of the professions holding an advanced degree.” The only stated explanation concerns the Petitioner’s academic record. The Petitioner, however, had submitted documentation of a bachelor’s degree in pharmacy and a credential evaluation indicating that her degree, plus more than five years progressive experience, is equivalent to a master’s degree under 8 C.F.R. § 204.5(k)(3)(i)(B). The Director did not address this evaluation or explain why it is deficient.

Regarding the national interest waiver, the Director stated a series of conclusions without explaining the reasoning underlying those conclusions:

The petitioner states the beneficiary will be a[n] Entrepreneur who will manage and operate her own company. Therefore, USCIS finds that the petitioner’s proposed endeavor **does not have** substantial merit.

. . . .

According to the petitioner’s statement, the beneficiary’s proposed endeavor is to work as an entrepreneur.

¹ 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).

The petitioner has not established how the beneficiary's proposed endeavor stands to impact the regional or national population at a level consistent with having national importance. Nor has the petitioner demonstrated the beneficiary's work would have broader implications for the medical field.

....

The petitioner has submitted documentation of the beneficiary's academic credentials, certificates, and a job offer letter from the petitioner. The evidence demonstrates the beneficiary **is not** well positioned to advance her proposed endeavor to be an entrepreneur.

....

The record does not demonstrate the widespread benefits associated with beneficiary's endeavor as a[n] Entrepreneur. In addition, the record does not demonstrate that the beneficiary's proposed endeavor may lead to potential creation of jobs. The record does not contain sufficient evidence to demonstrate that the beneficiary's proposed endeavor benefits would be beneficial to the United States.

In the absence of a more detailed explanation, the Director's conclusions appear to suggest that the Petitioner is ineligible for the waiver because she is an entrepreneur. But entrepreneurs can qualify for the waiver provided they meet the underlying EB-2 requirements and the *Dhanasar* criteria. *See generally* 6 *USCIS Policy Manual* F.5(D)(4), <https://www.uscis.gov/policy-manual>. The question instead is whether the Petitioner has submitted sufficient evidence to show eligibility for the waiver. If not, the Director must explain the deficiencies in the evidence in sufficient detail.

The record before us raises significant doubt that the Petitioner has met her burden of proof, but the lack of specific information in the denial notice limited the Petitioner's ability to prepare a substantive appeal. The Director must issue a new decision. If that decision is a denial, then the Director must specifically explain, in reasonable detail, why the Petitioner had not established eligibility.

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