



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

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

In Re: 26580086

Date: MAY 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur, seeks classification as a member of the professions holding an advanced degree. 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 Nebraska Service Center denied the petition, concluding that the record did not establish either the Petitioner's eligibility for EB-2 classification or that a waiver of the classification's job offer requirement is 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). 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 immigrant 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, the petitioner must then establish eligibility for 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,<sup>1</sup> 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. ANALYSIS

The Director found that the Petitioner did not establish that he is an advanced degree professional, and as such did not establish that he qualifies for the EB-2 classification. The Director further found that the Petitioner did not establish eligibility under any of the three required prongs of the *Dhanasar* analytical framework, and therefore, did not establish that a waiver of the classification's job offer requirement is in the national interest.

### A. Qualification for EB-2 Classification

As discussed above, to qualify for the underlying EB-2 classification, an individual must establish eligibility as either a member of the professions holding an advanced degree, or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. In the Petitioner's initial filing he claimed that he meets some of the regulatory criteria used to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii). However, in response to the Director's request for evidence (RFE), which requested among other items additional evidence to establish exceptional ability, the Petitioner did not further assert that he qualifies as an individual of exceptional ability nor submit additional evidence to support this claim. The Petitioner also does not assert that he qualifies as an individual of exceptional ability on appeal. Accordingly, we consider the claim that the Petitioner qualifies as an individual of exceptional ability to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

In response to the Director's RFE and on appeal, the Petitioner instead asserts only that he qualifies as a member of the professions holding an advanced degree. To qualify as an advanced degree professional, an individual must either possess an academic or professional degree above that of a bachelor's degree or possess at least five years of progressive experience in the specialty following their receipt of a bachelor's degree or the foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

The record contains evidence that the Petitioner obtained a "diploma" in jurisprudence from the Academy of [REDACTED] in Kazakhstan in 1999, evidence of his years of work experience as a police investigator with the [REDACTED] of the Republic of Kazakhstan from 2001 to 2018, and an evaluation of academics and work experience. The evaluation claims that the Petitioner's degree is equivalent to a United States bachelor's degree and further that the Petitioner has obtained the equivalent of a master's degree in law based upon his receipt of this degree followed by more than five years of progressive experience in law. The Petitioner states that he proposes to establish a cargo logistics and transportation business as his specific proposed endeavor.

---

<sup>1</sup> *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 Director found that the Petitioner's claimed work experience in law was unrelated to cargo logistics and transportation. Therefore, the Director stated, the Petitioner did not establish that his post-baccalaureate experience is "in the specialty" of the proposed endeavor, and as such he did not establish that he an advanced degree professional as defined at 8 C.F.R. § 204.5(k)(2).

In a brief submitted on appeal, counsel for the Petitioner asserts that the Petitioner's advanced degree qualifications are relevant to his proposed endeavor, stating that his degree has supplied him with "the skills and knowledge that will be instrumental in implementing the proposed endeavor" because he will be "developing his business, employing knowledge of contracts, sales, and other business related subjects." Counsel also asserts on appeal that in some of his prior roles in Kazakhstan, the Petitioner was "primarily responsible for traffic-related crimes" and, as a result, gained an understanding of road safety compliance, vehicle operation, and the transportation and logistics industry.

Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence. The only evidence in the record supporting this claim appears to be the Petitioner's personal statement, in which he claims that in his prior roles he was responsible for investigating traffic-related crimes, and that through this he "began coming into contact with the logistics industry." However, the Petitioner's work experience letter from the [redacted] of the Republic of Kazakhstan does not mention a specialization in "traffic-related crimes," "road safety compliance," or other work related to the transportation and logistics industry in describing the Petitioner's work experience with the organization. Although the business plan and the expert opinion letter that the Petitioner submitted summarize the Petitioner's work experience as involving "traffic-related crimes," these documents do not cite to a source for those summaries and appear to be simply repeating the Petitioner's claim. As such, we do not consider them to be additional, independent evidence of the Petitioner's experience. The record contains no other evidence to support the claim that the Petitioner's experience relates to traffic-related crimes or the logistics industry, and the Petitioner has not established this fact with his unsupported testimonial evidence alone. Moreover, even if the Petitioner has experience investigating and prosecuting traffic-related crimes, he has not sufficiently established that his experience in that specialty relates to his proposed endeavor of operating a logistics and transportation business. Therefore, we conclude that the Petitioner has not established that his work experience is "in the specialty" of the proposed endeavor, and as a result he has not established that he qualifies as an advanced degree professional as defined at 8 C.F.R. § 204.5(k)(2).<sup>2</sup>

Additionally, as stated above, the Petitioner has not established that he qualifies for EB-2 classification as an individual of exceptional ability. Having determined that the Petitioner does not qualify as either an advanced degree professional or as an individual of exceptional ability, we conclude that the Petitioner has not demonstrated his eligibility for the underlying EB-2 classification.

---

<sup>2</sup> Although the Director appeared to conclude that the Petitioner established that his foreign degree is equivalent to a U.S. bachelor's degree, because our conclusion that the Petitioner's experience is not "in the specialty" of the proposed endeavor is sufficient to determine the outcome of the appeal, we need not address whether the Petitioner has established that he possesses the equivalent of a U.S. bachelor's degree.

## B. Eligibility for a National Interest Waiver

The next issue is whether the Petitioner has established that a waiver of the classification's job offer requirement is in the national interest. Because the Petitioner has not established that he meets the threshold requirement of eligibility for the underlying EB-2 classification, we need not address whether he is eligible for, and merits as a matter of discretion, a waiver of that classification's job offer requirement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

## III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 8 C.F.R. § 204.5(k)(2), (k)(3). Because the Petitioner has not established eligibility for the underlying EB-2 immigrant classification, we conclude that the Petitioner has not established eligibility for a national interest waiver. We reserve our opinion regarding whether the record satisfies any of the three prongs of the *Dhanasar* analytical framework.

**ORDER:** The appeal is dismissed.