



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

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

In Re: 29095291

Date: FEB. 6, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an accounting specialist, seeks employment-based second preference (EB-2) immigrant classification 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the requested 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.

## I. LAW

To qualify for a national interest waiver, a petitioner must first show eligibility for the underlying EB-2 visa classification, as either a member of the professions holding an advanced degree or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

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).<sup>1</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>2</sup> If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

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<sup>1</sup> 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).

<sup>2</sup> 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>.

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 for EB-2 classification, 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,<sup>3</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

### A. EB-2 Classification

The Petitioner claims eligibility for EB-2 classification as an individual of exceptional ability. The Director concluded in the request for evidence that the Petitioner did not meet three out of the six required criteria and stated that additional documentation was needed. However, the Director did not specify which criteria were not met, explain why the evidence in the record did not meet the criteria, or discuss what additional documentation should be submitted. On remand, the Director should evaluate the Petitioner’s evidence and determine if she has met at least three of the above criteria. If the Petitioner is found to meet at least three criteria, the Director must then conduct a final merits determination and review the evidence in its totality to determine if she has established she possesses a degree of expertise significantly above that ordinarily encountered in her field. *See generally*, 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual> (describing the two-step evidential review process used in determinations for exceptional ability petitions).

### B. National Interest Waiver

On appeal, the Petitioner asserts that the Director’s decision does not explain the specific reasons for denial. We agree with the Petitioner’s assertion that the decision is deficient. An officer must fully explain the reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(i). Furthermore, a decision denying a benefit must include the specific reasons for denial and sufficiently explain the underlying deficiencies to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See, e.g., Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Here, the decision did not meet these requirements.

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<sup>3</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 stated that the occupation of accounting specialist and the general work of the occupation are not specific enough to be considered an endeavor and, “[d]ue to the non-specificity of the petitioner’s proposed endeavor we were unable to determine that the foreign national is well positioned to advance the proposed endeavor.” The Director then concluded “[f]or the same reason, USCIS is unable to determine whether or not, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.” The Director next discussed how substantial merit and national importance are determined under the *Dhanasar* framework and concluded that the Petitioner did not meet this standard. The Director generally listed the evidence in the record but did not analyze the documents or sufficiently explain why the evidence did not establish eligibility under the *Dhanasar* framework. The Petitioner contends on appeal that she has provided an endeavor and that the personal statement offers detailed information on her proposed work in the United States. The Petitioner also asserts that the Director stated she did not meet the qualifications for a national interest waiver without discussion of why they determined the evidence was deficient. We agree with the Petitioner that the decision did not provide an analysis of the evidence or sufficiently explain why the evidence in the record was deficient.

### III. CONCLUSION

For the above reasons, we will withdraw the Director’s decision and remand this matter for further consideration and entry of a new decision. On remand, the Director should review the entire record, including the Petitioner’s appeal, and determine whether she has established eligibility for both the underlying EB-2 classification as an individual of exceptional ability and each of the three prongs of the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the determination prior to issuing a new decision.

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