



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

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

In Re: 29846843

Date: FEB. 07, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an industrial engineer and a business owner of a transportation company, 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 immigrant 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 Petitioner had not established eligibility for the underlying EB-2 classification as a member of the professionals holding an advanced degree. The Director further concluded that the Petitioner had not met the national interest waiver requirements. 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.

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 U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner first demonstrates qualification for the underlying EB-2 visa classification, they must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner shows:

¹ *See Poursina v. USCIS*, 936 F.3d 868, 872 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability.² In denying the petition, the Director concluded that the Petitioner did not establish he is an advanced degree professional because he did not submit the following: 1) certified English translations of his educational credentials in a foreign language; 2) official academic transcripts verifying the dates of attendance, area of concentration, and major areas of study; and 3) an academic credential evaluation confirming that the Petitioner has a foreign equivalent of a U.S. advanced degree.

Although the Director specifically requested these missing documents in the request for evidence (RFE), the Petitioner submitted only a summary statement of his educational credentials and did not comply with the request. On appeal, the Petitioner claims that “I believe I am eligible for the EB-2 NIW classification as a member of professions holding an advanced degree . . . as I hold a Bachelor’s degree in Mechanical Industrial Engineering, a diploma in Process Management and Continuous Improvement.” However, the Petitioner does not identify specific errors on the part of the Director in concluding he did not establish he is an advanced degree professional or offer evidence or arguments regarding his eligibility for the underlying classification.

The Petitioner is required to submit a copy of documents accompanied by a full English language translation. See 8 C.F.R. § 103 .2(b)(3). Furthermore, to qualify as an advanced degree professional, an individual must demonstrate that he possesses a “United States academic or professional degree or a foreign equivalent degree” above that of a bachelor’s degree. 8 C.F.R. § 204.5(k)(2). As the Petitioner has not submitted the required documentation to address the deficiencies in his academic degree, we agree with the Director that the Petitioner does not qualify as an advanced degree professional.

The Petitioner has not established his qualification for the underlying EB-2 visa classification, a threshold issue prior to considering eligibility for a national interest waiver. Therefore, we decline to reach and hereby reserve remaining arguments concerning the Petitioner’s eligibility under the *Dhanasar* prongs. See *INS v. Bagambashad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

² The Petitioner did not claim the EB-2 classification as an individual of exceptional ability nor submit any evidence related to this eligibility requirement.