



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

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

In Re: 30185439

Date: FEB. 29, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an executive manager, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts or business. *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 demonstrate that the Petitioner qualified for the underlying EB-2 classification or that a waiver of the required job offer, and thus of the labor certification, would be 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 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. *Id.* 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 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 discretion,³ 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 Petitioner claims to have worked as an executive manager in Brazil, and intends to establish a marketing and graphic company in the United States. He initially claimed eligibility for the underlying EB-2 classification as an advanced degree professional. In support of this assertion, he submitted his middle school and high school diplomas, as well as an academic credentials evaluation equating his high school education and subsequent years of professional experience to a U.S. bachelor’s degree in business administration.

The Director issued a request for evidence (RFE), noting that the evidence of record did not establish that he qualified for the underlying classification as an advanced degree professional. The Director requested evidence to establish, in the alternative, that the Petitioner qualified as an individual of exceptional ability. The Director also requested additional evidence to demonstrate that he qualified for a national interest waiver under the *Dhanasar* framework.

In response, the Petitioner submitted documentary evidence in support of his qualification as an individual of exceptional ability, including salary data and letters from employers. He also reasserted his eligibility for the underlying EB-2 classification as an advanced degree professional based on the documentation initially submitted.

The Director denied the petition, concluding the record did not establish the Petitioner’s eligibility for the underlying EB-2 classification, and further determined that the Petitioner did not meet two of the

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).

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. See generally 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual>.

³ See also *Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

three *Dhanasar* prongs and was therefore ineligible for a national interest waiver. Regarding the Petitioner's eligibility as an individual of exceptional ability, the Director concluded the Petitioner had not met at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii).

Upon review, we agree with the Director's determination that the Petitioner has not demonstrated eligibility for the underlying classification for the reasons set forth below.

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [noncitizen] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [noncitizen] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [noncitizen] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner initially presented his middle school and high school diplomas, along with an "Evaluation of Education and Work Experience" from GEO Credential Services stating: "Considering that [the Petitioner's] academic qualifications followed by more than five years of full-time work experience in the field of Business Administration is equivalent to a Bachelor's Degree in Business Administration, it is my expert opinion that [the Petitioner] has the equivalent of a U.S. Bachelor's Degree in Business Administration." This credential evaluation does not indicate that the Petitioner has "a foreign equivalent degree" to either a U.S. advanced degree or a U.S. baccalaureate degree.⁴

In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a U.S. baccalaureate degree (plus five years of progressive experience in the specialty). See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B).⁵ A United States baccalaureate degree is generally found to require four years of education. See *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty).

On appeal, the Petitioner simply asserts that he has provided "robust documentary evidence that he is a professional who holds an advanced degree" and that this evidence "was completely forgotten and disregarded in the denial decision." Upon de novo review, we conclude that the Petitioner has not established that he is a member of the professions holding an advanced degree.

The plain language of the regulations indicates that an advanced degree equivalency must include a

⁴ The evaluator bases his evaluation on a "3-for-1 rule" for evaluating the equivalency of work experience to education, but does not reference a statute, regulation, or other source. The regulations pertaining to the requested classification at 8 C.F.R. § 204.5(k) do not include such a rule.

⁵ The regulatory language at 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B) does not state that occupational experience is acceptable in lieu of a U.S. baccalaureate degree or a foreign equivalent degree.

single bachelor's degree, with no provision for substituting experience for education or combining lesser educational credentials. The regulations require five years of progressive experience to follow "[a] United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(2). On appeal, the Petitioner does not offer new arguments or evidence, but rather reasserts eligibility based on the determination made in the credentials evaluation previously submitted.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a noncitizen's eligibility for the benefit sought. *Id.* As the evaluation from GEO Credential Services relies upon a combination of educational credentials and work experience to reach its conclusion, and therefore does not comport with the plain language of the relevant regulation, that conclusion will not be given consideration. Moreover, as stated previously, there is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). The evaluation does not conclude that the Petitioner's educational credentials alone are equivalent to a United States baccalaureate degree; therefore, the record does not establish that the Petitioner possesses a single degree that is the foreign equivalent of a U.S. bachelor's degree.

For the reasons set forth above, the Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree.

B. Individual of Exceptional Ability

The Director determined that the Petitioner is not eligible for the underlying EB-2 classification as an individual of exceptional ability, as he meets only one of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii).

On appeal, the Petitioner provides no evidence or arguments addressing the concerns of the Director regarding his eligibility for the underlying classification as an individual of exceptional ability. Therefore, we consider this issue to be waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

C. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for EB-2 classification as either an advanced degree professional or an individual of exceptional ability. Because the Petitioner has not established eligibility for the underlying immigrant classification and this issue is dispositive of his appeal, we decline to reach and hereby reserve the appellate arguments regarding his eligibility under the three prongs outlined in *Dhanasar*. *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 alternative 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.