



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

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

In Re: 29049409

Date: JAN. 10, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, who describes herself as a business manager and tourism enthusiast, seeks employment-based second preference (EB-2) immigrant 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, in part, that the Petitioner qualified for the EB-2 immigrant classification as a member of the professions holding an advanced degree. 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.

“Advanced degree” is defined as 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 one of the occupations listed in section 101(a)(32) of the Act, 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.¹ 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying 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,² 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.

See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. MEMBER OF THE PROFESSIONS HOLDING AN ADVANCED DEGREE

As discussed, 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. The Petitioner does not assert—nor does the record establish—that she is an individual of exceptional ability. Therefore, she must establish that she is eligible for the EB-2 classification as 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 [individual] 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 [individual] 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 [individual] has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B). Moreover, the regulation at 8 C.F.R. § 204.5(g)(1), provides in pertinent part that “[e]vidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.”

The record shows that the Petitioner received her degree in 2004 in business administration from a university in Brazil; her degree and transcripts show she received a *Titulo de Bacharel(a) em Administração* after four years of coursework. An evaluation included in the record states that her degree is the foreign equivalent of a U.S. bachelor’s degree. We note that the evaluation supplies

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

² *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).

information from the Petitioner's curriculum vitae and argues that her years of experience are equivalent to post-baccalaureate experience under a "3-for-1 Rule." The assessment that the evaluator describes does not apply to immigrant petitions, but to a provision for certain nonimmigrant petitions. We also note that, while the evaluation lists the Petitioner's academic and work experience, it does not provide an analysis of that experience. Credential evaluations are reviewed for advisory purposes only; if questionable in any way, USCIS may give them less weight. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r) 1988). Because the credibility of the credential evaluation is in question, we conclude that it holds little probative value in this matter. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Nonetheless, we reviewed the American Association of Collegiate Registrars and Admissions Officers (AACRAO) EDGE database to determine whether the Petitioner's foreign education is comparable to a U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. For more information, visit <https://www.aacrao.org/edge>. The database provides the following concerning the Petitioner's degree:

The 4- or 5-year *Titulo de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to a bachelor's degree in the United States.

We agree that the Petitioner has earned the foreign equivalent of a U.S. bachelor's degree. The remaining issue to be considered is whether the record shows that she has at least five years of progressive post-baccalaureate experience in the specialty. The Petitioner intends to operate a tourism business in the United States. The Petitioner claims to have several years of experience prior to 2004, when she worked as an intern at a bank. Because we must evaluate her post-baccalaureate experience, we may only consider documented experience following her graduation in 2004.

By her own account, the Petitioner worked at a bank beginning while she was attending college and then continuously from her graduation in 2004 until 2010. She states she worked primarily in the position of Commercial Manager, where she performed the following duties:

[I] committed management and customer portfolio administration; conducted business matters referring to loans and financing; did an analysis of loan operations, prospecting, offering and accepting investments, offered products and services following customer profile and needs. I also did prospecting for new customers, monitoring and collecting overdue credit operations. I was in charge of the projects and implementing processes relevant to the area to reduce costs and create revenue.

A letter from a former superior at the bank where the Petitioner worked attests to her receipt of "several awards in sales campaigns" and her professionalism "with client portfolio management, identification of business opportunities and customer acquisition; [p]reparation of proposals and budgets; [r]eporting, customer services, [and] proposal analysis." The letter, however, does not specify whether the Petitioner was employed full- or part-time, provide specific dates of employment, or describe the Petitioner's specific duties and positions with the bank. 8 C.F.R. § 204.5(g)(1). Additional letters from colleagues at the bank attest to her managerial skills but also do not provide specific information concerning her position, such as specific duties and dates of employment. *Id.* Because the Petitioner's endeavor is to manage a tourism business, it is not clear how her work at the bank relates to her stated

specialty as an entrepreneur operating a tourism business. These letters do not serve as probative evidence of at least five years of progressive post-baccalaureate experience.

We note that, while the Petitioner states that she led her own business from 2011 to 2020, the record does not include documentation relating to the nature of that business or provide details concerning its operation under the Petitioner's ownership or management. The Petitioner's curriculum vitae depicts her occupation as "CEO / Partner" of a company in Rio de Janeiro from May 2011 to December 2020; it provides a generalized description of duties, such as "purchase of products, logistics of entry and exit of goods, business strategy, marketing and layout." The only indication that the Petitioner may have operated a business during that time period comes from a letter from a friend who operated a store in a mall where the Petitioner was working; she states that she met the Petitioner in 2012 and that the Petitioner "performed the activities of purchasing, store management, and customer service." A letter from another friend states that they met doing volunteer work in 2012 and highlights her work as a manager for a project at their church, and several additional letters from friends speak to her personal character. While these letters describe the Petitioner's personality and work ethic, they do not describe specific employment experience or timeframes to demonstrate at least five years of progressive experience in her specialty as an entrepreneur and manager of a tourism business. 8 C.F.R. § 204.5(g)(1).

The Petitioner states that she also managed an element of the Olympic Games in 2016, and a letter from a colleague who worked with the Petitioner during the 2016 Olympics lauds her professionalism in leading a team charged with managing athletes' meals. The record, however, does not include probative evidence of her employment at the event from a supervisor or specify her period of employment. The Petitioner's assertion that she was employed as a team lead at the Olympic Games is not supported by probative evidence sufficient to demonstrate progressive experience in her specialty.

The record also includes a letter from a partner at a market and grocery store where the Petitioner claims previous employment; the author attests that the Petitioner worked as an administrative manager from September 2017 to October 2019. This letter, which describes her duties and the caliber of her work managing the business, meets regulatory requirements to demonstrate her experience managing a store for two years. 8 C.F.R. § 204.5(g)(1).

The Petitioner submitted business formation documents for her tourism company in Brazil, and the authors of several letters spanning from 2020 to 2023 mention either receiving assistance in planning vacations or their intention to have the Petitioner assist them in planning future trips. We note that several of these letters discuss services provided by the Petitioner—or services that the authors intend to receive from the Petitioner—which post-date February 2022, the filing date of the petition. As such, those letters cannot be used as supporting evidence. 8 C.F.R. § 103.2(b)(1). Even if all of the letters submitted qualified as supporting evidence, which they do not, the letters are not accompanied by probative evidence sufficient to demonstrate when the Petitioner operated the company, whether she worked full- or part-time, or the specific duties she performed that would indicate progressive experience in her specialty. The record does not contain tax documents, invoices, or bank statements that would show when and whether she operates the company. The evidence that does include definitive dates of employment shows that the Petitioner was employed in a business management role at a market for just over two years. While the documentation of record shows that the Petitioner has

two years of management experience, it does not demonstrate that she has at least five years of progressive post-baccalaureate experience managing a business in the tourism industry.

On appeal, the Petitioner resubmits several letters previously present in the record. She also submits an email from 2022 that provides what appears to be a link to her business—possibly in partnership with another tourism business, although that is not clear—as well as another email from 2022 confirming her registration with a stroller rental company. We have considered these newly submitted documents, the initial business formation documents, along with letters from people attesting that they have received or will receive assistance from the Petitioner in planning their vacations; however, without more, this material does not sufficiently demonstrate that the Petitioner has at least three years of post-baccalaureate experience in the tourism specialty through this business. While the record demonstrates that the Petitioner holds the foreign equivalent of a U.S. bachelor’s degree and has two years of progressive experience in business management, the record does not show that she has at least five years of progressive post-baccalaureate experience in the tourism business specialty. Further, the record does not include evidence to demonstrate that the Petitioner’s intended occupation qualifies as a profession requiring the attainment of at least a bachelor’s degree for entry. *See* 8 C.F.R. § 204.5(k)(3).

The Petitioner has not established eligibility for the EB-2 classification as a member of the professions holding an advanced degree. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); *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 she meets the requirements of EB-2 classification. Her petition will remain denied.

ORDER: The appeal is dismissed.