



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

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

In Re: 29532247

Date: JAN. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an auditor and international tax consultant, seeks employment-based second preference (EB-2) 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that a waiver of the classification's job offer requirement, 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 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 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

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.

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,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.

The Director determined that the Petitioner was a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner qualifies for a national interest waiver under the *Dhanasar* framework.

The Petitioner states that he has nearly 17 years of experience in accounting and has operated his own accounting firm in Brazil since 2012, “with large customers in the areas of Accounting, Tax, and Tax and Personnel.” He states that he intends “to continue working the high-growth industry of financial services, specifically working in finding solutions and generating benefits in the accounting, advisory, tax, and auditing areas.” He further states that he intends to expand his current Brazilian accounting company, MP Accounting, to open his own consulting company and provide the following services:

- Business valuation;
- Due diligence;
- Environmental, social and governance consulting;
- Cost management;
- Personal financial planning;
- Accounting and financial technology; and
- Auditing services.

The Petitioner states that he will differentiate himself from other major accounting firms “by offering the same high-level services, but offering a very attractive and competitive cost-benefit relationship [and serving] as an internal or external auditor.” He states that he intends to provide the following services to U.S. companies operating, or planning to operate, in Brazil:

- International tax services;
- Labor regulation services;
- International accounting standard services; and
- Third party capital services.

With the initial filing the Petitioner submitted evidence of his education and experience, a personal statement describing his qualifications and the field of accounting and financial services, an expert opinion letter, recommendation and support letters, and legal and marketing documentation for his

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).

³ The record demonstrates that the Petitioner holds the equivalent of a U.S. bachelor’s degree awarded in 2014, followed by more than five years of progressive experience. See 8 C.F.R. § 204.5(k)(3)(i)(B).

Brazilian accounting business. He also submitted industry reports and articles discussing the complexities of corporate taxes in Brazil, doing business in Brazil, shortages and demand in the field of financial and accounting services, and the benefits of international trade for the United States.

Following initial review, the Acting Director issued a request for evidence (RFE), allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Acting Director specifically noted that the Petitioner's initial evidence did not include a detailed description of his proposed undertaking or venture. The Petitioner's response to the RFE includes an updated personal statement and additional industry reports and articles addressing the importance of generating employment to the U.S. economy. In his updated personal statement, the Petitioner states that his proposed endeavor is to "advance my career in the United States by utilizing my expertise and knowledge in the financial services industry."

After reviewing the Petitioner's RFE response, the Acting Director determined that the Petitioner did not provide specific insight as to what he intended to do as an auditor and international tax consultant. The Acting Director noted that "a position, field or industry is not an endeavor that meets the requirement of the *Dhanasar* analytical framework." She concluded that, without the Petitioner's proposed endeavor, USCIS is impeded in determining the Petitioner's eligibility for a national interest waiver.

On appeal, the Petitioner submits a brief and asserts that the Acting Director erred in concluding that that he did not provide specific insight of his proposed endeavor to work as an auditor and international tax consultant. In his brief on appeal, the Petitioner references evidence already in the record and states that this evidence demonstrates that he merits a national interest waiver.

As noted above, the Acting Director concluded that the Petitioner did not describe his proposed endeavor with sufficient specificity. As a result, the Acting Director stated that USCIS was impeded in analyzing whether the Petitioner's proposed endeavor has substantial merit and is of national importance, whether the Petitioner is well-positioned to advance his proposed endeavor, and whether, on balance, waiving the job offer requirement would benefit the United States. In her decision, the Acting Director references the Petitioner's personal statements and statements made by the Petitioner's counsel. Upon de novo review, we determine that the Acting Director's decision does not offer a complete analysis or adequately explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

At the outset, we note that the Acting Director incorrectly states in her decision that the Petitioner submitted evidence that he is a foreign national of exceptional ability.⁴ This statement is incorrect and contrary to the Acting Director's determination in the RFE that the Petitioner established that he is an advanced degree professional pursuant to 8 C.F.R. § 204.5(k)(3)(i)(B).

⁴ 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).

The Acting Director's determination that the record does not describe a proposed endeavor is contrary to the evidence submitted (which included, among other items, two personal statements from the Petitioner, an expert opinion letter, and documentation of the Petitioner's accounting business). Further, this conclusory finding that the Petitioner did not provide a description of his proposed endeavor led to an insufficient analysis of the evidence submitted in support of each prong of the framework in *Matter of Dhanasar*.

While the record contains various statements authored by the Petitioner's counsel, including counsel's initial cover letter and the letter submitted in response to the RFE, the record also contains two personal statements from the Petitioner adequately conveying that the Petitioner's proposed endeavor is to expand his current business based in Brazil to the United States in order to offer financial services in accounting, advisory, tax, and auditing.

In light of the above, we conclude that the record contains sufficient documentation establishing that the Petitioner adequately described his proposed endeavor. The Acting Director's determination to the contrary was therefore incorrect. Because the Acting Director did not provide an analysis of the Petitioner's eligibility for a national interest waiver under any of the prongs set forth in the framework under *Matter of Dhanasar*, we will withdraw the Acting Director's decision.

Because the Acting Director's decision does not properly apply the *Dhanasar* framework to the facts in the record, we will remand the matter for entry of 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.