



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

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

In Re: 27467273

Date: AUG. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an aircraft mechanic, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. 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 that the Petitioner is eligible for or otherwise merits a national interest waiver as a matter of discretion. 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 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.<sup>1</sup> 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent

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<sup>1</sup> 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.

degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

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>2</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>3</sup> If a petitioner does so, 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.<sup>4</sup>

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 eligibility for 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>5</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

The Petitioner proposes to work in the United States as an aircraft mechanic. The Director determined that the Petitioner established his eligibility as a member of the professions holding an advanced degree but did not establish that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

We note that in his petition, the Petitioner asserted that he is eligible for the EB-2 classification as an individual of exceptional ability and did not claim eligibility as a member of the professions holding an advanced degree. For the reasons discussed below, we conclude that the Petitioner has not established his eligibility for EB-2 classification as an advanced degree professional.

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<sup>2</sup> If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

<sup>3</sup> 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>.

<sup>4</sup> See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if it satisfies the required number of criteria, considered in the context of a final merits determination); see generally 6 USCIS Policy Manual, *supra*, at F.5(B)(2).

<sup>5</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).

## A. Member of Professions Holding an Advanced Degree

The Director concluded that the Petitioner qualifies for classification as a professional holding an advanced degree. However, the Director did not provide an explanation of the basis for the finding. After reviewing the record, we disagree with the Director's finding.

To qualify as a member of the professions, an individual must meet "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." 8 C.F.R. 204.5(k)(2).<sup>6</sup> The record does not establish that the Petitioner's occupation, an aircraft mechanic, requires the minimum of a U.S. bachelor's degree or its foreign equivalent for entry into the occupation. The Petitioner maintains that his prospective aircraft mechanic position comports with the duties and responsibilities of those employed in the "Aircraft Mechanics and Service Technicians," SOC Code 49-3011 occupation. The U.S. Department of Labor states that the education requirements for this occupation are "training in vocational schools, related on-the-job experience, or an associate's degree." See U.S. Department of Labor, O\*NET Summary Report for "Aircraft Mechanics and Service Technicians," <https://www.onetonline.org/link/summary/49-3011.00>. Therefore, the Petitioner has not established that he qualifies as a member of the professions. 8 C.F.R. 204.5(k)(2).

Additionally, the record does not establish that the Petitioner has at least a U.S. bachelor's degree or a foreign equivalent degree. The Petitioner earned an occupational certificate of aircraft line technician from [REDACTED] in Colombia on December 13, 2008, and a degree of technician in aircraft line maintenance from [REDACTED] in Colombia on November 1, 2016, and has worked as an aircraft technician. The Petitioner submitted copies of his certificate and degree, the respective academic transcripts, work experience letters, and an academic evaluation from [REDACTED] dated September 17, 2021. The academic evaluation opines that the Petitioner with an occupational certificate of aircraft line technician, a degree of technician in aircraft line maintenance, and 12 years of experience "has no less than the equivalent of a Bachelor of Science in Aviation Maintenance Technology."

The plain language of the regulations indicates that an advanced degree equivalency must include a single bachelor's degree, without 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).<sup>7</sup> Here, as

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<sup>6</sup> Section 101 (a)(32) of the Act states "[t]he term 'profession' shall include but not limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

<sup>7</sup> When introducing the EB-2 regulations, the former Immigration and Naturalization Service (INS) explained that "the proposed rule does not provide a procedure to allow experience alone to substitute for either a baccalaureate degree or an advanced degree." Proposed Rule on Employment-Based Petitions, 56 Fed. Reg. 30703, 30706 (July 15, 1991). In response to stakeholder input, the INS reviewed the Immigration Act of 1990 and found the proposed regulations consistent with Congressional intent. The INS stated, "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, an alien must have at least a bachelor's degree." INS Final Rule on Employment-Based Petitions, 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added). Thus, an advanced degree professional must have at least a U.S. bachelor's degree or a single foreign degree equivalent.

the Petitioner has not established that his degree is the foreign equivalent to a U.S. bachelor's degree, he does not qualify as an advanced degree professional.

Because the Petitioner has not established that he qualifies as a member of the professions or that he holds a U.S. baccalaureate degree or foreign equivalent degree, the Director's determination that he is eligible to be classified as a member of the professions possessing an advanced degree is withdrawn.

#### B. Individual of Exceptional Ability

Because the Director determined that the Petitioner established his eligibility as a member of the professions possessing an advanced degree, the Director did not evaluate the Petitioner's claim that he qualifies as an individual of exceptional ability. The Petitioner submitted evidence to meet all six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). On remand, the Director should evaluate the documentation to determine whether the Petitioner meets the requirements of an individual of exceptional ability.

#### C. Substantial Merit and National Importance

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The Director's decision concluded that although the Petitioner's proposed endeavor has substantial merit, the evidence does not demonstrate the national importance of the Petitioner's proposed endeavor. However, the decision does not sufficiently explain the basis for this determination.

The endeavor's merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education.<sup>8</sup> The Petitioner indicated that his proposed endeavor is to continue to work as an aircraft mechanic for a U.S. employer. He submitted two professional plans and letters from his current and former employers relating to his work experience. We agree that the evidence in the record is sufficient to show that the Petitioner's proposed endeavor is of substantial merit.

On appeal, the Petitioner argues that the Director's decision "contains numerous erroneous conclusions of both law and fact." (emphasis in original). The Petitioner points to evidence submitted with the petition and with his reply to a request for evidence, arguing that the documentation submitted establishes the Petitioner's proposed endeavor has national importance.

Although the Director's decision acknowledges receipt of documentation with the reply to the request for evidence, namely reference letters, an updated professional plan, and a letter from Counsel, it does not sufficiently explain the reasons the documentation does not demonstrate the national importance of the Petitioner's proposed endeavor. Also, the Petitioner submitted additional documentation to show the national importance of his proposed endeavor, including two expert opinions, the Petitioner's resume, Counsel's letters, and articles relating to air transportation, aircraft maintenance, and immigrants working in the United States. However, the Director's decision did not reference or analyze these documents.

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<sup>8</sup> See generally 6 USCIS Policy Manual, *supra*, at F.5(D)(1).

An officer must fully explain the reasons for denying a petition in order to allow a petitioner a fair opportunity to contest the decision and to allow an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994). In determining the Petitioner did not establish the national importance of his proposed endeavor, the Director's decision did not meaningfully address the evidence submitted with the petition or in response to a request for evidence.

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates the endeavor has national importance. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Matter of Dhanasar*, 26 I&N Dec. at 889. The Director should focus on what the Petitioner will be doing rather than the specific occupation. The Director should keep in mind that it is the national importance of the Petitioner's specific proposed endeavor that must be shown, not the importance of the overall field of aircraft mechanics. An endeavor having significant potential on the broader implications for a field or region, generally may rise to the level of having national importance for the purpose of establishing eligibility for a national interest waiver.<sup>9</sup> The Director should review the record to determine whether the Petitioner has demonstrated his proposed endeavor has significant potential on the broader impact in the field.

If the Director concludes that the Petitioner's documentation does not meet the national importance requirements of *Dhanasar's* first prong, the decision should discuss the insufficiencies in the evidence and adequately explain the reasons for ineligibility.

#### D. Well Positioned to Advance the Proposed Endeavor

For *Dhanasar's* second prong, the Director concluded, "the [P]etitioner's education and work history rises to the level of rendering him well positioned to advance his proposed endeavor." However, the Director's decision did not provide a basis for this determination.

The second prong shifts the focus from the proposed endeavor to the petitioner. We analyze whether the petitioner is well positioned to advance their proposed endeavor, and we look at several factors in making this determination. We consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Matter of Dhanasar*, 26 I&N Dec. at 890.

On remand, the Director should analyze the evidence to determine whether the record sufficiently demonstrates the Petitioner is well positioned to advance the proposed endeavor. The Director should articulate the basis for finding whether the evidence shows or fails to show that he is well positioned to advance his endeavor.

#### E. Balancing Factors to Determine Waiver's Benefit to the United States

As to the third prong of *Dhanasar*, the Director concluded that the Petitioner "has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and

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<sup>9</sup> See generally 6 USCIS Policy Manual, *supra*, at F.5(D)(1).

thus of a labor certification.” The Director’s decision listed evidence in the record; referenced the Petitioner’s arguments related to a shortage of aircraft mechanics in the United States; and stated the law and the relevant considerations in performing the third prong’s balancing analysis. However, the Director did not sufficiently discuss the evidence weighed in balancing those considerations or meaningfully address the Petitioner’s specific claims as to the third prong.

On remand, if the Director concludes that the Petitioner does not meet *Dhanasar*’s third prong, the decision should address the Petitioner’s arguments and evidence, and explain the relative decisional weight given to each balancing factor.

### III. CONCLUSION

Accordingly, we are remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for the underlying EB-2 classification as an individual of exceptional ability. In addition, the Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if 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. The Director may request any additional evidence considered pertinent to the new determination. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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