



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

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

In Re: 27188289

Date: JUN. 8, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an operation specialist, 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 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established eligibility as a member of the professions holding an advanced degree and 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. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien 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 alien has at least five years of progressive post-baccalaureate experience in the specialty.”

Next, a petitioner 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 discretion¹, grant a national interest waiver if the petitioner shows:

- 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

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, which in this case, as an advanced degree professional. The initial cover letter claimed that the Petitioner’s eligibility for EB-2 immigrant classification as a member of the professions holding an advanced degree “because [he] hold[s] a bachelor’s degree in business law, seven years of progressive experience in Business Management and [he is] employed as Operations specialist at [REDACTED]” The Petitioner initially provided only a translation without the foreign language document claiming the Petitioner’s receipt of a bachelor’s degree from [REDACTED] University (STAU) in Burkina Faso. In addition, the Petitioner offered an employment letter from [REDACTED] indicating the Petitioner’s part-time employment from March 2018 to June 2018 and an employment letter from [REDACTED] [REDACTED] praising the Petitioner without indicating the type or period of employment.

The Director issued a request for evidence informing the Petitioner to submit an official academic record of his bachelor’s degree and letters showing at least five years of progressive post-baccalaureate experience in the specialty. Further, the Director instructed the Petitioner to provide a detailed advisory evaluation of his credentials that determines the level and major field of the education in terms of equivalent education in the United States. In response, the Petitioner presented copies of a foreign language document for a “Diplome De Licence” and an English language certificate from STAU. Moreover, the Petitioner offered a letter from the American Red Cross in [REDACTED] Nebraska verifying the Petitioner “has been part of the American Red Cross family since 2017” and a job offer letter from [REDACTED] offering the Petitioner an operations support specialist position effective November 2021.

In denying the petition, the Director determined the Petitioner did not possess the equivalent to a U.S. baccalaureate degree and the employment letters do not show at least five years of progressive post-baccalaureate experience in the specialty. Furthermore, the Director concluded the Petitioner did not submit the requested education evaluation. Moreover, the Director indicated a review of the Electronic

¹ 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).

Database for Global Education (EDGE) found no degree that matched the Petitioner's claimed "Diplome De Licence."

On appeal, the Petitioner argues he submitted a detailed advisory of his credentials by a U.S. accredited evaluation service and an official letterhead showing five years of progressive years of experience. We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

In order to show an individual holds an advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, the Petitioner may present "[a]n official academic record showing that the alien 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 alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Director thoroughly reviewed, discussed, and analyzed the Petitioner's documentation. The record does not reflect the Petitioner possesses either a foreign equivalent degree of a United States advanced degree or a foreign equivalent of a United States baccalaureate degree with at least five years of progressive post-baccalaureate experience in the specialty. The Petitioner did not demonstrate his certificates from STAU represent an official academic record of his education, nor did he establish his employment letters show at least five years of progressive post-baccalaureate experience in his specialty. In addition, contrary to the Petitioner's assertion on appeal, the record does not reflect he submitted the requested education evaluation. Finally, the Petitioner does not address the Director's finding of no degree matching the Petitioner's "Diplome De Licence" in EDGE. Although the Petitioner provides additional documentation on appeal, we will not consider this evidence for the first time. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Director); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

Here, the Petitioner did not establish that he qualifies as a member of the professions holding an advanced degree through the possession of a foreign degree equivalent to a U.S. baccalaureate degree with at least five years of progressive post-baccalaureate experience consistent with section 203(b)(2)(B)(i) of the Act; 8 C.F.R. §§ 204.5(k)(2) and (k)(3)(i)(B).

III. CONCLUSION

The Petitioner did not establish that he qualifies for the underlying EB-2 visa classification as an advanced degree professional. As a result, we need not reach a decision whether, as a matter of discretion, he is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework.

Accordingly, we reserve this issue.² 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.

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).