



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

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

In Re: 27439633

Date: JUN. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an investment and financial advisor, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree or an individual of exceptional ability, 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 Director of the Texas Service Center denied the petition, concluding that while the Petitioner is eligible for the EB-2 classification as a member of the professions holding an advanced degree, the record did not establish that he is eligible for, and merits as a matter of discretion, a national interest waiver. 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. 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. 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).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² 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.

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, 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. EB-2 CLASSIFICATION

The Petitioner initially claimed eligibility as an individual of exceptional ability. Because the Director determined that he qualified as a member of the professions holding an advanced degree, she did not evaluate his eligibility as an individual of exceptional ability. Per the discussion below, on remand the Director should focus on the latter when issuing her new decision.

A. Member of the Professions Holding an Advanced Degree

The Director determined that the Petitioner holds a Bachelor of Finance degree, and that this was sufficient to establish his eligibility as a member of the professions holding an advanced degree. We disagree and withdraw the Director’s conclusion per the analysis below.

The Petitioner submitted a properly translated copy of his diploma and transcripts from [] University [] which show that after four semesters of study he completed the management technician program. An “Evaluation of Education, Training, and Experience” in the record concludes that this diploma represents the equivalent of one year of academic studies towards the attainment of a Bachelor of Science degree in finance from an accredited college or university in the United States. It then considers this diploma in combination with the Petitioner’s training and work experience in financial management to conclude that he holds the foreign equivalent of a bachelor’s degree in finance from an accredited institution of higher education in the United States.

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 aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

³ 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).

The plain language of the regulations, however, 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).

Also, 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 Act 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.

Here, the evaluation states that the Petitioner's degree is not equivalent to a U.S. bachelor's degree, and that the determination that he possesses the foreign equivalent of a U.S. bachelor's degree is based on a combination of education, training and experience. The record therefore does not establish the Petitioner's qualification as an advanced degree professional.

B. Individual of Exceptional Ability

As noted above, the Director did not evaluate the Petitioner's eligibility as an individual of exceptional ability in her decision. On remand, the Director should consider whether the Petitioner meets the three criteria under 8 C.F.R. § 204.5(k)(3)(ii) that he initially claimed. If she determines that he meets those three criteria, the Director must then consider the totality of the evidence to evaluate whether the Petitioner is recognized as having a degree of expertise significantly above that ordinarily encountered in his field. In doing so, the Director should consider, among other factors, whether the Petitioner's education and certifications are above the minimum standards for his profession as indicated in the documentary evidence in the record. Also, as the Director did not address these issues in her request for evidence or her denial decision, she should afford the Petitioner the opportunity to address any deficiencies in the evidence relating to the criteria and the final merits determination by issuing a second request for evidence if needed.

IV. NATIONAL INTEREST WAIVER

The Director determined in her decision that the Petitioner was not eligible for, and did not otherwise merit, a national interest waiver. However, her decision lacks any analysis of the evidence under the three prongs of the *Dhanasar* analytical framework. An officer must fully explain the reasons for denying a visa petition to allow a petitioner a fair opportunity to contest the decision and to allow us 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) (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). On remand, the Director should consider all of the evidence in a manner consistent with the analysis below, and articulate her analysis in the new decision.

A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director concluded that the Petitioner's proposed endeavor is of both substantial merit and national importance, but did not provide an analysis or explain the reasoning behind those conclusions. As the Director did not identify the nature of the Petitioner's proposed endeavor at all in her decision, it is unclear how she determined its substantial merit and national importance.

The Petitioner indicated that his proposed endeavor is to continue to work as a financial and investment advisor for his current employer, focusing on serving wealthy individuals from Latin America. He submitted several articles regarding wealth management and foreign direct investment in the United States. We agree that this evidence is sufficient to show that the Petitioner's proposed endeavor of providing wealth and financial management advice to clients from abroad seeking to invest in the United States is of substantial merit.

Turning to the national importance of his proposed endeavor, the Petitioner asserted that the potential prospective impact of his proposed work would lead to job creation and economic growth in the United States, beyond the direct impact to the clients he proposes to serve. On remand, the Director should evaluate whether the record includes sufficient detail regarding the Petitioner's proposed endeavor to support these assertions. In addition, when evaluating the Petitioner's claims and the evidence submitted in support of these claims, 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 national importance of the overall field of wealth and financial management. Further, the Director must articulate her reasoning in her decision.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, 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. *Id.* at 890.

In her decision, the Director listed letters of recommendation and the Petitioner's degree as the evidence submitted in support of this prong. We note that this does not comprise the totality of the evidence in the record regarding his positioning to advance his proposed endeavor. Also, while the

Director listed the factors noted above, she did not analyze the evidence in light of those factors, but provided only conclusory statements. On remand, the Director should consider all of the evidence submitted in support of the Petitioner's ability to advance his proposed endeavor, including evidence of his further training and expert opinion letters, and articulate whether that evidence shows or fails to show that he is well positioned to advance his endeavor.

C. Whether on Balance a Waiver is Beneficial

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 890-91.

The Director concluded in her decision that the Petitioner had not submitted documentary evidence in support of this prong of the *Dhanasar* framework. On remand, the Director should evaluate the Petitioner's arguments regarding this criterion, including those made on appeal, and determine whether the record supports those arguments and establishes that a waiver of the job offer requirement would be beneficial to the United States.

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