



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

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

In Re: 23073815

Date: MAR. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a graphic designer, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree.<sup>1</sup> 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 a waiver of the classification's job offer requirement 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

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. [If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. (delete if doctorate not an issue)] 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

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<sup>1</sup> The Petitioner is considered self-represented in this matter, as the attorney representing him on appeal has been determined to be unauthorized to practice law.

framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>2</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. ADVANCED DEGREE

The Petitioner asserts that he qualifies for advanced degree professional classification by virtue of a foreign education equivalent to a U.S. master's degree. He also asserts that he possesses an advanced degree based on a combination of his foreign education and experience in graphic design. The Petitioner does not make any claim to qualify as an individual with exceptional ability.<sup>3</sup> Although the Director did not address the Petitioner's qualifications for the requested EB-2 classification, we will address this issue at the outset.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate [or] 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." 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12).

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).

The record includes various professional certifications demonstrating completion of professional trainings in design technologies. In addition, the Petitioner provides evidence of his employment with [redacted] in the field of design and communication from 2000 to 2016. With the initial filing, the Petitioner submitted the following academic credentials:

- A diploma and school curriculum issued by the University [redacted] in [redacted] Brazil on November 20, 2002, titled "Curso Superior de Formação Especifica."

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<sup>2</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).

<sup>3</sup> On the ETA Form 9089, Application for Permanent Employment Certification, in the record, the Petitioner indicates that his highest level of education is "Other" and describes this as an "MBA in Design Thinking" earned in 2016 from [redacted], Brazil.

- A postgraduate certificate and transcript issued by the University [redacted] on October 31, 2006, for completion of a one-year academic program in graphic technology and production.
- A certificate and transcript issued by [redacted] Brazil on June 10, 2013, for completion of a one-year executive master of business administration program in marketing management in October 2012.

The initial filing includes a credential evaluation report completed by USCES, LLC on March 7, 2019. The report summarizes the Petitioner's three academic credentials listed above as follows:

- The Petitioner's 2002 "Curso Superior de Formação Especifica" is equivalent to an associate of applied science in information technology from a regionally-accredited institution of higher education in the United States.
- The Petitioner's 2006 postgraduate certificate from the University [redacted] is equivalent to a graduate certificate in design and graphic technology from a regionally-accredited institution of higher education in the United States.
- The Petitioner's 2013 executive master of business administration from [redacted] is equivalent to a graduate certificate in marketing management from a regionally-accredited institution of higher education in the United States.

The report concludes that, based on the academic credits earned in the three completed academic programs, the Petitioner holds the U.S. equivalent of a master's degree in information technology earned in 2012.

Upon review of the evidence submitted with the initial filing of the petition, the Director issued a request for evidence (RFE) to the Petitioner. Although the Director did not raise the issue of the Petitioner's possession of an advanced degree in the RFE, the Petitioner submitted a second evaluation of his academic credentials, as well as a declaration and grade list, with English translation, stating that he completed a "Lato Senu Postgraduate Course in MBA in Design Thinking" in July 2017 at [redacted] in Brazil.<sup>4</sup>

The second evaluation was completed by GEO Credential Services on September 30, 2021, and concludes that the Petitioner's "academics followed by more than five years of full-time work experience in the field of graphic design is equivalent to a Master's Degree in Graphic Design" is equivalent to a U.S. master's degree in graphic design. The evaluator does not state the U.S. equivalence of the individual academic credentials, nor state the total number of years of experience he relied upon to make this conclusion.

The Petitioner has not established that either of his academic credentials alone is the foreign equivalent degree to either a U.S. baccalaureate degree or a U.S. advanced degree. Although the Petitioner's

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<sup>4</sup> The declaration is not signed and is not on letterhead but lists the title of the issuer as "Academic Secretary." It includes the statement "Document Generated and Digitally Signed" and lists the place of issuance as [redacted] on September 21, 2021. The Petitioner does not explain why this document was not submitted with the initial petition, why it is not accompanied by an official academic record such as a diploma or transcripts, and why it was issued in [redacted] when he purportedly completed the program in [redacted]. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

academic records reflect a completion of two years of postsecondary education and two years of postgraduate coursework in two separate and unrelated programs, neither of the evaluations in the record equates the Petitioner's four years of study to a U.S. baccalaureate degree. The USCIS evaluation states without explanation that the Petitioner's four years of postsecondary study are equivalent to a U.S. master's degree. The GEO evaluation does not state that the Petitioner's academic study has any U.S. equivalence without combining his experience. Neither evaluation states that the Petitioner earned the equivalent of a U.S. baccalaureate degree at any time.

Evaluations of foreign educational credentials by evaluations services and individual evaluators are utilized by USCIS as advisory opinions only. When an evaluation is not in accord with evidence in the record or is in any way questionable, USCIS need not accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988), and *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, the evaluations do not establish that the Petitioner's educational credentials are equivalent to a U.S. bachelor's or master's degree.

We have also consulted the Electronic Database for Global Education (EDGE),<sup>5</sup> created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).<sup>6</sup> EDGE includes a list of credentials from Brazil. The list includes the following credentials that represent attainment of a level of education comparable to a bachelor's or master's degree, respectively, in the United States:

- Titulo de bacharel (title of bachelor);
- Titulo de mestre (master's degree program); and
- Mestrado profissional (professional master's degree program).

However, the Petitioner did not provide an official academic record demonstrating that he possesses any of these credentials.

In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty).

Even if we accepted that the Petitioner's four years of study is equivalent to a U.S. baccalaureate degree, which we do not, the Petitioner has not established that he would possess five years of post-baccalaureate experience in the specialty. The record demonstrates that the Petitioner was employed with [REDACTED] in Brazil from October 2000 to July 2016 in the field of graphic design. However,

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<sup>5</sup> EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (visited March 9, 2023).

<sup>6</sup> AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." <http://www.aacrao.org/who-we-are> (visited March 9, 2023).

only three years of this experience would potentially be considered post-baccalaureate, as the Petitioner's graduate certificate in marketing management was issued on June 10, 2013. As noted above, nothing shows that the Petitioner has a separate bachelor's degree, or the date of any such degree. Although the Petitioner claims additional experience from July 2016 to May 2017 running his own design and communication business, the Petitioner does not submit documentary evidence of this experience as required by 8 C.F.R. § 204.5(k)(3)(i)(B). The only other experience the Petitioner claims is with [REDACTED] Florida beginning January 2020, which is after the filing of this petition on September 23, 2019. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The regulatory language identifying a "United States baccalaureate degree," a "United States advanced degree," or a "foreign equivalent degree" at 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(A) and (B) requires a single degree rather than a combination of academic credentials. Without evidence demonstrating that either of his diplomas or certificates alone is the foreign equivalent degree to either a U.S. baccalaureate degree or a U.S. advanced degree, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

### III. NATIONAL INTEREST WAIVER

As noted above, the Petitioner has not established the threshold issue of demonstrating 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. However, we will address the Director's decision and discuss the remaining issue of whether the Petitioner qualifies for a national interest waiver.

The Petitioner states that he is a communication design technician. His proposed endeavor is to offer services through his own company "to work on the development of digital products that would help people and professionals in different areas, transforming the knowledge of professionals into different online products." In this endeavor he intends to provide strategic consulting services in design and to develop online design training programs in order to "help numerous U.S. companies, of different sectors and sizes, to successfully seize opportunities in the American market, attract investments and increasingly leverage national and international success."

With the initial filing, the Petitioner submitted evidence of his education and experience, a personal statement, a professional business plan, samples of his design work,<sup>7</sup> and recommendation and support letters.

Following initial review, the Director issued a RFE, allowing the Petitioner an opportunity to submit additional evidence in attempt to establish his eligibility for the national interest waiver. The Director concluded that the Petitioner had not established that the proposed endeavor had substantial merit or

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<sup>7</sup> Among the examples of the Petitioner's work is a printed packet of designs with the name of the Petitioner's company in Brazil [REDACTED]. The printed packet includes drawings, illustrations, characters, arts, branding and packaging. The printed packet does not specifically identify the Petitioner as the creator or designer of these designs and we note that some of the material appears to be images of licensed products, including well known copyrighted and trademarked characters and brand representatives. The Petitioner does not submit evidence that he designed these characters or packaging or evidence of his permission to use or recreate these images.

national importance, that he was well positioned to advance the proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

In the RFE, the Director noted that the record lacked evidence providing specific insight into the Petitioner's proposed endeavor to work as a graphic designer. He stated that without a more specific description of the Petitioner's proposed endeavor, USCIS could not determine whether it had substantial merit and is of national importance, or whether the Petitioner was well-positioned to advance it.

The Petitioner's response to the RFE includes an updated personal statement and professional business plan, financial documents documenting his prior employment, additional recommendation letters, and an expert opinion letter.

After reviewing the Petitioner's RFE response, the Director concluded that the Petitioner had not demonstrated that his proposed endeavor had substantial merit or is of national importance, that he is well positioned to advance his proposed endeavor, or that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of the labor certification.

On appeal, the Petitioner submits another business plan and copies of evidence already in the record. The Petitioner asserts that his proposed endeavor is of national importance and that it will be beneficial for the United States to grant him a national interest waiver.

#### 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The Petitioner's proposed endeavor seeks to help U.S. businesses make improvements in design, marketing and communication. As the Petitioner has demonstrated that the proposed endeavor is in the area of business, we conclude that it has substantial merit we will withdraw the Director's decision to the contrary.

The Director determined that the Petitioner did not demonstrate how his proposed endeavor will broadly impact the field of graphic design to establish national importance. He stated that the Petitioner's business plan demonstrates that the proposed endeavor is specific to customers and clients using his services, rather than impacting the industry, and that the record does not demonstrate that the proposed endeavor would offer benefits beyond the business community he serves. He further stated that the record did not demonstrate benefits to the regional or national economy resulting from the Petitioner's proposed endeavor that would reach the level of "substantial economic effects" contemplated by *Dhanasar*. *Id.* at 890.

On appeal, the Petitioner provides a copy of the personal statement dated October 4, 2021 that was submitted in response to the RFE. In his decision, the Director already informed the Petitioner that the description of the proposed endeavor in this statement lacked sufficient detail to demonstrate that its national importance. The statement does not discuss any additional details not already reviewed and addressed by the Director.

In the updated business plan, the Petitioner states his “business idea” as starting “a digital marketing and design agency in the United States, offering customized and the highest quality services as per the needs and requirements of the customers.” For the first time on appeal he identifies his business as [REDACTED] located in [REDACTED] Florida.<sup>8</sup> The business plan includes an industry and market analysis, a marketing plan, an organizational plan, a financial plan, descriptions of “global education projects,” and a discussion of the Petitioner’s “national-level impact.”

In discussing his “national-level impact,” the Petitioner states that he will transfer his knowledge and experience in graphic design and marketing to the United States. He states that his experience and knowledge will make businesses more efficient and effective with faster growth and minimum budget. He states that he will support the economy by hiring U.S. workers, supporting startup businesses, and making companies profitable. He also lists the financial and employment benefits of his business as paying taxes and creating employment. Additionally, the Petitioner describes a “global education project” that will allow his business to “contribute and help American society” by addressing problems such as drug use, child abuse, and child maltreatment. He proposes to create illustrated comic books discussing these and other problems for distribution in schools and other public and private places “to prepare children and adolescents to face the challenges of daily life.”

When determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Matter of Dhanasar*, 26 I&N Dec. at 889. Much of the Petitioner’s evidence relates to his past experiences and achievements, rather than his specific proposed endeavor. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may will be understood to have national importance.” *Id.* at 890.

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. While the Petitioner’s statements and business plans indicate his intention to provide graphic design and marketing services to the clients and customers of his company, he has not provided sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. Additionally, with respect to the Petitioner’s proposal to distribute his illustrated comic books addressing various important societal issues, the Petitioner has not

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<sup>8</sup> A search of Florida’s Division of Corporations website reveals that [REDACTED] is an active business that was initially registered in Florida on [REDACTED] 2017, with the Petitioner as its registered agent. See Florida Department of State, Division of Corporations, <https://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (visited March 9, 2023).

provided sufficient detail concerning the potential impact of this project beyond “spreading awareness” as he describes in his business plan.<sup>9</sup> Although the Petitioner states that the project will “take action against” these issues and that his company will donate profits toward these causes, he does not indicate the overall impact of such activities. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude that the Petitioner has not submitted sufficient evidence to establish what the broader implications of his work would be, or that his work would extend beyond his company and its clients to impact the graphic design field, the marketing and branding industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company’s future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecast and projected income statement indicates that the Petitioner’s company has growth potential, it does not demonstrate that the benefits to the regional or national economy resulting from his undertaking would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his company will hire U.S. employees and that his endeavor will “create hundreds of employment opportunities for the local people of the United States,” he has not offered sufficient evidence that the area where his company operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

As the Petitioner has not established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the second and third prongs would serve no meaningful purpose.<sup>10</sup>

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<sup>9</sup> We note that the Petitioner presents this proposal for this first time on appeal. However, the purpose of a RFE is to elicit information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(1), 103.2(b)(8), 103.2(b)(12). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998). If significant, material changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

<sup>10</sup> Even if we had addressed the remaining issues, we still would have dismissed this appeal. As noted above, the Director concluded that the Petitioner did not establish that he was well-positioned to advance the proposed endeavor, or 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. On appeal, the Petitioner references the same supporting evidence submitted with the original petition and RFE response and does not provide any new evidence. The Director fully addressed the previously submitted evidence and explained how it was deficient in establishing that the Petitioner is eligible for a national interest waiver. The Petitioner does not submit evidence of progress toward achieving his proposed endeavor or the interest of potential customers, despite the fact that his business has been in existence more than five years since 2017. Nor does he submit evidence that it would be impractical to secure a job offer or to obtain a labor certification, whether the United States would benefit from his contributions, or whether the national interest in his contributions is sufficiently urgent to warrant forgoing the labor certification process. The Petitioner’s assertions on appeal do not establish that he meets all of the three *Dhanasar* prongs.



### III. CONCLUSION

The Petitioner has not established that he qualifies for the underlying EB-2 classification. Or that he has met all of the requisite three prongs set forth in the *Dhanasar* analytical framework. Therefore, we conclude that he has not established that he is eligible for or otherwise merits a national interest waiver.

**ORDER:** The appeal is dismissed.