



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

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

In Re: 28562799

Date: NOV. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner states that she is a “highly skilled environmental protection technician/specialist.” She 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 EB-2 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 the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that the record did not establish 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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the analysis below.

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. 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 discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

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).

- 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 previously indicated, the Director's decision did 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).

Despite concluding that the Petitioner did not establish eligibility for a national interest waiver, the Director determined that: 1) the Petitioner qualifies as a member of the professions holding an advanced degree, and 2) that the Petitioner's endeavor has substantial merit and national importance under the first prong of the *Dhanasar* framework. For the reasons discussed below, we find that the record lacks sufficient evidence to support these conclusions, and we will remand this matter to allow the Petitioner an opportunity to address these issues.

A. Member of the Professions Holding an Advanced Degree

First, we will address the Director's conclusion that the Petitioner qualifies as a member of the professions holding an advanced degree.²

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."³ 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).

In the matter at hand, the Director determined that the Petitioner earned a bachelor's degree followed by five years of relevant work experience, thereby concluding that the Petitioner qualifies for the EB-2 immigrant classification. However, the record lacks sufficient evidence to support the Director's conclusion. Although the Petitioner states that she completed a four-year undergraduate degree prior to being awarded the post-graduate degree in 2018, the record does not show that her undergraduate degree is the foreign equivalent of a U.S. bachelor's degree. Despite providing a diploma certificate showing that the Petitioner was awarded the title of environmental administrator with emphasis on

² The Petitioner did not claim that she qualifies as an individual of exceptional ability.

³ 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). 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."

agrobusiness in 2013 from [REDACTED] the record lacks sufficient evidence showing that the Petitioner was awarded this degree after completion of four years of undergraduate study, or a length equivalent to a U.S. bachelor's degree. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner provided an expert opinion letter from [REDACTED] stating that the above listed degree was earned after completion of a four-year undergraduate program that is "the equivalent of the U.S. degree of Bachelor of Science in Environmental Management with an Emphasis in Agribusiness." However, it is unclear what documents [REDACTED] reviewed to determine that the Petitioner completed a four-year program as the record does not contain corresponding transcripts.

Although the Petitioner also provided a credentials evaluation report which states that it was "based on photocopies of official academic credentials submitted by [REDACTED]" the report is different from the expert opinion letter upon which the report is purportedly based. Namely, the report states that the Petitioner's attendance at the university in [REDACTED] Colombia "is equivalent to seven semesters of undergraduate study" and does not state that the Petitioner's degree from that institution resulted in four years of undergraduate work, as stated in the expert opinion letter. The report goes on to state that the Petitioner "continued her undergraduate study" from 2017 to 2018 at the University [REDACTED]. It appears the evaluator relied on a combination of the Petitioner's degree in 2013 as well as her more recent degree of "Specialist in Occupational Health Management" in 2018, together, as part of her undergraduate education. Although the evaluation seemingly deems the combined coursework to be "the equivalent of completion of 26 semester credit hours," the record contains no transcript from either institution to corroborate the assertion or to show how many credit hours the Petitioner earned. Nor did the Petitioner offer evidence establishing that 26 credit hours is the equivalent of a four-year U.S. bachelor's degree.⁴ We further note that credential evaluations are advisory and may be given less weight, particularly where, as in this instance, the credentials evaluation report is inconsistent with the expert opinion letter, which is seemingly based on the same set of credentials. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988); *see also Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988).

Based on the evidence submitted, we cannot determine that either of the Petitioner's degrees is the equivalent to a U.S. bachelor's degree. And if, as indicated in the credentials evaluation report, the Petitioner earned a bachelor's degree after her course of study in 2018, then she would not have been able to attain at least five years of progressive post-graduate work experience by the time she filed the instant Form I-140 petition in October 2021. *See* 8 C.F.R. § 103.2(b)(1) (requiring that all eligibility requirements be met as of the date the petition is filed).

Without further evidence, the Petitioner has not established that she meets the requirements for an advanced degree professional. As such, the Director's favorable conclusion must be withdrawn. On

⁴ According to American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE), an undergraduate degree requiring at least four years of coursework and equivalent to a U.S. bachelor's degree is a Título de Licenciatura, which is awarded after 4-5 years of undergraduate study, or a Título de Profesional, which is awarded after 4-6 years of study. The Petitioner's degree certificates show that she earned a Título de Administrador Ambiental con Enfoque en Agronegocios in 2013 and a Título de Especialista en Gerencia en Salud Ocupacional in 2018.

remand, the Director may ask for additional evidence and then consider such evidence in determining whether the Petitioner qualifies as a member of the professions under either of the regulatory requirements for holding an advanced degree as set forth at 8 C.F.R. § 204.5(k)(3)(i)(A) and (B).

B. National Interest Waiver

Next, we will address the Director's determination that the Petitioner's endeavor satisfies the substantial merit and national importance elements of the first prong under *Dhanasar*. The Director did not explain the basis for this determination but specified that the determination was made with respect to the Petitioner's endeavor to be an entrepreneur by "operating a firm" that provides "'risk assessment and mitigation services to combat pollution, radiation and environmental hazards within the oil and gas industry.'" We note, however, that at the time of filing the Petitioner did not indicate an intent to own a business and operate within the context of her own firm. Rather, the Petitioner stated that she intends "to act as a highly skilled environmental protection technician/specialist within the U.S. oil industry sector." It was not until the Petitioner responded to an RFE that she first mentioned the intent to own and operate her own consulting firm. The RFE response also includes a professional plan, which further describes the altered endeavor and lists the Petitioner's role as "director" rather than that of a "technician/specialist." The business plan submitted with the RFE also lists a subordinate three-person staff who would be assigned roles within the "Training Unit," "Consulting Unit," and "Administration and Marketing Unit," thus indicating that they, rather than the Beneficiary, would be assigned the consulting firm's operational tasks, including tasks involving risk mitigation within the oil and gas industry. Because the Petitioner did not list her own duties within the context of this altered entrepreneurial venture, it is unclear whether her role would entail any tasks associated with the position of a "technician/specialist" in the oil and gas industry, as was discussed at the time of filing.

We further note that the work experience listed in the Petitioner's résumé indicates that none of her previously held positions involved owning her own business, but rather showed that she was an employee who assumed the role of a service provider, a role that is consistent with the endeavor as originally described when this petition was filed. The Petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the purpose of an 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).

Accordingly, the materially changed proposed endeavor should not have formed the basis of the Director's analysis of the Petitioner's eligibility for a national interest waiver. Because the Director's reliance on the altered endeavor impacted the analysis of the Petitioner's eligibility for a national interest waiver, including whether the endeavor has substantial merit or national importance, we will withdraw the Director's decision.

Notwithstanding the deficiencies in the Director's decision and our withdrawal thereof, the evidence of record does not appear to demonstrate that the Petitioner met the requirements of the analytical framework set forth in *Dhanasar*, which requires the Petitioner to demonstrate that: (1) her endeavor

has substantial merit and national importance, (2) she is well-positioned to advance the endeavor, and (3) on balance, waiving the job offer requirement would benefit the United States. However, because the 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, and further consideration of whether the Petitioner can establish that she satisfies the criteria for an advanced degree professional.

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