



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

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

In Re: 28744385

Date: NOV. 29, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an information security analyst in the cybersecurity field, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts, or business. 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director further determined that the Petitioner did not establish that a waiver of the 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

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).

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 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,<sup>1</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 primary issue to be addressed is whether the Petitioner established that she is eligible for EB-2 classification as a member of the professions possessing an advanced degree.

The Petitioner initially claimed eligibility for classification under section 203(b)(2) of the Act as both an advanced degree professional and as individual of exceptional ability in the sciences, arts, or business. The Director evaluated the evidence submitted in support of both claims and concluded that the Petitioner did not establish her eligibility for either classification. On appeal, the Petitioner does not raise her previous claim that she qualifies for EB-2 classification as an individual of exceptional ability or otherwise acknowledge or contest the Director’s adverse determination regarding her exceptional ability claim. Issues or claims that are not raised on appeal are deemed to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

### A. Member of the Professions Holding an Advanced Degree

In support of her claim that she qualifies as a member of the professions holding an advanced degree, the Petitioner provided copies of her diploma, academic transcripts, certified English translations, and an educational evaluation demonstrating that she holds the foreign equivalent of a U.S. bachelor’s degree in “Control and Instrumentation Engineering Technology” from [REDACTED] University.

In the Director’s request for evidence (RFE), he noted that although the Petitioner’s personal statement, resume, and list of exhibits indicate she was also attaching a copy of a master’s degree she received in digital forensics and cybersecurity from [REDACTED] College of Criminal Justice, the record does not contain that documentation. In addition, the Director noted that the Petitioner did not submit evidence to establish she has at least five years of progressive post-baccalaureate experience in the specialty.

The RFE advised the Petitioner that in order to show that she holds an advanced degree, the petition must be accompanied by an official academic record showing that she has a U.S. advanced degree or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(A). The Director further explained that, alternately, the Petitioner may present “[a]n official academic record showing that [she] has a United

---

<sup>1</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).

States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that [she] has at least five years of progressive post-baccalaureate experience in the specialty.” § 204.5(k)(3)(i)(B). The record reflects that the Petitioner did not provide a response to the Director’s RFE.

The Director determined that the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree as defined at 8 C.F.R. § 204.5(k)(2), as she has not sufficiently established she possess a U.S. academic or professional degree or foreign equivalent above that of a bachelor’s degree, or, in the alternative, evidence of a bachelor’s degree or its foreign equivalent and evidence in the form of letters from current or former employers showing her five years of progressive post-baccalaureate experience in the specialty.

On appeal, the Petitioner asserts that the Director erred in concluding that she did not provide sufficient evidence that she obtained a master’s degree from [redacted] College of Criminal Justice.<sup>2</sup> She submits new evidence pertaining to her educational qualifications. Specifically, the Petitioner provides a copy of a program dated May 26, 2021, of a Virtual Recognition Celebration in which she is listed as a Spring 2021 candidate for a Master of Science degree, and asserts that the program “confirms that [she] received a Master’s of Science in the year 2021[.]”

However, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The Petitioner was notified in the Director’s RFE that the evidence was insufficient to show her eligibility as a member of the professions holding an advanced degree, and was provided with examples of evidence which could cure these deficiencies.

Based on a review of the record, we agree with the Director that the Petitioner has not provided sufficient evidence that she possesses an advanced degree. Accordingly, she has not established her eligibility for the requested EB-2 classification.

#### B. National Interest Waiver

The Petitioner has not established her qualification for an EB-2 classification as a member of the professions holding an advanced degree and she has waived her prior claim that she qualifies as an individual of exceptional ability in the sciences, arts, or business. She is therefore not eligible for a national interest waiver. While the Petitioner asserts on appeal that she meets all three of the prongs under the *Dhanasar* analytical framework and that the Director erred in concluding otherwise, we will reserve these issues. *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, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

---

<sup>2</sup> The Petitioner does not challenge the Director’s determination that she has not established, in the alternative, that she has at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

### III. CONCLUSION

The Petitioner has not established that she is eligible to be classified as a member of the professions holding an advanced degree or that she is otherwise eligible for EB-2 classification. 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.