



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

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

In Re: 28430298

Date: OCT. 12, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a marketing specialist, 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 did not qualify for classification as a member of the professions holding an advanced degree, and that she had not had not established 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.

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. 8 C.F.R. § 204.5(k)(2). In addition, "profession" is defined as 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.¹ 8 C.F.R. § 204.5(k)(3).

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

¹ Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², 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

A. Member of the Professions Holding an Advanced Degree

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 alien 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 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 Petitioner initially presented her “Bachelor of Social Communication” degree (July 2005) and official academic record from [REDACTED] (Brazil) showing three and one half years (seven semesters) of coursework. She also submitted an “Evaluation of Education and Work Experience” from GEO Credential Services stating: “Considering that an Associate’s degree followed by more than five years of full-time work experience in the field of Marketing and Advertising is equivalent to a U.S. Bachelor’s degree, it is my expert opinion that [the Petitioner] with an Associate’s degree in Social Communication and 8 years of experience, has the equivalent of a U.S. Bachelor’s degree in Social Communication.” This credential evaluation does not indicate that the Petitioner has “a foreign equivalent degree” to either a U.S. advanced degree or a U.S. baccalaureate degree. 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 U.S. baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B).³ 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).

In response to the Director’s request for evidence (RFE), the Petitioner provided a certificate stating that she received a “Bachelor’s Degree in Theology” (August 2018) from [REDACTED] Schools (Brazil), but she did not present an official academic

² *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).

³ The regulatory language at 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B) does not state that occupational experience is acceptable in lieu of a U.S. baccalaureate degree or a foreign equivalent degree.

record showing her coursework as required by the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).⁴ The Petitioner also submitted an “Evaluation of Academics” from Silvergate Evaluations asserting that her “Bachelor’s Degree in Theology,” in conjunction with her “Bachelor of Social Communication” degree, constitutes “the equivalent of a Bachelor’s degree in Communications and Theology from an accredited institution of higher education in the United States.”⁵ This credential evaluation, however, does not indicate that the Petitioner has a single degree that is the “foreign equivalent degree” to a U.S. baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). Nor does the evaluation offer a sufficient analysis of the coursework she completed at [REDACTED] Schools.

Even if we were to conclude that the Petitioner’s “Bachelor’s Degree in Theology” was “a foreign equivalent degree” to a U.S. baccalaureate degree, which we do not, the evidence indicates that she did not receive her degree until August 2018, and we count only her progressive experience in the specialty after that date.⁶ The Form I-140, Immigrant Petition for Alien Workers, in this matter was filed on December 14, 2021. With respect to the Petitioner’s five years of progressive post-baccalaureate experience in her specialty, she must demonstrate such experience at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). Based on either her graduation date or the date she received her “Bachelor’s Degree in Theology,” the Petitioner has not demonstrated at least five years of progressive post-baccalaureate experience in her specialty at the time of filing.

For the reasons set forth above, the Petitioner has not demonstrated that she qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. In order to qualify for a national interest waiver, the Petitioner must first show that she qualifies for EB-2 classification as either an advanced degree professional or an individual of exceptional ability.⁷ Because the Petitioner has not established eligibility for the underlying immigrant classification and this issue is dispositive of her appeal, we decline to reach and hereby reserve the appellate arguments regarding her eligibility under the three prongs outlined in *Dhanasar*. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is 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).

⁴ This degree was not listed on the Petitioner’s Form ETA-750B, Statement of Qualifications of Alien, or the resume that she presented at the time of filing the petition.

⁵ This evaluation stated: “In August 2018, [the Petitioner] completed examinations and was awarded a Bacharela em Teologia (Bachelor’s Degree in Theology). . . . On the basis of the credibility of [REDACTED] and [REDACTED] the number of years of course work, the nature of the course work, and related areas, it is the judgment of Silvergate Evaluations, Inc. that [the Petitioner] has attained the equivalent of a Bachelor’s Degree in Communications and Theology from an accredited institution of higher education in the United States.”

⁶ While this degree was issued on August 20, 2018, it lists the Petitioner’s graduation date as July 31, 2017.

⁷ On appeal, the Petitioner does not contend that she qualifies as an individual of exceptional ability. Accordingly, we deem this issue abandoned. *See Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

III. CONCLUSION

The Petitioner has not established that she satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. 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.