



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

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

In Re: 28458591

Date: OCT. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/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 although the Petitioner was eligible for the EB-2 classification, the record did not establish that he was eligible for, and otherwise merited 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 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).

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).<sup>1</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>2</sup> 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 discretion<sup>3</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. EB-2 CLASSIFICATION

The Petitioner claims to be eligible for the EB-2 immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability. In their decision, the Director concluded that the Petitioner holds an advanced degree, and therefore qualifies as a member of the professions holding an advanced degree. As per the below discussion, we withdraw the Director’s conclusion.

The Petitioner submitted the following evidence related to his education:

- Certificate of completion of [redacted] postgraduate course, MBA in Business Management, University [redacted], June 11, 2021
- Transcripts for the above certificate, showing that the Petitioner completed 11 classes during the period from August 7, 2020 to May 20, 2021
- Title of Technologist in Industrial Production diploma, [redacted] University, March 9, 2015
- Bachelor of Theology diploma, [redacted] January 12, 2018
- Transcripts for the above diploma, showing that the Petitioner completed 11 courses from November 2016 to August 21, 2017
- Certificate for completion of Religious Science course, Educational Society [redacted], June 4, 2021
- Transcripts for the above certificate, indicating that the Petitioner completed 6 courses from November 4, 2020 to February 26, 2021

---

<sup>1</sup> 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).

<sup>2</sup> 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>.

<sup>3</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).

- Certificate for completion of Theology course, [REDACTED] December 10, 2016
- First education evaluation (initially submitted) [REDACTED] dated September 28, 2021, concluding that the Petitioner has the equivalent of 3 years of study in an undergraduate program in theology from an accredited university in the United States
- Second education evaluation (submitted in response to RFE), [REDACTED] dated September 28, 2021, concluding that the Petitioner has the equivalent of a Master's degree in Business Management from an accredited university in the United States
- Third education evaluation (submitted in response to NOID), [REDACTED] dated January 28, 2023, concluding that the Petitioner has the equivalent of a Master's degree in Business Management from an accredited university in the United States

The first educational evaluation focused only on the Petitioner's bachelor's degree in theology from the [REDACTED]. Despite not mentioning the Petitioner's certificate from the [REDACTED] it appears to have incorporated that certificate in the evaluation, as it concludes that he has the equivalent of three years of undergraduate study in theology from a regionally accredited university in the United States. Nevertheless, this evidence does not demonstrate that the Petitioner holds the equivalent of a United States bachelor's degree.

In responding to the Director's RFE, the Petitioner submitted the second education evaluation, which appears to be a different evaluation issued by the same evaluator on the same date as the first. However, this second evaluation reaches conflicting conclusions regarding the equivalency of the Petitioner's education. It contains several discrepancies which render it meaningless, including the following:

- The header section includes the same conclusion as the previously submitted evaluation, while the summary section states that the Petitioner holds the equivalent of a master's degree in business management from an accredited U.S. university
- The awarding institution is listed as [REDACTED] not University [REDACTED] [REDACTED] which issued the Petitioner's *latu sensu* in MBA in business management
- The evaluation states that completion of this degree grants access to "further undergraduate programs," belying the conclusion in the summary that the degree is equivalent to a master's degree
- The overview section discusses the 3-year *Titulo de Bacharel* degree issued in Brazil, not the *latu sensu* diploma referred to in the summary

It is the Petitioner's burden to resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, although the Director made no mention of the discrepancies in the second evaluation when issuing the NOID, the Petitioner submitted the third evaluation from the same evaluator with his response, dated January 28, 2023. While this version lacks most of the discrepancies from the second evaluation, the overview section continues to discuss the *Titulo de Bacharel* degree, not the *latu sensu* diploma of MBA in business management that is referred to in the remainder of the evaluation. So this third evaluation does not resolve all of the discrepancies in the second evaluation, nor does it include an analysis of the credential which it states was evaluated. Due to the remaining discrepancy and the lack of analysis of the Petitioner's educational credentials, we will not afford the educational evaluations any weight in determining the Petitioner's eligibility.

The transcripts for the Petitioner's *latu sensu* diploma in MBA in business management show that he attended courses for one academic year, although it is not clear whether this was full time or part time study.<sup>4</sup> Nor is it clear which of the Petitioner's previous diplomas were considered to meet entry requirements for this program, as the transcripts do not include this information. Regarding his theological education, even if we assume that the Petitioner's claimed two years of study in theology at the [redacted] were accepted for entry into [redacted] which is not apparent from the record, the bachelor's degree from that institution was awarded after only one additional year of study. 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).<sup>5</sup> Based on the information contained in the record, we conclude that the Petitioner has not met his burden to establish the U.S. equivalency of his foreign education in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B).

In addition, we reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The AACRAO EDGE database is a reliable resource concerning the U.S. equivalencies of foreign education. See generally American Association of Collegiate Registrars and Admissions Officers, Electronic Database for Global Education, <https://www.aacrao.org/edge> (last visited October 18, 2023). It contains extensive information regarding the Brazilian educational system, including *latu sensu* certificates. The database states that *latu sensu* programs are for professional development and specialization, and lead toward professional certificates instead of graduate degrees. In addition, it states that a three-year *Titulo de Bacharel* degree is the equivalent of three years of undergraduate study in the United States, whereas diplomas awarded after four or five years of study are equivalent to a bachelor's degree in the United States. As discussed above, the Petitioner has not established that he completed at least four years of study towards his Bachelor of Theology degree. Therefore, the information from the EDGE database, together with the discussion above, shows that the Petitioner does not hold a degree that is the foreign equivalent of a baccalaureate degree from an accredited university in the United States.

As the Petitioner has not established that he has the foreign equivalent of a United States baccalaureate degree, he is not eligible as an advanced degree professional, and we withdraw that portion of the Director's decision. He also claimed eligibility for the EB-2 immigrant classification as an individual of exceptional ability. However, because we conclude that he is not eligible for, and does not merit, a national interest waiver, and this is dispositive of the Petitioner's appeal, we decline to reach and

---

<sup>4</sup> The record indicates that the Petitioner was attending courses at the University [redacted] and the Educational Society [redacted] at the same time. The Petitioner also states on his resume and on Form ETA-750B that he was working full time through most of this period.

<sup>5</sup> We further note that even if either the Petitioner's bachelor's of theology degree or his *latu sensu* in MBA in business management were equivalent to a United States baccalaureate degree, there would not have been sufficient time between the award of either degree and the filing of his petition for him to have earned five years of progressive, post-degree experience in his specialty.

hereby reserve the issue of his eligibility as an individual of exceptional ability. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision); 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).

### III. NATIONAL INTEREST WAIVER

In the Petitioner’s initial statement, he proposed to start his own business which would offer electronic document management services to small and medium-sized companies in the [ ] Florida area. Although his RFE response offered conflicting references to “high-level consulting services” and financial management consulting, in addition to the hiring for a confusing array of unrelated job titles (“sales representative – housewares from Brazil” was just one example), the Petitioner returned to the original description of his proposed endeavor in responding to the Director’s NOID.

#### A. Substantial Merit and National Importance

The first prong of the *Dhanasar* analytical framework, 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 did not include in their decision a determination of whether the Petitioner’s proposed endeavor is of substantial merit, but did mention in their RFE and NOID that this requirement had been met. Based upon the evidence regarding the economic importance of small businesses such as the Petitioner’s proposed business and its proposed clients, the record is sufficient to show that the proposed endeavor would be of substantial merit in the areas of business and entrepreneurialism.

Turning to the national importance of the proposed endeavor, the Director determined that the expert letter and business plan submitted by the Petitioner were insufficient to show that the Petitioner’s proposed business would have a significant potential to employ U.S. workers, as they discussed the employment of only three workers in addition to him. Nor did they show that the proposed endeavor would have substantial positive economic effects beyond those few employees and the potential clients it would serve.

On appeal, the Petitioner refers several times to the expert opinion letter he submitted. His first such reference is to a section of the letter which mainly discusses his work experience, but which also includes the writer’s conclusory statement that the Petitioner’s “work is sought after and has national importance in the service outsourcing and marketing industry.” Such a statement, without explanation as to why the expert believes that the proposed endeavor is of national importance, carries little evidentiary weight. In addition, the discussion of the Petitioner’s work experience is not relevant to his proposed endeavor’s national importance, but is one consideration when determining whether he is well positioned to advance that endeavor under the *Dhanasar* framework’s second prong.

The second section of the expert opinion letter that the Petitioner focuses on in his brief includes another conclusory statement regarding the proposed endeavor's national importance, then goes on to describe the role of operations managers in general as an explanation. But it is the Petitioner's specific proposed endeavor that must be shown to be of national importance, not that of an industry, or an occupation across all industries. *See Dhanasar* at 889. This statement does not show why the Petitioner's proposed work as the general manager of an electronic document management business would have broader implications for his field or the industry in which he proposes to operate.

Later in his brief, the Petitioner points to the first paragraph of the expert opinion letter, wherein the writer opines:

In addition, he is well qualified to teach business concepts to aspiring entrepreneurs and business professionals. It will reach a wider audience by offering seminars, lectures, courses or classes with the aim of transmitting information and disseminating its services with the aim of reaching potential future entrepreneurs.

However, nowhere in the Petitioner's description of his proposed endeavor does he state that he intends to teach classes or seminars on business concepts. It is therefore not apparent to whom the writer is referring, or how this section of the letter is relevant to the national importance of the specific endeavor proposed by the Petitioner.

The Petitioner also argues on appeal that the *Dhanasar* framework does not set out a minimum level of job creation when discussing the national importance of an endeavor "that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in a depressed area." *Dhanasar* at 890. While the decision does not set forth a specific minimum amount of job creation that a petitioner would need to establish national importance, it does indicate that any positive economic effects must be "substantial." We agree with the Director's conclusion that the record does not establish that the potential creation of three relatively unskilled jobs is sufficient to constitute a substantial positive economic effect. Nor are the Petitioner's vague mentions of indirect job creation and revenue generation.

The Petitioner also points to his business plan and statement as supporting the national importance of his proposed endeavor. But that business plan includes the same type of inconsistencies found in the Petitioner's statement in his RFE response. For example, in the section discussing the legal form of the Petitioner's proposed business, it describes the business as a financial analysis and bookkeeping office. Further, the business plan later describes the range of services to be provided by the business, including operational consulting, human resources services, sales services, and the organization of sales events. As the plan's revenue projections are based upon a company offering these services, as opposed to the electronic document management services briefly described in the Petitioner's initial statement and NOID response, they are not relevant in showing that the Petitioner's specific proposed endeavor would have a substantial positive economic effect, or would otherwise have a broader impact in the field of general management or the outsource services industry.

For all of the reasons discussed above, the Petitioner has not established that his proposed endeavor is of national importance. He therefore does not meet the first prong of the *Dhanasar* analytical framework.

### III. CONCLUSION

The Petitioner also argues on appeal that he meets *Dhanasar*'s second and third prongs by showing that he is well positioned to advance her proposed endeavor and that, on balance, a waiver of the job offer requirement would be in the national interest. However, as he does not meet the first prong of the *Dhanasar* analytical framework, he has not established his eligibility for a national interest waiver. As this is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of his eligibility for the remaining prongs. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

**ORDER:** The appeal is dismissed.