



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

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

In Re: 22427165

Date: JUNE 9, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree and as an individual of exceptional ability, 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 or as an individual of exceptional ability, 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. On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for the underlying EB-2 visa classification and for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means 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 in the occupation.

In addition to the definition of “advanced degree” provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner 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.”

Furthermore, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Additionally, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) 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.²

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 record includes employment verification letters relating to the Petitioner's experience as a skincare technician, cosmetologist, researcher, and instructor, as well as copies of her bachelor's degree in accounting and transcript from [REDACTED] Faculty of Human Sciences in Brazil. She also presented two academic evaluation reports which both concluded that the aforementioned degree is the foreign equivalent of a U.S. bachelor's degree in accounting.

As noted above, the definition of advanced degree at 8 C.F.R. § 204.5(k)(2) and the regulatory language at 8 C.F.R. § 204.5(k)(3)(i)(B) both require post-baccalaureate experience to be “in the specialty.” Here, the Petitioner's bachelor's degree is in the specialty of accounting, but her employment verification letters indicate that her experience is in the cosmetology field. In addition, the Petitioner has stated that she intends to continue working the field of cosmetology in the United States.³ The acquisition of a degree or equivalent experience does not, of itself, qualify a person as a member of a “profession.” The knowledge acquired must also be of nature that is a realistic prerequisite to entry into the particular field of endeavor. *See Matter of Shin*, 11 I&N Dec. 686 (BIA 1966).

In her appeal brief, the Petitioner asserts that she “intends to continue working as a Career and Technical Education Teacher” and that the entry-level education for this occupation is a bachelor's

¹ *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

² *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner asserted that she intends “to continue working in my field of expertise in cosmetology, particularly in hair, facial and body aesthetics in the United States. Moreover, I intend to continue conducting scientific research in my field of expertise as well as providing training to cosmetics professionals” In addition, Parts 5 and 6 (“Additional Information About the Petitioner” and “Basic Information About the Proposed Employment”) of the Immigrant Petition for Alien Worker, Form I-140, both list the Petitioner's “Occupation” and “Job Title” as “Skincare Specialist.”

degree. The Petitioner, however, has not shown that she has at least five years of progressive post-baccalaureate experience in accounting to constitute the equivalent to an advanced degree in that specialty. *See* 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). Nor has she demonstrated that her bachelor's degree in accounting is a realistic prerequisite to entry into her proposed endeavor in the cosmetology field, either as a skincare researcher, salon operator, or "Career and Technical Education Teacher." Accordingly, the record supports the Director's determination that the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree.

B. Exceptional Ability

In denying the petition, the Director determined that the Petitioner fulfilled only the license to practice criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). Upon review of the record, we conclude that the Petitioner also meets the official academic record criterion and the ten years of experience criterion.⁴ *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B). Accordingly, the Petitioner has presented documentation that satisfies at least three of the six categories of initial evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). However, meeting the minimum requirement by providing at least three types of initial evidence does not, in itself, establish that the Petitioner meets the requirements for exceptional ability classification.⁵ The Director must therefore undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine in the first instance if they establish her exceptional ability and are consistent with "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." *See* 8 C.F.R. § 204.5(k)(2).

C. 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. On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner provided the following information:

Part 5 - Additional Information About the Petitioner

Section 3.a. Occupation: Skincare Specialist

Part 6 - Basic Information About the Proposed Employment

Section 1. Job Title: Skincare Specialist

Section 2. SOC Code: 39-5094

⁴ The Petitioner's graduation certificates and school records from [redacted] in Brazil are sufficient to meet the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A). In addition, her employment verification letters from [redacted] and [redacted] are sufficient to satisfy the ten years of experience criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

⁵ Officers must also consider the quality of the evidence. In the second part of the analysis, officers should evaluate the evidence together when considering the petition in its entirety for the final merits determination. The officer must determine whether or not the petitioner, by a preponderance of the evidence, has demonstrated that she has a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *See* 6 USCIS Policy Manual F.5(B), <https://www.uscis.gov/policy-manual>.

Section 3. Nontechnical Description of Job: Provide skin care treatments to face and body to enhance an individual's appearance.

With respect to her proposed endeavor, the Petitioner initially submitted a letter stating: "I intend to continue working in my field of expertise in cosmetology, particularly in hair, facial and body aesthetics in the United States. Moreover, I intend to continue conducting scientific research in my field of expertise as well as providing training to cosmetics professionals in the United States"

In response to the Director's request for evidence (RFE), the Petitioner provided a "Professional Plan & Statement" further describing her proposed endeavor:

My focus is to continue my career as a Skin Care Teacher and Researcher in the field of Cosmetology, working on research and development of new treatments and new equipment within the beauty and aesthetic industry. I also plan to continue writing scientific articles based on the findings of my own research and present them in important seminars, workshops and other events in my field, helping to disseminate knowledge and innovative treatments among other professionals in my industry. Moreover, I plan to open and expand my own brand of cosmetology salon, named [REDACTED] [REDACTED] in the United States using the techniques I have developed and creating jobs to [sic] the American workers. Furthermore, I will open a Cosmetology and Aesthetic Laboratory to conduct research and studies in the U.S. as well as to provide specialized training to enhance the skills and knowledge of U.S. workers.

. . . .

In order to conduct research in the United States, I founded [REDACTED] my own laboratory and school of aesthetics and cosmetology, in [REDACTED] Florida. I plan to conduct researches of new treatments, technologies and equipment with the objective of improving the aesthetic treatments or even creating new ones.

. . . .

[I]n July 2018, I founded [REDACTED] a cosmetic salon At the salon, I intend to devote part of my time to manage the business, implementing a variety of facial and body treatments, many of them developed by myself. I also plan to expand the business and the brand by opening additional salons in other locations.

. . . .

I founded [REDACTED] my own laboratory and school of aesthetics and cosmetology in [REDACTED] Florida, together with other partners. Our purpose is to gather highly qualified professionals in the aesthetics industry in the region to offer a variety of specialization courses on different facial and body treatment techniques. At [REDACTED] I will work as an instructor together with . . . specialized personnel, educating and training other aesthetics and cosmetology professionals on how to apply high-end techniques available in the market, such as the ones I developed myself.

....

I propose to keep disseminating my knowledge to audiences composed of young professionals, professional peers, students, clients and laypeople, among others. I will participate as a lecturer and speaker in academic and professional events, such as congresses, fairs, seminars, panels and others, to educate a variety of people on themes related to my areas of expertise.

1. Substantial Merit and National Importance of the Proposed Endeavor

The first prong focuses on the specific endeavor that the Petitioner proposes to undertake. In the decision denying the petition, the Director concluded that the Petitioner had not demonstrated the substantial merit and national importance of her proposed endeavor. The Director stated that the Petitioner had “not submitted a detailed description of the proposed endeavor” or “documentary evidence that demonstrates that the proposed endeavor will have potential prospective impact.” We withdraw the Director’s determination that the Petitioner did not offer a detailed description of her proposed endeavor. The information in the “Professional Plan & Statement” identified above adequately describes her proposed work in the United States.⁶ In addition, while the Director’s decision mentions the Petitioner’s submission of “an opinion letter and a business plan,” it did not provide an analysis of either document.

On appeal, the Petitioner contends that the Director’s decision overlooked additional evidence she submitted to satisfy the first prong of *Dhanasar*, including multiple letters of support from colleagues, industry reports, her authorship of scientific articles, and business documentation relating to her formation of [REDACTED] and [REDACTED]. We agree with the Petitioner’s assertion that her evidence was not given due consideration in the Director’s decision. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *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). Here, the Director’s decision did not adequately address the evidence submitted with the petition or in response to the RFE.

The Director should analyze the Petitioner’s evidence to determine if her proposed endeavor has national or global implications in the cosmetology field, significant potential to employ U.S. workers, or other substantial positive economic effects. If the Director concludes that the Petitioner’s

⁶ The Petitioner indicates that at least a portion of her proposed endeavor will involve training others in her field and providing facial and body treatments to clientele. While these endeavors have substantial merit, the record does not establish that teaching training courses and serving her salon’s clientele stand to impact the cosmetology field or the aesthetics industry more broadly, as opposed to being limited to her trainees and salon clientele. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner’s proposed instructional work and the services she intends to provide for her salon’s clientele do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Likewise, 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.

documentation does not meet the requirements of *Dhanasar*'s first prong, his decision should discuss the insufficiencies in her evidence and adequately explain the reasons for ineligibility.

2. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner.⁷ The record includes her resume, academic records, cosmetic certifications and licenses, published and presented work, and business formation documents. In addition, the Petitioner offered recommendation letters describing her expertise in cosmetology and aestheticism and her past record of success in those endeavors. The Director's decision stated that the Petitioner meets the second prong of *Dhanasar* based on her submission of "an opinion letter," "a business plan," "industry reports," and business "communications," but it did not adequately explain the reason for this determination. Accordingly, we withdraw the Director's finding on this issue. Any new determination by the Director must consider all of the evidence offered for prong two. If the Director concludes that the Petitioner's documentation does not meet *Dhanasar*'s second prong, his decision should discuss the insufficiencies in her evidence and adequately explain the reasons for ineligibility.

3. Balancing Factors to Determine Waiver's Benefit to the United States

The third prong requires the petitioner to demonstrate 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. The Petitioner's response to the Director's RFE argued that aesthetic medicine is a growing market, that there is significant demand for her work, and that her skills and expertise will contribute to her field and to overall societal welfare. While the Director's decision listed "an opinion letter," "a business plan," "industry reports," and business "communications," the decision did not mention the other letters of support and industry reports the Petitioner offered under prong three of *Dhanasar*, nor did it discuss the arguments she presented in response to the RFE. If the Director concludes that the Petitioner's documentation does not meet this prong, his decision should address all of her arguments and evidence, and explain the relative decisional weight given to each balancing factor.

III. CONCLUSION

We withdraw the Director's decision and remand the matter for further review and entry of a new decision. On remand, the Director should review all evidence submitted to date, conduct a final merits determination to decide if the Petitioner qualifies for classification as an individual of exceptional ability, and analyze the Petitioner's evidence to determine if she meets all three requirements set forth in the *Dhanasar* framework. The Director may request any additional evidence considered pertinent to the new decision.

⁷ To the extent that the Petitioner's proposed endeavor involves teaching training courses and serving her salon's clientele, if the Director determines that these activities do not have a broader impact, significant potential to employ U.S. workers, or other substantial positive economic effects, and therefore are not of national importance, the Director need not determine whether the Petitioner has established that she is well positioned to advance her proposed instructional work and clientele services. Moreover, if the Director determines that the Petitioner meets prong one of *Dhanasar* based on her proposed research, the Director's analysis under this prong should focus on whether the Petitioner is well positioned to advance her proposed research and development work. This includes the Petitioner's proposed speaking engagements at academic and professional events to disseminate her scientific findings.

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