



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

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

In Re: 22584051

Date: OCT. 06, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electrical engineer specializing in electric vehicle technology, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business. He also seeks 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, 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. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established eligibility for the underlying EB-2 immigrant visa classification as a member of the professions holding an advanced degree or that a waiver of the classification's job offer requirement would be in the national interest.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See 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. Because this classification requires that the

¹ The Petitioner did not claim in his filing, in response to a request for evidence, or on appeal that he qualified based on exceptional ability.

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, 8 USC § 1101(a)(32), 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent 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, 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).

Furthermore, 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). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

The Petitioner states that he is an electrical engineer specializing in electric vehicle technology, with multiple patents for electric vehicle [redacted] methods. His proposed endeavor is to “leverage [his] track record of successful industry innovation and government-recognized expertise regarding the technological roadmap for next-generation electric vehicles in order to bring proven, leading-edge [redacted] technology to the United States.” In this endeavor, he intends to serve as “Director” of a proposed joint venture in building electric vehicle [redacted]

The Petitioner asserts that he qualifies for advanced degree professional classification by virtue of a foreign education equivalent to a U.S. baccalaureate degree and more than five years of post-baccalaureate experience in the specialty, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner does not make any claim to qualify as an individual with exceptional ability.

As noted above, a petition for an advanced degree professional must include evidence that a petitioner possesses a “United States academic or professional degree or a foreign equivalent degree above that of baccalaureate [or] 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.” 8 C.F.R. § 204.5(k)(2). In addition, a petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12).

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 [individual] 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 [individual] 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 [individual] has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

With the initial filing, the Petitioner submitted a certificate of graduation and scholastic record demonstrating that he earned a bachelor of engineering degree from [REDACTED] University in South Korea in February 2012. He also submitted the following evidence of his employment:

- An employment certificate and English translation stating that he was employed as a Director with [REDACTED] from March 1, 2019 to the date of issuance, June 10, 2019.
- A career certificate and English translation stating that he was employed as a Vice President with [REDACTED] from November 1, 2016 to May 3, 2019 (issued June 5, 2019).
- His curriculum vitae.
- Certificates of National Health Insurance listing him as an employee of various businesses from 1987 to 2019.

Upon review of the evidence submitted with the initial filing of the petition, the Director issued a request for evidence (RFE) to the Petitioner. The Director notified the Petitioner that the record did not establish he is a member of the professions with an advanced degree. The Director acknowledged that the Petitioner had submitted his bachelor's degree and transcripts from [REDACTED] University and letters of employment. However, the Director noted that the letters of employment do not state the duties the Petitioner performed, and, therefore, he could not establish the five years of required post-baccalaureate experience in the specialty. In addition, the RFE informed the Petitioner that the evidence provided was insufficient to establish the Petitioner's eligibility under each of the three *Dhanasar* prongs.

In his response to the RFE, the Petitioner asserted that he possessed more than five years of progressive post-baccalaureate experience and again submitted his curriculum vitae. He also submitted a letter of recommendation from [REDACTED] [REDACTED] states that he worked with the Petitioner from July 2000 to June 2003, at [REDACTED] and from July 2016 to March 2019 at [REDACTED]. He also attests to the Petitioner's traits and areas of expertise.

The Director denied the petition, providing analysis of the Petitioner's ineligibility for both the underlying classification based on advanced degree criteria and under the *Dhanasar* framework related to seeking a National Interest Waiver. The Director concluded that the record did not include "letters from employers with a specific description of the duties [the Petitioner] performed, demonstrating five years of progressive post-baccalaureate experience in the specialty, and including the name, address, and title of the writer." The Director also noted that the Petitioner did not submit an academic evaluation stating the U.S. equivalence of his education. The Director concluded that there was insufficient evidence to establish that the Petitioner was a member of the professions holding an advanced degree. He also concluded that, although the Petitioner had established that the proposed endeavor has substantial merit, he did not establish its national importance, that he was well-positioned to advance the proposed endeavor, or 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.

On appeal, the Petitioner again asserts that he qualifies for advanced degree professional classification based on his foreign education equivalent to a U.S. baccalaureate degree and what he claims as more

than five years of post-baccalaureate experience in the specialty. He submits an academic equivalency evaluation stating that his bachelor of engineering degree from South Korea is equivalent to a four-year bachelor of science degree in electrical engineering from an accredited U.S. college or university. He also resubmits the previously submitted employment and career certificates, and the certificates of national health insurance. He did not submit new employment letters or any additional evidence to document his five years of progressive post-baccalaureate experience or address the Director's concerns.

The Petitioner's originally submitted curriculum vitae is self-serving and does not provide independent, objective evidence of his prior work experience. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The certificates of national health insurance do not list the Petitioner's job title or duties or describe his employment experience in any way. While the employment and career certificates provide the Petitioner's job titles as "Director" and "Vice President" they do not provide any description of his job duties in these roles. Without these details of the Petitioner's experience, we are unable to determine whether this experience is progressive in nature or in the specialty. Further, the certificates document less than five years of total experience, from November 2016 to June 2019, the date the certificates were issued.²

We also note that the recommendation letter from [redacted] is insufficient to document the Petitioner's five years of progressive post-baccalaureate experience. The letter does not describe the Petitioner's duties in any specific position. Further, the letter references employment from July 2016 to March 2019 at [redacted] which is less than five years. The other employment referenced, with [redacted] from July 2000 to June 2003, is not post-baccalaureate, as it was prior to the Petitioner's completion of a bachelor's degree in 2012. Therefore, we agree with the Director that the Petitioner has not established his eligibility for classification as a member of the professions with an advanced degree, because he has not established that he has five years of progressive post-baccalaureate experience in the specialty.

As explained in the legal framework above, 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 the Petitioner has not established this threshold issue, the remainder of the Petitioner's arguments need not be addressed.³ It is unnecessary to analyze any remaining independent grounds

² We note that the Petitioner's claimed employment with [redacted] overlaps with his claimed employment with [redacted] from March to May 2019. In any further filings the Petitioner must explain this overlapping employment and how he was able to work full-time as Director of [redacted] and Vice President of [redacted] for two months.

³ Even if we had addressed the remaining issues and arguments, we still would have dismissed this appeal. As noted above, the Director concluded that, although the proposed endeavor has substantial merit, the Petitioner did not establish its national importance, that he was well-positioned to advance the proposed endeavor, or 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. On appeal, the

when another is dispositive of the appeal. Therefore, we decline to reach whether he meets the remainder of the first prong on national importance, or the second and third prongs under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); 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. CONCLUSION

As the Petitioner has not established that he qualifies for the underlying EB-2 classification, he has not established that he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

Petitioner references the same supporting evidence submitted with the original petition and provides news and journal articles discussing electric vehicles. The Director fully addressed the already submitted evidence and the articles do not address the specific proposed endeavor. The Petitioner's evidence and arguments do not establish that he meets all of the three *Dhanasar* prongs.