



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

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

In Re: 27260353

Date: AUG. 10, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a hazardous waste management consultant, seeks employment-based second preference (EB-2) 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 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 qualified for classification as a member of the professions possessing an advanced degree, but that he had not established he is well positioned to advance the endeavor and 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. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

**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. 8 C.F.R. § 204.5(k)(2). 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).

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). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>1</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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,<sup>2</sup> grant a national interest waiver if the petitioner shows:

- 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.<sup>3</sup>

## II. ANALYSIS

As noted, the Director determined that the Petitioner, who claims eligibility for the EB-2 classification as both an advanced degree professional and as an individual of exceptional ability, qualifies as a member of the professions holding an advanced degree. However, the Director determined that the record did not establish his eligibility under the second and third prongs of the *Dhanasar* framework, and therefore found him ineligible for a waiver of the job offer requirement.

For the reasons discussed below, we will withdraw the Director’s decision and remand the matter to the Director for entry of a new decision.

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

We withdraw the Director’s determination that the Petitioner is a member of the professions holding an advanced degree. The Petitioner submitted an official academic record establishing that he possesses a bachelor’s degree in architecture from a Colombian university, completed in 1988. The Petitioner also provided an evaluation of his education by a credentials evaluator. The evaluator concluded that the Petitioner’s foreign bachelor’s degree is the academic equivalent of a U.S. baccalaureate degree. In the denial decision, the Director stated that the Petitioner “submitted evidence with Form I-140 which establishes [he] has completed his Bachelor of Architecture and thus qualifies as a member of the

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<sup>1</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally*, 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

<sup>2</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).

<sup>3</sup> *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

professions holding an advanced degree. Therefore, at this time, USCIS does not need to evaluate whether [he] also qualifies as an alien of exceptional ability.”

However, as noted, an individual who does not possess a U.S. academic or professional degree or foreign equivalent above that of a bachelor’s degree must provide, in the alternative, evidence of a bachelor’s degree or its foreign equivalent and “evidence in the form of letters from current or former employer(s)” showing their five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B). At the time of filing, the Petitioner submitted evidence intended to show his progressive post-baccalaureate experience, in the form of letters from his former employers documenting his employment. The Director has not yet reviewed this evidence.

Therefore, we will remand the matter to the Director. On remand, the Director should consider whether the submitted evidence of the Petitioner’s progressive post-baccalaureate experience complies with 8 C.F.R. § 204.5(k)(3)(i)(B) and establishes his eligibility for classification as a member of the professions possessing an advanced degree under section 203(b)(2) of the Act. If the Director concludes that the Petitioner is not an advanced degree professional, he should then determine whether the Petitioner qualifies as an individual of exceptional ability.

#### B. Exceptional Ability

As stated, the Director’s decision did not address, in the alternative, whether the Petitioner satisfies at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and has achieved the level of expertise required for exceptional ability classification. In a cover letter accompanying the petition, counsel for the Petitioner indicated that they were submitting evidence that the Petitioner also qualifies as a professional with an Exceptional Ability in logistics and operations management as follows:

- 1) Evidence of [his] Certificates and Professional memberships;
- 2) [His] Degrees and Certificates [] in the field;
- 3) Evidence of [his] Work Experience []; and
- 4) Articles of Organization[] for [redacted] illustrating [his] role as a legal representative of the company.

The Director has not yet reviewed this evidence.

On remand, the Director should consider the Petitioner’s evidence to determine if he has met three of the regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). If so, the Director should then conduct a final merits determination to conclude whether the Petitioner has achieved the level of expertise significantly above that ordinarily encountered for exceptional ability classification. *See* 8 C.F.R. § 204.5(k)(2).

#### C. National Interest Waiver

While the Director concluded that the Petitioner did not establish that a waiver of the required job offer would be in the national interest, the Petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or as an individual of exceptional ability. Since the Director’s determination of this first threshold requirement is withdrawn, we also

withdraw the Director's conclusion that the Petitioner had not established eligibility under the second and third prongs of the *Dhanasar* framework.

Further, as the Petitioner emphasizes on appeal, the Director's analysis of the Petitioner's eligibility under the *Dhanasar* framework contains few references to the evidence he provided in his initial submission and in response to the Director's request for evidence. An officer must fully explain the reasons for denying a visa petition 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).

On remand, if the Director determines the Petitioner demonstrates qualification for the underlying EB-2 visa classification, he should issue a new national interest waiver determination after considering all previously submitted evidence, including the Petitioner's claims on appeal.

### III. CONCLUSION

We are remanding the petition for the Director to reconsider whether the Petitioner has satisfied the eligibility requirements for classification as a member of the professionals holding an advanced degree or, in the alternative, as an individual of exceptional ability. In addition, the Director should properly apply all three prongs of the *Dhanasar* analytical framework to determine if the Petitioner has established that a waiver of the job offer requirement would be in the national interest.

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