



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 28089817

Date: AUG. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a business administrator, seeks employment-based second preference (EB-2) immigrant classification as an advanced degree professional, 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 the Petitioner did not establish eligibility for the underlying second preference classification as an advanced degree professional or an individual of exceptional ability, nor did he establish eligibility for a national interest waiver under the framework outlined in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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.

On appeal, the Petitioner requests that we not consider his eligibility for the second preference EB-2 classification as an individual of exceptional ability. He explains that the Director misconstrued the purpose of his evidence and arguments relating to the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii). Specifically, the Petitioner states, “I request again, as I had previously requested in the response to RFE, that only the criteria that make up the category for a professional and advanced degree to be considered for eligibility purposes . . . (emphasis supplied by the Petitioner).” Accordingly, we do not further discuss the Petitioner’s eligibility as an individual of exceptional ability.¹

We adopt and affirm the Director’s decision regarding the specific issue of eligibility for the EB-2 classification as an advanced degree professional. See *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); see also *Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that

¹ Even if we were to analyze his eligibility as an individual of exceptional ability, we would nevertheless agree with the Director that the evidence provided does not sufficiently establish the Petitioner’s eligibility for this classification.

has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case).

The Petitioner reasserts on appeal that he qualifies as an advanced degree professional and directs our attention to evidence he previously submitted, including documentation that he earned the foreign equivalent of a U.S. bachelor’s degree in May 2021, as well as the Articles of Incorporation for his Brazilian-based business.

The Petitioner provided documentation stating that he finished his academic courses in June 2000 but did not graduate or receive his diploma until May 2021. Without further explanation for this 21-year gap between his courses and his graduation, it is unclear whether the progressive post-baccalaureate should be calculated from June 2000 onward or from May 2021 onward.² Even considering June 2000 as the date in which he earned his baccalaureate degree, we still conclude the evidence does not sufficiently establish the Petitioner gained five years of post-baccalaureate experience in business administration.

The Petitioner relies heavily upon the Articles of Incorporation to establish that he possesses the five years’ experience required for meeting the advanced degree professional classification. He points to the first paragraph of the fifth clause, which lists the general duties of the business’ “administrator” role. While we acknowledge these duties, the Petitioner has not explained how he performed them within the context of his business. The record does not include detailed examples of how he carried out these functions, the specific responsibilities he managed when fulfilling this role, or how his experience has been progressive. Rather, as the Petitioner noted, the Articles of Incorporation contain “basic data of the business.” Simply assigning oneself the title of “managing partner” or “administrator” does not explain what relevant experience the Petitioner gained in executing that role. Accordingly, this document is insufficient to establish the Petitioner has any relevant experience.

The letters from former clients include the general years in which the Petitioner provided services to specific clients. The letters do not demonstrate how many days the Petitioner worked within the specified years, nor do the clients explain the experience the Petitioner gained by working with each of them, respectively.

As the record does not establish the Petitioner’s eligibility for the underlying EB-2 classification, a threshold requirement, the Petitioner cannot demonstrate eligibility for a national interest waiver. Further analysis of eligibility under the Dhanasar framework would, therefore, serve no meaningful purpose. Because the identified reasons for dismissal are dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s remaining appellate arguments. 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).

ORDER: The appeal is dismissed.

² The May 2021 graduation date necessarily negates gaining post-baccalaureate experience totaling at least five years.