



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

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

In Re: 17573460

Date: SEP. 03, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a business and marketing manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree and/or 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 record did not establish that the Petitioner was eligible for, or otherwise merited, a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 the 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. 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.

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.

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). This, however, is only the first step, and the successful submission of evidence meeting at least three criteria does not, in and of itself, establish eligibility for this classification.¹ When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as having a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(i)(3)(i).

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. *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a 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

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. USCIS Policy Memorandum, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, PM-602-0005.1 (Dec. 22, 2010).

would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national 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.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

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. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate 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.³

II. ANALYSIS

The Petitioner proposes to work as a general and operations manager, specifically in the luxury goods sector. We note that she holds a similar position with her current employer.

A. Eligibility for the Underlying Immigrant Classification

As noted above, in order to establish eligibility for a national interest waiver, a petitioner must first establish that they qualify under the EB-2 classification as either a member of the professions holding an advanced degree or as an individual of exceptional ability in the sciences, arts, or business. Here,

² To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

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

the Petitioner asserted in her initial filing that she qualifies as both, and submitted supporting evidence. The Director did not seek further evidence regarding her eligibility under the EB-2 classification with his request for evidence, and in his decision stated only that the Petitioner “meets the education requirements.” However, upon review and for the reasons discussed below, we disagree with this conclusion.

An individual may establish eligibility as a member of the professions with an advanced degree by submitting evidence of either a U.S. professional or academic degree, or foreign equivalent degree, above that of baccalaureate, or a U.S. baccalaureate degree or foreign equivalent degree followed by evidence of five years of progressive experience in the specialty in which they intend to work. In support of these requirements, the Petitioner submitted copies, along with English translations, of the following material:

- Certificate from the University [redacted] and Institute [redacted] [redacted] stating that as of September 24, 2007, the Petitioner had successfully completed the “Special Program of Pedagogic Formation of Techers” which allowed to teach “Artistic Education” at the primary and secondary levels.
- A document titled “School Records” from the above institutions which shows that the Petitioner completed 6 classes and a total of 340 “supervised hours” from September 30, 2006 through September 24, 2007.
- Diploma from the University [redacted] dated January 27, 2006 which states that pursuant to completing the course of higher education in fashion in 2004 and “grade collation” in June 2005, the Petitioner received the title of “Bachelor in Fashion.”
- A document titled “School Records” from the above institution, showing that the Petitioner completed or was credited for 7 semester of coursework from 2001 through 2004.

The Petitioner also submitted an educational evaluation which stated that she earned a bachelor’s degree in fashion and a master’s degree in education, and that these documents show that she completed requirements “substantially similar to those required toward the completion of a Bachelor’s Degree in Design and a Master’s degree in Education, from an accredited institution of higher education in the United States.” However, contrary to the evaluator’s conclusion, we note that the certificate from [redacted] and [redacted] does not state that the Petitioner was awarded a master’s degree in education, or any other academic degree. It is only a certificate which permits her to teach art to elementary and high school students.

Further, according to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),⁴ a *Titulo de Licenciado* is a “teaching qualification which varies in length of study from 2 to 4 years,” and the four-year course “represents attainment of a level of education comparable to a bachelor’s degree in the United States.”⁵ Further,

⁴ We consider EDGE to be a reliable source of information about foreign credential equivalencies. *Sec Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-1 0072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

⁵ *See* [https://www.aacrao.org/edge/country/credentials/credential/brazil/titulo-de-licenciado-\(licentiate\)](https://www.aacrao.org/edge/country/credentials/credential/brazil/titulo-de-licenciado-(licentiate)) (last accessed August 30, 2021)

EDGE indicates that the Brazilian equivalents to a U.S. Master's degree are called *Titulo de Mestre*, *Grau de Mestre*, or *Diploma de Mestrado*.⁶

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817,820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.* Since the evaluator's statement that the Petitioner earned a master's degree in education is not supported by the record, and their evaluation that the certificate from [] and [] is equivalent to a U.S. master's degree in education is highly questionable given the information from EDGE, we will discount the evaluation as evidence of the Petitioner's eligibility as a member of the professions holding an advanced degree.

Per the above, the Petitioner has not established that she holds a foreign degree that is equivalent to a U.S. degree above that of baccalaureate, and we therefore withdraw the Director's conclusion that she "meets the educational requirements." On remand, the Director should review the record to determine whether the Petitioner holds the equivalent of a U.S. baccalaureate degree, and has submitted evidence of five years of progressive, post-degree experience as a general and operations manager. If the Director determines that the Petitioner does not qualify as a member of the professions with an advanced degree, he should then review the evidence submitted in support of her claim as an individual of exceptional ability and render a decision regarding her eligibility.

B. National Interest Waiver

The Director also concluded in his decision that the Petitioner was not eligible for, and did not otherwise merit, a national interest waiver. We note that if the Director determines on remand that the Petitioner has not established eligibility for the underlying EB2 immigrant classification, he may choose to reserve the issue of whether she qualifies for a national interest waiver. However, if the Petitioner does render a new decision under the *Dhanasar* framework, he should analyze the Petitioner's claim that her proposed endeavor is of substantial merit and national importance in accordance with the guidelines laid out in that precedent decision. Specifically, we note that in analyzing the potential prospective impact of her proposed endeavor in the first prong, the Director should not focus on the Petitioner's employment history and any inconsistencies present in the record, as those factors pertain to the analysis in the second prong of the *Dhanasar* framework.

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

⁶ See [https://www.aacrao.org/edge/country/credentials/credential/brazil/titulo-de-mestre-grau-de-mestre-diploma-de-mestrado-\(master's-degree-program\)](https://www.aacrao.org/edge/country/credentials/credential/brazil/titulo-de-mestre-grau-de-mestre-diploma-de-mestrado-(master's-degree-program)) (last accessed on September 2, 2021)