



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

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

In Re: 20096055

Date: AUG. 5, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an international trade specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, 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, noting that “[a]fter the [P]etitioner has established . . . eligibility for second preference classification under section 203(b)(2)(A) of the [Act], [U.S. Citizenship and Immigration Services] may grant a national interest waiver if the [P]etitioner demonstrates by a preponderance of evidence that [the criteria established in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), have been satisfied].” The Director proceeded to conduct a *Dhanasar* analysis without first concluding whether the Petitioner qualifies for a second preference classification as a member of the professions holding an advanced degree.¹ On appeal, the Petitioner asserts that the Director did not fully adjudicate the issues and that she is eligible for a national interest waiver.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review. As presently constituted, the record does not establish whether the Petitioner qualifies as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act.

¹ In a request for evidence (RFE), the Director noted that the Petitioner had not submitted the required evidence for the benefit sought, and requested documentation demonstrating that she is eligible for classification as a professional holding an advanced degree. Specifically, the Director requested an official academic record showing that the Petitioner has a United States advanced degree or a foreign equivalent degree, or an official academic record showing that the Petitioner has a United States baccalaureate degree or a foreign equivalent degree accompanied by evidence in the form of letters from current or former employer(s) showing that she has at least five years of progressive post-baccalaureate experience in the specialty. The record demonstrates that the Petitioner complied with the Director’s request; however, the Director declined to evaluate the evidence submitted in response to the RFE and did not determine in the denial decision whether the Petitioner qualifies for the requested second preference classification. On appeal, the Petitioner correctly notes that the Director “omitted to state the Petitioner’s qualification for the requested classification as a member of the professions holding an advanced degree, although each adjudicative element of the benefit should have been discussed and reasoned by the Service.”

Accordingly, the matter will be remanded to the Director to conduct a final merits determination of the advanced degree issue and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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.