



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 22644494

Date: OCT. 31, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a general operations manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree or, in the alternative, 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, 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 or, in the alternative, as an individual of exceptional ability.¹

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 or, in the alternative, as an individual of exceptional ability. *See* section 203(b)(2) of the Act.

We note that, although the record contains an evaluation of the Petitioner’s academic credentials, the evaluation addresses the Petitioner’s foreign degree in social communication, a specialty that appears to be dissimilar to business administration, the focus of the proposed endeavor. *See* 8 C.F.R. § 204.5(k)(2) (requiring a qualifying degree and experience to be “in the specialty”); *see also* 8 C.F.R. § 204.5(k)(3)(ii)(A) (requiring an official academic record establishing that the noncitizen has a degree or similar award from a college, university or other institution of learning “relating to the area of

¹ Similarly, in a prior request for evidence, the Director noted that “[i]n order to establish eligibility, the [P]etitioner must establish that . . . [she] qualifies for the requested classification; and [a]n exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States.” However, the Director did not comment on whether the Petitioner qualifies for the requested classification.

exceptional ability” to satisfy that criterion). Specifically, the English translation of the Petitioner’s academic transcript lists many courses unrelated to business administration, including courses in art, language, philosophy, anthropology, and culture.

Additionally, even to the extent that the Petitioner’s degree is in the specialty, the record contains unresolved discrepancies regarding the Petitioner’s prior employment. The academic evaluation notes that, “[f]rom November 2009 to February 2014, [the Petitioner] worked as Chief Executive Officer of the company” she founded; however, the evaluation also states that she simultaneously “was employed as Operations manager at . . . a company selling shoes and clothes in Brazil . . . [f]rom January 2012 to October 2018.” The Petitioner’s concurrent employment from January 2012 to February 2014 raises questions regarding whether she worked either position on a full-time basis. Furthermore, the Petitioner’s employment history prior to earning her degree in July 2011 is inapplicable to qualifying employment under 8 C.F.R. § 204.5(k)(2), which requires a qualifying degree, “*followed* by at least five years of progressive experience in the specialty” (emphasis added). In turn, the record contains a letter from an individual who identifies his position only as “human resources” for the company for which the Petitioner worked from 2012 to 2018. In contrast to the academic evaluation, the letter from the Petitioner’s prior employer indicates that the Petitioner’s job title was “Administrative Advisory” from January 20, 2012, through August 30, 2014, and her job title was “Director Operations Manager” from September 1, 2014, through October 30, 2018,” not that she “was employed as Operations manager . . . [f]rom January 2012 to October 2018.” Moreover, the letter from the Petitioner’s prior employer merely asserts that the Petitioner “has worked in this Company” during the respective periods, without specifying whether she worked on a full-time basis. The Director did not address these deficiencies in the record regarding the Petitioner’s work experience.²

Accordingly, the matter will be remanded to the Director to determine if the Petitioner has established eligibility for the underlying classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability, and to 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.

² The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).