



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

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

In Re: 30146908

Date: MAR. 19, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant classification as well as a national interest waiver (NIW) 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner merits a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 summarily dismiss the appeal.

To establish eligibility for an NIW, 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.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW if the petitioner demonstrates that:

- 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.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS’ decision to grant or deny an NIW to be discretionary in nature).

The Director avoided making a determination on the Petitioner's eligibility under the relevant EB-2 provisions. The Director also determined that the Petitioner met both elements of the first prong, but did not offer analysis related to either element. The Director denied the petition under *Dhanasar*'s second prong, and the decision was brief on this issue. The Director listed some of the materials the Petitioner relies upon under this prong, then noted that much of it came into existence after the Petitioner filed the petition. The Director correctly noted the Petitioner must demonstrate he is eligible on the date he filed the petition and this evidence could not be used to support this petition. This may explain why the Petitioner has filed a new NIW petition that remains pending. We note the Petitioner's appeal brief is unresponsive to the evidentiary shortcoming included as the sole basis for the Director's adverse decision.

The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). Without such an error specifically identified within the appeal, the affected party has not identified the basis for the filing. If the Petitioner does not explain the specific aspects of the decision that he considers to be incorrect, he has failed to meaningfully identify the reasons for taking an appeal. In order to review the appeal, it would therefore be necessary to search through the record and speculate on what possible errors the Petitioner asserts. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986).

Here, the Petitioner has not sufficiently identified a basis for the appeal. As the Petitioner failed to challenge the Director's analysis in the final decision, we must summarily dismiss the appeal.

**ORDER:** The appeal is summarily dismissed under 8 C.F.R. § 103.3(a)(1)(v).