



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 21798945

Date: AUG. 16, 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 security management specialist, seeks second preference immigrant classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts or business, 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). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as 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 would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center determined that the Petitioner had not established eligibility for the underlying EB-2 classification as an advanced degree professional or an individual of exceptional ability. In addition, the Director determined that the evidence was insufficient to establish the Petitioner's eligibility under any of the three Dhanasar prongs.

The matter is now before us on appeal. The Petitioner reasserts his eligibility under the Dhanasar framework, arguing that the Director did not review each piece of evidence properly and erred in the decision. 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 dismiss the appeal.

I. LEGAL FRAMEWORK

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.

Section 101(a)(32) of the Act, 8 USC § 1101(a)(32), provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

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.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

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).

Furthermore, 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 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted 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 would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

Upon review of the evidence submitted with the initial filing of the petition, the Director issued a request for evidence (RFE) to the Petitioner. In the RFE, the Director explained that the evidence did not establish that the Petitioner qualified for the underlying classification either as an advanced degree professional or as an individual of exceptional ability. In addition, the RFE informed the Petitioner that the evidence provided was insufficient to establish the Petitioner’s eligibility under each of the three *Dhanasar* prongs. In his RFE response, the Petitioner did not provide any analysis or additional evidence to address the deficiencies the Director noted regarding his eligibility as an individual of exceptional ability, nor did the Petitioner submit any clarifying evidence to establish his eligibility as an advanced degree professional. Nevertheless, his RFE response included additional evidence and arguments concerning his eligibility under each of the three *Dhanasar* prongs. The Director denied the petition, providing analysis of the Petitioner’s ineligibility for both the underlying classification and under the *Dhanasar* framework. Regarding the underlying classification, the decision stated:

Initially the petitioner claimed he qualified as an alien holding an advanced degree and an alien of exceptional ability. However, USCIS reviewed the evidence submitted in support of the Form I-140 and found that the petitioner did not establish that he was either an alien holding an advanced degree or an alien of exceptional ability. A[n RFE] was submitted requesting additional evidence to establish eligibility for the benefit sought. In response to the RFE, the petitioner focused on his claim that he qualified as an alien holding an advanced degree. He did not claim to be an alien of exceptional ability and did not submit evidence which overcame the deficiencies regarding his claim of eligibility as an alien of exceptional ability.

On appeal, the Petitioner’s brief initially acknowledges that, “[i]n the present case, the Service stated that the Petitioner does not qualify for the requested classification as a member of the professions holding advanced agree or an individual with exceptional ability.” Nevertheless, on appeal, the Petitioner provides no evidence or arguments addressing the concerns of the Director regarding his eligibility for the underlying classification. Therefore, we consider this issue abandoned. See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an

issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

As explained in the legal framework above, 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 the Petitioner abandoned a threshold issue, the remainder of the Petitioner’s arguments need not be addressed.¹ It is unnecessary to analyze any remaining independent grounds when another is dispositive of the appeal. Therefore, we decline to reach but hereby reserve remaining arguments concerning eligibility under the Dhanasar prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *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).

III. CONCLUSION

As the Petitioner has not established that he qualifies for the underlying EB-2 classification, he has not established that he is eligible for or otherwise merits a national interest waiver. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

¹ Even if we had addressed the remaining issues and arguments, we still would have dismissed this appeal. The Petitioner’s evidence and arguments do not establish that he is eligible under any of the three Dhanasar prongs.