



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

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

In Re: 21982972

Date: AUG. 22, 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 and operations manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree or, in the alternative, classification 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 architecture, a specialty 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,

¹ Similarly, in a prior request for evidence, the Director noted that “[i]n order to establish eligibility, the [P]etitioner must establish that . . . [he] 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.

university or other institution of learning “relating to the area of exceptional ability” to satisfy that criterion).

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.