



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

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

In Re: 28819117

Date: DEC. 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, describing himself as an entrepreneur in the field of automation and control, seeks employment-based second preference (EB-2) 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 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner was a member of the professions holding an advanced degree. Further, the Director determined the Petitioner did not demonstrate that his proposed endeavor was of national importance, that he was well positioned to advance his endeavor, or that it would be beneficial for the United States to waive the requirements of a job offer and a labor certification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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 dismiss the appeal.

## I. LAW

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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. 8 C.F.R. § 204.5(k)(2).

Profession is defined as 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 into the occupation.<sup>1</sup> 8 C.F.R. § 204.5(k)(3).

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).<sup>2</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>3</sup> If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion<sup>4</sup>, grant a national interest waiver 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.

## II. ADVANCED DEGREE PROFESSIONAL

In support of the petition, the Petitioner stated that his academic background combined with his “over 27 years of progressive professional experience” established he “possesses advanced qualifications that are equivalent to an Advanced Degree from an accredited institution of higher education in the United States.” Specifically, he asserted that he qualified as a professional holding an advanced degree based on holding the foreign equivalent of a U.S. bachelor’s degree and five years of progressive post-baccalaureate experience in his field. In support of this assertion, the Petitioner submitted a diploma from the [REDACTED] [REDACTED] in Brazil dated in January 2018 reflecting that he was awarded the title “Technologist in Industrial Production Management.” The Petitioner further provided a “Certificate of Conclusion” from the same educational institution dated in March 2015 indicating that the Petitioner had completed, in 2007, “the requirements needed for the completion of the Graduation course in HIGHER EDUCATION COURSE IN INDUSTRIAL PRODUCTION.” The [REDACTED] also stated in this document from 2015 “that said student will graduate in due time.” In addition, the Petitioner also submitted the

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<sup>1</sup> Profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

<sup>2</sup> If these types of evidence do not readily apply to the individual’s occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

<sup>3</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

<sup>4</sup> See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

Petitioner's transcripts from his time at the [redacted], which reflect that he completed two years of study.

The Petitioner also submitted an expert opinion from [redacted], a senior evaluator for United States Credential Evaluations, dated July 27, 2021, stating that the Petitioner's academic qualifications are equivalent to two years of undergraduate study in the United States. It further states the following:

Considering that a Technology Degree followed by thirteen years of full-time work experience in the field of Industrial Production Management is equivalent to a U.S. bachelor's degree in Industrial Production Management, it is my expert opinion that [the Petitioner] with a technology degree in Industrial Production Management and 13 years of experience, has no less than the equivalent of a U.S. bachelor's degree in industrial production management.

The Director then issued a request for evidence (RFE) stating that the submitted evidence was insufficient to demonstrate that the Petitioner held the foreign equivalent of at least a four-year U.S. bachelor's degree. As such, the Director requested that the Petitioner provide evidence to establish that he had the foreign equivalent of U.S. bachelor's degree along with documentation to substantiate that he had at least five years of progressive experience following the receipt of this degree, including support letters from employers. In response, the Petitioner did not assert he qualified as an advanced degree professional but contended that he qualified for EB-2 classification based on having exceptional ability. The Petitioner further pointed to the theoretical and professional experience he "developed through his studies," including a "higher education course of technology on industry production management" from the [redacted] and a masters of business administration degree (MBA) from [redacted] in Brazil.

In denying the petition, the Director determined that the submitted evidence was insufficient to establish that the Beneficiary held a bachelor's degree or an MBA, as asserted. The Director pointed to the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) as a resource for assessing the U.S. equivalency of foreign educational credentials.<sup>5</sup> The Director indicated that the diploma submitted by the Petitioner from the [redacted] in industrial production management was not the foreign equivalent of a U.S. bachelor's degree since EDGE reflected that a petitioner should hold at least a four- to five-year "Titulo de Bacharel/Grau de Bacharal" degree from Brazilian university to equate to a four-year U.S. bachelor's degree. The Director also stated that EDGE showed that the Petitioner's diploma likely equated to a "Title of Technologist" diploma in Brazil, awarded after only two to three years of university study. Therefore, the Director concluded that the Petitioner did not establish that he held an advanced degree as required.

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<sup>5</sup> USCIS considers EDGE to be a reliable, peer-reviewed source of information about the equivalencies of foreign educational credentials. AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." AACRAO, <https://www.aacrao.org/who-we-are> (last accessed December 15, 2023). "Its mission is to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services." *Id.*

On appeal, the Petitioner again asserts that he qualifies as a professional holding an advanced degree. He does not assert on appeal that he qualifies as an individual of exceptional ability in the sciences, arts, or business. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). Therefore, we deem the issue of exceptional ability waived and will not address it further in this decision.

Regarding the Petitioner's appellate claim, he emphasizes that he has attained "the equivalent of an Advanced Degree with more than thirty (30) years' experience in areas such as logistics, maintenance, production, automation engineering, business administration, project management, industrial production management, and electrical and mechanical engineering, among others." The Petitioner emphasizes employment verification letters provided on the record, noting that these reflect his required five years of progressive experience. The Petitioner contends that he has "skills and knowledge through his extensive professional and educational experience" and lists the following asserted educational credentials:

In June 1995, he graduated as a Certified Electrician from [redacted] in Brazil. In November 1997, he graduated as an Electronic Technician from [redacted] in Brazil. In December 2007, he earned a Degree in Industrial Production Management from [redacted]. In December 2008, he completed his [MBA] in Project Management at [redacted].

The Petitioner further points to the expert opinion provided from [redacted], emphasizing that he opined that the Petitioner's academic qualifications are "equivalent of a US 2 Years of undergraduate Programs – Major in Manufacturing Operations [*sic*]." The Petitioner contends his academic experience along with his progressive work experience establishes that he qualifies as a professional holding an advanced degree.

As discussed, in support of the petition, the Petitioner emphasized that he qualified as a professional holding an advanced degree based on having the equivalent of a U.S. bachelor's degree along with five years of progressive post-baccalaureate experience in his field, specifically pointing to his diploma from the [redacted] awarding him the title "Technologist in Industrial Production Management." Likewise, a submitted expert opinion from [redacted] opined that the combination of his technology degree in industrial production management, which equated to two years of undergraduate study in the United States, and his 13 years of related experience, was the equivalent of a U.S. bachelor's degree in industrial production management. [redacted] asserted that "under the provision USCIS, the '3-for-1 Rule' states that three years of relevant work experience is equal to one year of education."

In order to have education and experience equating to an advanced degree under section 203(b)(2) of the Act, the Petitioner must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2). A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). There is no provision in the statute or the regulations that would allow a petitioner to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). The regulation at 8

C.F.R. § 204.5(k)(3)(i)(B) requires an official academic record showing that the noncitizen has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employers showing that the noncitizen has at least five years of progressive post-baccalaureate experience in the specialty.

The Petitioner has set forth a confusing array of assertions with respect to his education leaving substantial uncertainty as to whether he qualifies as a professional holding an advanced degree. As noted, the Petitioner emphasized his diploma from the [redacted] awarding him title “Technologist in Industrial Production Management.” However, the Petitioner’s resume reflected that this was awarded this in December 2007, while the diploma itself indicates that it was issued in January 2018. Likewise, the provided “Certificate of Conclusion” from the same educational institution dated in March 2015 suggested that the Petitioner had not completed the requirements for this diploma in 2007, stating questionably “that said student will graduate in due time.”

The Petitioner also emphasizes on appeal that he earned an MBA “in “Project Management at [redacted] in December 2008. However, the Petitioner’s assertions in support of the petition made no mention of him attaining an MBA in 2008, nor was it discussed in the 2021 expert opinion provided by [redacted]. It is also notable that the Petitioner provided no supporting documentation, such as a degree and transcripts, to substantiate his claimed MBA, and it is questionable that he would have attained such a degree only one year after completing his claimed diploma from the [redacted] particularly since this diploma appears to have been awarded in 2018, not 2007, as claimed. Further, if the Petitioner’s degree from the [redacted] was awarded in 2018, as is reflected on the diploma, and the petition was filed in November 2021 only three years after the apparent issuance of this diploma, we are unable to determine whether he gained five years progressive post-baccalaureate experience in the specialty following its issuance. *Id.*

In sum, the discrepancies in the Petitioner’s assertions and evidence related to his claimed education leave substantial uncertainty as to whether he earned an advanced degree or its equivalent. The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). He has not done so in this case. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

In denying the petition, the Director indicated that the diploma submitted by the Petitioner in industrial production management was not sufficient to demonstrate that he earned the foreign equivalent of a U.S. bachelor’s degree. As noted, the Director stated EDGE reflected that the asserted degree was indicative of a “Title of Technologist” diploma awarded following only two to three years of university study, rather than a four or five-year program required for a “Titulo de Bacharel/Grau de Bacharel” degree from a Brazilian university, or a degree equating to a four-year U.S. bachelor’s degree. The Petitioner does not assign error to this degree equivalency on appeal.

In fact, the Petitioner has not sufficiently demonstrated that he earned the foreign equivalent of a U.S. bachelor’s degree. First, the Petitioner contended that he earned the foreign equivalent of an MBA, but provided no supporting documentation to substantiate that he was awarded this degree. Further, he contended that his academic experience combined with 13 years of related professional experience was the equivalent of a U.S. bachelor’s degree in industrial production management. In addition, on

appeal, the Petitioner points to the expert opinion of [redacted] stating that the Petitioner's academic qualifications are the "equivalent of a US 2 Years of undergraduate Programs – Major in Manufacturing Operations [*sic*]." The Petitioner's assertions, including those on appeal, do not indicate that he ever earned an academic or professional degree or a foreign equivalent degree above that of a bachelor's degree, or the foreign equivalent of a four-year U.S. bachelor's degree plus five years of progressive, post-baccalaureate experience in his specialty. For the foregoing reasons, the Petitioner has not sufficiently established that he qualifies as a professional holding an advanced degree.

### III. CONCLUSION

The Petitioner has not established that he is eligible for the underlying EB-2 classification as an advanced degree professional or as an individual of exceptional ability. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining arguments concerning his eligibility for a national interest waiver under the *Dhanasar* framework. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); 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 the applicant did not otherwise meet their burden of proof).

The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.