



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

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

In Re: 28808725

Date: DEC. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an early childhood and elementary school teacher, seeks classification as a member of the professions holding an advanced degree. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. Section 203(b)(2)(B)(i) of the Act. 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 that the record did not establish that the Petitioner's endeavor would have national importance, that she is well-positioned to advance that endeavor or that, on balance, it would benefit the United States to waive the job offer requirement. 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 that they qualify for the underlying EB-2 visa classification, either as an advanced degree professional or as an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Advanced degree professionals must have "advanced degrees or their equivalent." Section 203(b)(2)(A) of the Act. An "advanced degree" means a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate," *i.e.*, a master's degree or higher. 8 C.F.R. § 204.5(k)(2). The equivalent of an advanced degree is a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." *Id.*

The regulation at 8 C.F.R. § 204.5(k)(3) states that a petition for an advanced degree professional must be accompanied by either:

- An official academic record showing that the noncitizen has a United States advanced degree or a foreign equivalent degree; or
- 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 employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Because the EB-2 visa 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)(2)(B)(i) of the Act. Neither the statute nor the pertinent regulations define the term "national interest."

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016) states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the noncitizen's proposed endeavor has both substantial merit and national importance; (2) that the noncitizen is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would benefit the United States to waive the requirements of a job offer and thus of a labor certification.

II. ANALYSIS

The Petitioner seeks to continue working as a Portuguese teacher for a Brazilian learning center in the United States. The Director concluded that the Petitioner qualifies for the EB-2 visa classification as an advanced degree professional, based on obtaining a foreign degree which is equivalent to a U.S. baccalaureate degree, followed by five years of progressive work experience in her specialty. However, the Director also concluded that the Petitioner does not meet any of the three *Dhanasar* prongs, and so is not eligible for a national interest waiver. On appeal, the Petitioner submits a brief regarding her qualifications under *Dhanasar*. As an initial matter, we will withdraw the Director's finding that the Petitioner qualifies as an advanced degree professional.¹

A. Advanced Degree Professional

In order to establish her eligibility for the EB-2 classification as an advanced degree professional, the Petitioner initially submitted diplomas and a degree equivalency evaluation which considered both her formal education and her work experience. The Director issued a request for evidence (RFE) requesting, among other things, official academic transcripts, employer letters establishing her work experience, and a degree equivalency evaluation which only considers her formal education and which provides a detailed explanation for its conclusions. In response, the Petitioner provided employer

¹ The Petitioner initially claimed that she also qualifies as an individual of exceptional ability. The Director's RFE correctly noted that she had only provided evidence pertaining to one of the six evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii), which requires the submission of evidence meeting at least three criteria. In her RFE response, the Petitioner did not raise the issue of the exceptional ability classification, and only claimed to qualify for an EB-2 visa as an advanced degree professional. Therefore, we will not address her exceptional ability claims further.

experience letters, her academic transcripts, and the same evaluation she had previously submitted. The Director concluded that this evidence demonstrates that the Petitioner has the equivalent of a U.S. baccalaureate degree and five years of progressive post-baccalaureate experience in her specialty, and that she therefore qualifies as an advanced degree professional. 8 C.F.R. § 204.5(k)(2). However, the record does not support a finding that the Petitioner has the foreign equivalent of a U.S. baccalaureate degree.

The Petitioner has provided diplomas and transcripts regarding two Brazilian academic credentials:

- Diploma de Professor de Educação Infantil e de 1a a 4a Série do Ensino Fundamental (2004) (called a Curso Normal em Nível Médio in the accompanying transcript); and
- Licenciada em Pedagogia (2011) (Licenciada).

In her Application for Alien Employment Certification, Form ETA 750, the Petitioner listed both of these credentials as a “BA.” She also provided an academic equivalency evaluation from G-P-, which examines her Licenciada diploma and resume and concludes that she has attained the equivalent of a U.S. master’s degree in education, due to having the equivalent of a U.S. baccalaureate degree and at least five years of work experience in her specialty.²

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we may give less weight to or decline to accept an opinion that is not in accord with other information or is in any way questionable. *Id.* In this instance, G-P- cited the Electronic Database for Global Education (EDGE), an online resource regarding foreign educational equivalencies,³ in concluding that the Petitioner has the equivalent of a U.S. baccalaureate degree. However, EDGE states that the Brazilian Título de Licenciada program varies in length of study from two to four years, and only the four-year degree represents attainment of a level of education comparable to a U.S. baccalaureate degree.⁴ The Petitioner’s resume indicates that she attended her degree program from January 2009 to December 2011, or three years.

A U.S. baccalaureate degree generally requires four years of university studies. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm’r 1977). As noted by EDGE, completion of a three-year Licenciada program therefore only corresponds to three years of university-level study, and not to a full U.S.

² The evaluation does not clearly state whether the Petitioner has the equivalent of a U.S. baccalaureate degree through her Licenciada em Pedagogia alone, or through a combination of formal education and work experience. The relevant regulation requires an advanced degree equivalency to include a single-source U.S. baccalaureate degree or a single-source foreign equivalent degree. 8 C.F.R. § 204.5(k)(2); see *Snapnames.com, Inc. v. Michael Chertoff*, No. 06-65-MO, 2006 WL 3491005 (D. Or. Nov. 20, 2006). Therefore, to the extent that the evaluation contends that the Petitioner has the equivalent of a U.S. baccalaureate degree through a combination of education and work experience, we find that it is not in accord with regulation.

³ EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a non-profit, voluntary association of more than 11,000 professionals in more than 400 countries. See AACRAO, *Who We Are*, <https://www.aacrao.org/who-we-are>; see also *Viraj, LLC v. U.S. Att’y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as “a respected source of information”).

⁴ AACRAO, *Brazil - Título de Licenciado (Licenciante)*, [https://www.aacrao.org/edge/country/credentials/credential/brazil/titulo-de-licenciado-\(licentiate\)](https://www.aacrao.org/edge/country/credentials/credential/brazil/titulo-de-licenciado-(licentiate)) (last visited Nov. 6, 2023, and added to the record).

baccalaureate degree.⁵ G-P- based his evaluation solely on the Petitioner's diploma and resume, without examining her academic transcripts, and does not provide any reasoning for contradicting EDGE with his conclusion that the Petitioner's Licenciada is equivalent to a U.S. baccalaureate degree despite the program being only three years in length.⁶ Additionally, G-P- does not provide any information about his expertise in evaluating educational credentials. For these reasons, we will not accept his evaluation or grant it any evidentiary weight. *Matter of Caron Int'l*, 19 I&N Dec. at 795.

The academic transcript for the Petitioner's Licenciada indicates that she was admitted into the degree program in July 2009 after passing an entrance examination, which contradicts her resume's claim that she entered this program in January 2009. However, the transcript also states that the Petitioner received academic credit for classes taken in a university pedagogy course in 2008. Furthermore, while the Petitioner was enrolled in the degree program from 2009 to 2011, the transcript indicates that she did not take courses during all six semesters in those years. We therefore cannot determine the length of the Petitioner's Licenciada degree program.

Where there are inconsistencies in the evidence, it is the Petitioner's burden to resolve these inconsistencies using independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not resolved the contradictory evidence about her Licenciada length of study. The Petitioner has not established by a preponderance of the evidence that her Licenciada is equivalent to a four-year U.S. baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. at 245.

As noted above, the Petitioner listed her Diploma de Professor de Educação Infantil as a "BA" in her ETA 750. However, EDGE indicates that this degree is awarded upon the completion of three years of secondary-level education and represents attainment of a level of education equivalent to completing a vocational or other specialized high school curriculum in the United States.⁷ The Diploma de Técnico de Nível Médio is similarly equivalent to completing a U.S. vocational high school curriculum.⁸ Therefore, this credential is also not equivalent to a U.S. baccalaureate degree.

The Petitioner has not submitted an official academic record showing that she has a U.S. baccalaureate degree or a foreign degree which is equivalent to a U.S. baccalaureate. Therefore, we will withdraw the Director's conclusion that she is eligible for classification as an EB-2 advanced degree professional. 8 C.F.R. § 204.5(k)(3)(i)(B).

⁵ AACRAO, *supra* note 4.

⁶ The evaluation also refers to what it calls "the '3-for-1 Rule' [which] states that three years of relevant work experience is equal to one year of education." This method of calculating educational equivalency only applies to the baccalaureate-level credentials of beneficiaries of H-1B specialty occupation nonimmigrant visas. 8 C.F.R. § 214.2(h)(4)(iii)(D). We further note that even under this regulation, equivalence to a master's degree requires five years of relevant post-baccalaureate work experience. *Id.*

⁷ AACRAO, *Brazil – Diploma de Professor de Educação Infantil*, [https://www.aacrao.org/edge/country/credentials/credential/brazil/diploma-de-professor-de-educacao-infantil-e-series-iniciais-do-ensino-fundamental-\(teacher-diploma-in-early-childhood-education\)](https://www.aacrao.org/edge/country/credentials/credential/brazil/diploma-de-professor-de-educacao-infantil-e-series-iniciais-do-ensino-fundamental-(teacher-diploma-in-early-childhood-education)) (last visited Nov. 6, 2023, and added to the record).

⁸ AACRAO, *Brazil - Diploma de Técnico de Nível Médio*, [https://www.aacrao.org/edge/country/credentials/credential/brazil/diploma-certificado-de-tecnico-de-nivel-medio-\(formerly-2-grau\)-\(certificate-of-secondary-technical-education\)](https://www.aacrao.org/edge/country/credentials/credential/brazil/diploma-certificado-de-tecnico-de-nivel-medio-(formerly-2-grau)-(certificate-of-secondary-technical-education)) (last visited Nov. 6, 2023, and added to the record).

B. National Interest Waiver

The Petitioner's ineligibility for the EB-2 classification is normally a threshold issue which would also render her ineligible for a national interest waiver. However, since this issue was not one of the grounds of the Director's denial, the Petitioner has not had the opportunity to address it on appeal, and so it does not form the basis of this decision. 8 C.F.R. § 103.2(b)(16)(i) (stating that petitioners must be advised of derogatory information which is the basis of an adverse decision). We will therefore also examine her qualifications for a national interest waiver.

The first prong of the *Dhanasar* test, substantial merit and national importance, focuses on the specific endeavor that the Petitioner proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889-90. When determining whether a proposed endeavor will have national importance, we examine the specific impact of that endeavor. *Id.* For example, an endeavor may qualify if it has national implications within a particular field, or if it has significant potential to have a substantial economic effect, especially in an economically depressed area. *Id.* In this instance, the Director concluded that while the Petitioner's endeavor has substantial merit, she did not submit sufficient evidence to establish that endeavor's national impact.

The Petitioner is employed by a Brazilian learning center in Florida as a Portuguese teacher, and she intends to continue in this position. In her initial filing, the Petitioner described her endeavor in part as follows:

I intend to create programs to keep up with Brazilian immigrant children to adapt and insert them into the American school environment and educational schedule. Posteriorly, I intend to provide community libraries with educational material created by me to stimulate immigrant children in learning English and American children to learn Portuguese serving as a bridge instrument between both cultures and to offer resources to promote multicultural engagement.

In response to the Director's RFE, the Petitioner submitted a letter stating that she will "focus on autistic children through [her] ABA therapy qualification," and further states:

I intend to . . . contribute [*sic*] to innovative and inclusive concepts for educational institutions in the country besides addressing education issues and providing broader opportunities for immigrant children and kids with special needs whose families have low incomes and also boost development in vulnerable communities in [the] area . . . I have the intention to keep . . . exploring my options to develop my own projects in the early future with my own learning center . . . besides training other professional educators who aim to grow in the same path.

On appeal, as in her underlying petition, the Petitioner relies heavily on the importance of the education and childcare industries to establish the importance of her endeavor. However, in determining national importance, the relevant question is not the importance of the industry in which the individual will work. Instead, the relevant question when assessing an endeavor's importance is the impact that will be specifically attributable to it. *Id.*, see generally 6 USCIS Policy Manual F.5(D)(1), <https://www.uscis.gov/policy-manual> (stating that an endeavor's impact may rise to the level of

national importance if it has significant potential to broadly enhance societal welfare or cultural or artistic enrichment, or to contribute to the advancement of a valuable technology or field of study).

Much of the Petitioner's evidence discusses the importance of teachers and childcare workers to the United States, but the importance of an endeavor is not dictated by the occupation in which a noncitizen will be employed. In *Dhanasar*, the noncitizen's work as a science teacher was found to have substantial merit, but did not qualify him under the first prong because the evidence did not show how that work would impact the field of science education more broadly. *Matter of Dhanasar*, 26 I&N Dec. at 893. Similarly, the record here includes support letters written on the Petitioner's behalf by her coworkers and parents of students she has taught, which speak very highly of the Petitioner's skill, knowledge, and dedication, and illustrate the impact she has had on her students. However, the letters do not document any impact the Petitioner has had or will have on the fields of education or childcare beyond her immediate professional circle.

The remainder of the evidence also does not provide documentation of the endeavor's specific impact. For example, while the Petitioner states that she will create programs for Brazilian immigrant children, she does not state what format those programs will have, what they will teach, how many children they will serve, or any other information about what these programs will entail. Similarly, while she states that she will train other educators, she does not provide any information about where she would do so, what she would teach, or how she would divide her time between this and her other proposed activities. She also does not provide any details about the educational materials she intends to provide to libraries, such as what form those materials would take or how many libraries she would distribute them to. When assessing national importance, we look for an endeavor's broader implications. *Id.* at 889. Here, the Petitioner has not provided sufficient information about her endeavor to show that it would have implications for the broader field of education.⁹

Similar concerns apply to the Petitioner's claims that her work will have a nationally important economic impact. An endeavor may qualify under the first prong if it has significant potential to employ U.S. workers or have other substantial positive economic effects, particularly in an economically depressed area. *Matter of Dhanasar*, 26 I&N Dec. at 893. The Petitioner's claims that her work will have an impact on the U.S. economy due to the economic importance of the education and childcare fields. However, as noted above, an endeavor's national importance is determined by the impact that is specifically attributable to that endeavor, not the collective impact of the entire industry that endeavor is in. *Id.* The Petitioner has provided no documentation quantifying any specific economic impact her individual endeavor will have. *Matter of Chawathe*, 25 I&N Dec. at 376. She therefore has not established that the endeavor will have the kinds of "substantial positive economic effects" contemplated by *Dhanasar*. *Matter of Dhanasar*, 26 I&N Dec. at 893.

Finally, while the Petitioner provides extensive documentation regarding U.S. shortages of teachers and childcare workers, she does not provide evidence explaining how her individual work as a teacher will resolve these shortages or impact them on a level rising to national importance.¹⁰

⁹ The Petitioner must support her assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376 (AAO 2010).

¹⁰ We further note that the Department of Labor directly addresses U.S. worker shortages through the labor certification process. Therefore, a shortage of qualified workers in an occupation is not sufficient, in and of itself, to establish that

The record does not indicate that the Petitioner's endeavor would be nationally important. Because the Petitioner has not established her eligibility under the first prong of the *Dhanasar* test, we need not address her eligibility under the other two prongs and hereby reserve those issues. 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 an applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework. As such, we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. Furthermore, we will withdraw the Director's finding that the Petitioner qualifies as an EB-2 advanced degree professional. The petition will remain denied.

ORDER: The appeal is dismissed.

workers in that occupation should receive a waiver of the job offer requirement. See *Matter of Dhanasar*, 26 I&N Dec. at 885, see also 20 C.F.R. § 656.1.