



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

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

In Re: 23069742

Date: JAN. 26, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a postsecondary English language and literature teacher, seeks classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability in the sciences, arts or business. 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. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). 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 for several reasons. The Director found that the position does not appear to require either an advanced degree or exceptional ability, that the Petitioner does not appear to possess either an advanced degree or exceptional ability, and that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. 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. 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. . . . the 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.

II. ANALYSIS

As noted above, the Director denied the Form I-140, Immigrant Petition for Alien Workers, for several reasons. First, the Director found that “[t]he position does not appear to require either an advanced degree or exceptional ability.” Specifically, the Director observed, “The [DOL Form] ETA-750 provided does not list any special qualifications, skills, or licenses for the position, to include an advanced degree or its equivalent or exceptional ability.” The Director further stated that “this classification requires that the offered position must be for a member of the professions[, which] requires the minimum of a bachelor’s degree for entry into the occupation.”

On appeal, the Petitioner asserts that the Director “imposed a novel requirement, which requires a ‘position to appear to require either an advanced degree or exceptional ability.’” The Petitioner further states on appeal that “[i]mposing a novel requirement would amount to deprivation of Petitioner’s immigration benefits and also violation of Petitioner’s fundamental rights such as Due Process and so on [sic].”

The Petitioner’s assertion on appeal that the Director imposed a novel requirement is misplaced. To qualify for second-preference classification, in relevant part, the position sought must require, at a minimum, a professional holding an advanced degree or the equivalent. *See* section 203(b)(2)(A) of the Act; 8 C.F.R. § 204.5(k) (defining “profession” 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”)); *see also* 6 USCIS Policy Manual F.5(A)(1), <https://www.uscis.gov/policymanual> (citing section 203(b)(2)(A) of the Act; 8 C.F.R. § 204.5(k)). However, section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), specifically includes the occupations of “teachers in elementary and secondary schools” among the professions it contemplates. Therefore, the position of postsecondary English language and literature teacher sought by the Petitioner is a second-preference occupation contemplated by the Act.

Accordingly, we withdraw the Director's finding that the position is ineligible for second-preference classification and, consequently, for a national interest waiver.

Although the position is eligible for second-preference classification, the record does not establish that the Petitioner qualifies as either an advanced degree professional or, in the alternative, as an individual of exceptional ability. In the decision, the Director found that the Petitioner satisfied only two of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), of which at least three of six must be met. Specifically, the Director found that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B) and (E). In a prior request for evidence (RFE), the Director informed the Petitioner that letters of recommendation in the record are insufficient to satisfy the criterion at 8 C.F.R. § 204.5(k)(ii)(F). In the decision, the Director noted that the Petitioner's RFE response did not address the criterion at 8 C.F.R. § 204.5(k)(ii)(F), thereby abandoning it. The only other criterion at 8 C.F.R. § 204.5(k)(ii) that the Petitioner asserted that she satisfied in response to the RFE is the criterion at 8 C.F.R. § 204.5(k)(ii)(A). However, in the decision, the Director explained that, because the Petitioner's foreign degree is in the specialty of "Media Studies with a major in Public Relations, that was unrelated to the proposed endeavor of ESL teacher," the degree does not satisfy the criterion at 8 C.F.R. § 204.5(k)(ii)(A). In turn, the Director noted that the Petitioner's degree "appears to be a three year degree," which does not meet the requirement for an advanced degree that "USCIS may only consider experience in conjunction with a United States baccalaureate degree or a foreign equivalent degree." Based on the reasons discussed above, the Director found that the Petitioner did not establish eligibility as either an advanced degree professional or as an individual of exceptional ability.

On appeal, the Petitioner acknowledges that the Director "stated the Petitioner did not qualify for the requested classification as she is neither a member of the professions holding an advanced degree [n]or an individual of exceptional ability." However, the Petitioner does not assert on appeal how the Director erred in reaching that conclusion. Instead, the Petitioner asserts that she satisfies the framework for the discretionary national interest waiver in our precedent decision, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Petitioner's focus on the *Dhanasar* framework on appeal is misplaced. As discussed above, section 203(b) of the Act requires that an individual must first qualify for second-preference classification before USCIS may consider granting a discretionary national interest waiver. We note that the record contains an academic credentials evaluation of the Petitioner's degree; however, the evaluation opines that "[t]he courses completed, and the number of credit hours earned, indicate that [the Petitioner] satisfied requirements substantially similar to those required toward the completion of a Bachelor of Arts in Media Studies from an accredited institution of higher education in the United States," not that her degree is the equivalent of a U.S. degree in English language, English literature, or a sufficiently similar academic field.

The record contains a copy of the Petitioner's academic transcript, and an English translation of it. Although the transcript indicates the Petitioner completed courses in academic fields such as philosophy, economics, public relations, Brazilian culture, physical education, and art, it does not indicate that the Petitioner completed courses related to English language and literature, the proposed endeavor's specialty. Regardless of whether the Petitioner's three-year degree in media studies with a major in public relations is equivalent to a U.S. bachelor's degree, the record does not establish that it is a degree in the proposed endeavor's specialty. Because the record does not establish the Petitioner

has at least a bachelor's degree in the proposed endeavor's specialty, she is ineligible for second-preference classification as an advanced degree professional and she does not satisfy at least three of the six exceptional ability criteria at 8 C.F.R. § 204.5(k)(ii), discussed above.

In summation, the Petitioner has not established that she qualifies for second-preference classification as either an advanced degree professional or, in the alternative, as an individual of exceptional ability. We reserve our opinion regarding whether the record satisfies the *Dhanasar* prongs. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *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 does not qualify for second-preference classification as either an advanced degree professional or, in the alternative, as an individual of exceptional ability, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.