



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

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

In Re: 27467086

Date: JUL. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an accounting consultant, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner was eligible for, and merited as a matter of discretion, a national interest waiver. 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

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).

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).¹ Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.² If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence

¹ 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).

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

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 U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion³, 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 State

II. EB-2 CLASSIFICATION

The Petitioner claimed eligibility for the EB-2 classification as both a member of the professions holding an advanced degree and as an individual of exceptional ability. While the Director stated that the Petitioner qualified as a member of the professions holding an advanced degree in her request for evidence (RFE)⁴, she did not include a conclusion regarding the underlying classification in her decision. We will therefore analyze the Petitioner’s eligibility under both provisions of the EB-2 classification.

A. Member of the Professions Holding an Advanced Degree

The record includes a copy of a “title of public accountant” diploma issued to the Petitioner by the [redacted] University [redacted] Colombia on September 16, 2008. While the Petitioner did not submit official transcripts related to this degree, she did submit an educational evaluation which states that this is a five-year program and is equivalent to bachelor’s degree in accounting from an accredited institution in the United States. This evidence establishes that the Petitioner holds the foreign equivalent of a United States baccalaureate degree.⁵

As the evidence does not show that the Petitioner holds a United States degree above that of baccalaureate, or a foreign equivalent degree, she must establish that she has at least five years of progressive, post-baccalaureate work experience in her specialty. The record includes a letter from the general manager of [redacted] which states that she held the position of

³ 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).

⁴ The Director stated in her RFE that the Petitioner qualified as a member of the professions holding an advanced degree because she holds the foreign equivalent of a bachelor’s degree from an accredited college or university in the United States, but did not mention the additional regulatory requirement of at least five years of progressive, post-baccalaureate work experience in her field.

⁵ The record also includes evidence that the Petitioner received a “title of specialist in tax inspection” diploma in September 2015, which the evaluation states is the equivalent of one year of post-graduate study from an accredited U.S. institution. As this is not the foreign equivalent of a United States degree above that of baccalaureate, it does not qualify as an advanced degree.

public accountant with this company from January 10, 2007 to January 10, 2021. While this letter includes a description of the Petitioner's job duties, it does not state that the position was full-time. In addition, the Petitioner submitted partially translated documents which she describes as tax returns for the years 2018 and 2019 which show that she deducted costs as an "independent worker," indicating that the Petitioner was self-employed. This evidence, taken together with the missing information in the employment letter, counters the Petitioner's statement on ETA Form 9089 that she worked 40 hours per week for this employer. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As the Petitioner did not submit further evidence of her post-baccalaureate work experience, she has not established that she is a member of the professions holding an advanced degree.

B. Individual of Exceptional Ability

The Petitioner claimed to meet five of the six evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii) to show that she is an individual of exceptional ability. Per the analysis below, we conclude that she does not meet the initial evidence requirement of at least three of the criteria.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability; 8 C.F.R. § 204.5(k)(3)(ii)(A)

As noted above, the Petitioner holds a title of public accountant degree, issued by the [redacted] University [redacted] in 2008. She also earned a title of specialist in tax inspection diploma in September 2015. She therefore meets this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought; 8 C.F.R. § 204.5(k)(3)(ii)(B)

Here the Petitioner relies upon the same letter from [redacted] described above, which does not indicate whether her work experience was full-time. It therefore does not show that she gained at least ten years of full-time experience as an accountant, and she does not meet this criterion.

A license to practice the profession or certification for a particular profession or occupation; 8 C.F.R. § 204.5(k)(3)(ii)(C)

As evidence that she possesses a license to practice her profession, the Petitioner submitted a copy of her "professional card" from the Central Board of Accountants in Colombia. A letter from that organization verifies her registration and continuing valid status as March 2022, and information from its website states that it is the governing body of the accounting profession in Colombia and oversees the registration and disciplinary actions of accountants. This evidence is sufficient to establish that she meets this criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability; 8 C.F.R. § 204.5(k)(3)(ii)(D)

The Petitioner's 2018 and 2019 tax documents, briefly discussed above, show that she earned gross salaries of \$55,013,000 COP and \$61,415,000 COP, respectively. For purposes of comparison, she also submitted a report obtained from the Economic Research Institute dated April 12, 2022, which states that accountants in [] Colombia earn an average gross salary of \$39,004,471 COP, while with eight or more years of experience earn an average of \$48,355,904 COP.

While this evidence shows that the Petitioner's earnings in those years exceeded the average salary of accountants in [] at the time of filing, it does not show how her earnings compared with those of top earners in her field. This is especially the case as based on the record, her earnings should be compared to that of the senior level accountants. Accordingly, we conclude that the record is insufficient to establish that her salary demonstrates exceptional ability.

*Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.
8 C.F.R. § 204.5(k)(3)(ii)(F)*

In support of this criterion, the Petitioner submitted two reference letters. We note that such letters, written for the purpose of supporting a petition for immigration benefits, are generally less probative than evidence which contemporaneously recognizes a petitioner for their achievements and contributions. *See generally 6 USCIS Policy Manual F.5(B)(2)*, www.uscis.gov/policy-manual. The first, from a former employer, describes her work as an accounting assistant beginning in 1995 and moving up to director of the company's accounting department. While the writer lauds the Petitioner's work performance for this company, the letter does not indicate that she received recognition for achievements and significant contributions to the accounting industry or profession.

The second letter, from the general manager of a construction company, also appears to be from a former employer, but does not provide dates of employment and only a brief description of the Petitioner's duties. As the letter focuses more on her positive personality traits and work habits and does not describe specific achievements or contributions to the accounting profession, it is of minimal evidentiary value in meeting this criterion.

For these reasons, we conclude that the Petitioner does not meet this criterion.

C. Final Merits Determination

The Petitioner has not demonstrated that she meets the initial evidentiary requirements for classification as an individual of exceptional ability by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(k)(3)(ii). We thus need not conduct a final merits determination of whether the totality of the evidence establishes that she is recognized for having a degree of expertise significantly above that ordinarily encountered in the accounting field. Nevertheless, we have reviewed all of the evidence submitted by the Petitioner and conclude that it does not establish that she possesses the heightened level of expertise required for the requested classification. While she has completed relevant education and training and has experience working as an accountant, the

evidence does not reflect that she has been recognized as standing above her peers to a significant extent. The evidence shows that the Petitioner has taken on responsibilities and duties commensurate with her education and experience in the field of accounting, but not that her level of expertise has been recognized as significantly above that ordinarily held by an experienced accountant. As such, she has not established that she is an individual of exceptional ability.

III. NATIONAL INTEREST WAIVER

The Petitioner has not established her eligibility as a member of the professions holding an advanced degree or an individual of exceptional ability, and she therefore does not qualify for the EB-2 classification. Because of this, she is not eligible for a national interest waiver of that classification's job offer requirement. We will nevertheless briefly review her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner's proposed endeavor is to work as an accounting specialist in the United States. In response to the Director's request for evidence (RFE), she submitted a personal plan in which she indicated that she will register a company in Florida that will offer accounting consultancy services to small businesses. These services are to include accounting, financial, and tax planning services, and she states that she will also publish free written and audiovisual content offering financial tips. She plans to rent commercial space, create a company website and social media presence, and hire up to seven employees within two years after establishing her company.

The first prong of the *Dhanasar* framework, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In her decision, the Director concluded that the evidence was sufficient to show that the Petitioner's proposed endeavor is of substantial merit. Based upon the evidence concerning the accounting profession and the importance of small businesses to the U.S. economy, both of which are directly tied to the Petitioner's proposed endeavor, we agree that her plan to offer accounting consulting services for small businesses is of substantial merit.

Turning to the national importance of the Petitioner's proposed endeavor, the Director determined that the Petitioner had not established how her proposed consultancy business would have broader implications on the field of accounting, or that it would have a potential prospective impact on the national economy. On appeal, the Petitioner makes essentially the same arguments as she did when responding to the Director's RFE. She stresses that because she will be starting her own company, the impact of her services will not be limited to a single employer. And by expanding the online presence of her business, she will market to and serve clients nationwide, which will make the benefits of her proposed endeavor significant to the United States.

However, as we stated in *Dhanasar*, prospective impact is not evaluated solely in geographic terms. Rather, it is the broader implications of a proposed endeavor that determine its national importance. *Id.* The Petitioner has not shown that her plan to offer her services to clients across the country would

raise the potential prospective impact of this work to that of national interest, because she has not demonstrated that this would have broader implications for the U.S. economy or the accounting field. Further, she has not established that her provision of those services to her prospective clients would have any potential prospective impact beyond those clients. Although she asserts that her direct contributions to her small business clients “will trickle down into the economy,” the record does not show that her endeavor has significant potential to employ U.S. workers or has other substantial positive economic effects. *Id.* at 890. While her statement projects an annual revenue of more than \$500,000 and employment of six or seven employees by the end of the business’ second year, the basis for these projections is not apparent, as the plan lacks sufficient analysis. Further, the Petitioner has not established that even if the projections were well supported, this level of activity would be sufficient to show a substantial positive economic effect.

For the reasons stated above, we conclude that the Petitioner has not shown that her proposed endeavor is of national interest, and she therefore has not met the first prong of the *Dhanasar* analytical framework.

A petitioner must meet all three prongs of the *Dhanasar* analytical framework to establish eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding the *Dhanasar*’s second and third prongs. *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 is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established that she is eligible for the EB-2 classification, either as a member of the professions holding an advanced degree or as an individual of exceptional ability. In addition, she has not demonstrated that her proposed endeavor is of national importance, and she is therefore not eligible for a national interest waiver.

ORDER: The appeal is dismissed.