



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

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

In Re: 27448693

Date: JUL. 24, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an English teacher and administrator, seeks second preference 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 EB-2 classification. 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 Petitioner had not established eligibility as a member of the professions holding an advanced degree and 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.

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. Section 203(b)(2)(B)(i) of the Act. The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien 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."

A petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement “in the national interest.” Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>1</sup>, grant a national interest waiver if the petitioner shows:

- 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.

The Petitioner’s proposed endeavor is to “identify the needs of young children and adults’ [sic] immigrants to develop and deliver effective programs and services to meet those needs.” The Petitioner also states that she “will support the training and integration of immigrants through employment services, and a variety of language training and combining occupational skills and language training programs.”

In her initial letter, the Petitioner stated that she is an advanced degree professional. She provided a copy of her associate degree in hospitality and tourism management from [redacted] College, an untranslated Portuguese academic transcript for her “Bacharelado” in “Farmácia” from the Universidade [redacted] another untranslated Portuguese academic transcript for her “Licenciatura” in “Lingua Inglesa e Literaturas” from the Universidade [redacted] [redacted] and an educational evaluation. The educational evaluation states that the Petitioner’s “Bacharelado” in “Farmácia” is equivalent to a U.S. bachelor’s degree in pharmaceutical sciences and that her “Licenciatura” in “Lingua Inglesa e Literaturas” is equivalent to a U.S. bachelor’s degree in Portuguese and English.

The Director issued a request for evidence (RFE) instructing the Petitioner to submit copies of her foreign bachelor’s degrees and an exact certified English translation of the foreign academic transcripts. Further, the Director instructed her to provide letter(s) from current or former employer(s) showing that she has at least five years of progressive post-baccalaureate experience in the specialty. The Director noted that these letters should include the Petitioner’s position title, dates of employment (month, date, and year), number of hours worked per week, and specific duties.

In response to the RFE, the Petitioner submitted certified English translations of her academic transcripts and degrees from the “Universidade [redacted]” She also provided three employments letters - one from [redacted] verifying that she started teaching there in 2000 while she was studying for her degree in English, one from [redacted] stating that they “did not hesitate to hire her as soon as possible” as a teacher, and one from an individual retired from the [redacted] government confirming that the Petitioner was an “International Advisor.”<sup>2</sup>

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<sup>1</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).

<sup>2</sup> The Petitioner also submitted letters from [redacted] indicating that her services as an English teacher would be helpful in their companies, but neither the letters, nor the Petitioner, claim that she was working as an English teacher and/or administrator. As these letters are not evidence of “progressive post-baccalaureate experience in the specialty,” we will not discuss them further.

In denying the petition, the Director determined that the Petitioner possesses the foreign equivalent of a U.S. baccalaureate degree; however, the employment letters did not show at least five years of progressive post-baccalaureate experience in the specialty. On appeal, the Petitioner contends that the Director did not take into consideration the evidence submitted and asserts that while the employment letters do not include the dates of employment, they still show she has over five years of post-graduate experience in the field.

Upon review, we agree with the Director that the evidence does not establish that the Petitioner qualifies as a member of the professionals holding an advance degree in the claimed field of expertise. Although the Petitioner provided three employment letters, they did not include the Petitioner's specific dates of employment, number of hours worked per week, or specific duties and, thus, do not establish that the Petitioner has the required years of experience.<sup>3</sup>

In light of the above, the Petitioner has not established that she qualifies as a member of the professions holding an advanced degree through the possession of a foreign degree equivalent to a U.S. baccalaureate degree with at least five years of progressive post-baccalaureate experience consistent with section 203(b)(2)(B)(i) of the Act; 8 C.F.R. §§ 204.5(k)(2) and (k)(3)(i)(B). As a result, we need not reach a decision whether, as a matter of discretion, she is eligible for or otherwise merits a national interest waiver under the *Dhanasar* analytical framework. Accordingly, we reserve this issue.<sup>4</sup> The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> We also note that the letter from the [redacted] government was not on official letterhead.

<sup>4</sup> See *INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).