



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

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

In Re: 26953605

Date: MAY 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a truck driver and business owner in the road transport and logistics field, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for EB-2 classification as a member of the professions holding an advanced degree or as an individual of exceptional ability. The Director further determined that the Petitioner did not establish that a waiver of the job offer requirement 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. Section 203(b)(2)(B)(i) of the Act.

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 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.¹ 8 C.F.R. § 204.5(k)(3).

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or an individual of exceptional ability, 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 discretion², 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. ANALYSIS

The primary issue to be addressed is whether the Petitioner established that he is eligible for EB-2 classification as a member of the professions possessing an advanced degree.

The Petitioner initially claimed eligibility for classification under section 203(b)(2) of the Act as both an advanced degree professional and as individual of exceptional ability in the sciences, arts, or business. The Director evaluated the evidence submitted in support of both claims and concluded that the Petitioner did not establish his eligibility for either classification. On appeal, the Petitioner does not raise his previous claim that he qualifies for EB-2 classification as an individual of exceptional ability or otherwise acknowledge or contest the Director’s adverse determination regarding his exceptional ability claim. Issues or claims that are not raised on appeal are deemed to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

A. Member of the Professions Holding an Advanced Degree

In support of his claim that he qualifies as a member of the professions holding an advanced degree, the Petitioner provided copies of his diplomas, academic transcripts and certified English translations demonstrating that he holds: (1) a bachelor’s degree and a master’s degree in “chemical technology of inorganic substances” from [REDACTED] Technical University; and (2) a master’s degree in materials science and materials technology, with a specialization in nanotechnology, from [REDACTED] State University in Russia.

The Director determined, and we agree, that the Petitioner possesses an advanced degree as defined at 8 C.F.R. § 204.5(k)(2) based on his receipt of at least one foreign equivalent degree above that of a bachelor’s degree. In denying the petition, the Director emphasized that the Petitioner proposes to work in the United States as an “entrepreneur and truck driver” and cited to U.S. Department of Labor

¹ “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.

² *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).

publications indicating that the occupation of truck driver typically requires a high school diploma, attendance at a driving school, and a commercial driver's license. Therefore, the Director concluded that the Petitioner did not establish that his proposed occupation is a "profession" or that it requires a professional holding an advanced degree or its foreign equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i).³

On appeal, the Petitioner asserts that the Director erred in concluding that his advanced degree is not related to his proposed endeavor. Specifically, the Petitioner asserts that the Director mischaracterized the proposed endeavor "as driving a truck" and erred by "ignoring that [his] proposed endeavor is running a shipping company." The Petitioner maintains that his advanced degree is necessary to ensure he can "properly handle the complexities of shipping various specialized materials." Finally, the Petitioner states that "in focusing on the academic requirements of truck driving," the Director "fails to address the connection between [his] responsibilities as a business owner making logistical and technical decisions about shipping, leading to his erroneous conclusion."

Upon review of the statements and evidence submitted regarding the Petitioner's proposed endeavor, we conclude that the record supports the Director's determination.

As noted, the Petitioner possesses advanced degrees related to chemistry and materials science and technology. He completed his education in 2015. According to the Petitioner's submitted autobiographical statement, résumé, and letters from his former employers, he has since worked as a driver for his family's business (a preschool and kindergarten), as a cargo driver and logistician for a farming company, and, most recently (from June 2020 until May 2021) as the owner and director of a registered "individual entrepreneur" cargo transportation and logistics company, where he also performed the duties of a driver.

The Petitioner stated on the Form I-140, Immigrant Petition for Alien Worker, that he proposes to work as a "truck driver" performing duties that include long-distance driving, coordinating with dispatchers, and obeying and following applicable traffic laws. In the personal statement the Petitioner provided at the time of filing in October 2021, he repeatedly states that he proposes to work as a truck driver, noting that his "extensive experience as a truck driver . . . has uniquely prepared me for a continuation of my very successful career as a truck driver in the United States, and I would be tremendously honored to contribute my talent and ability as a Truck Driver to the benefit of [the United States]."

In a request for evidence (RFE), the Director noted the Petitioner's possession of an advanced degree but emphasized that he did not submit evidence to demonstrate his intent to work in an occupation or proposed endeavor that requires such degree. The Director advised the Petitioner that he could submit evidence to demonstrate that the occupation of truck driver requires an advanced degree.

The Petitioner's response to the RFE included evidence that he had established a Pennsylvania limited liability company in [REDACTED] 2022, approximately one year after filing the petition. The company's business plan indicates it will engage in the transport of general freight and dry goods and serve the

³ *See also* 6 USCIS Policy Manual F.5(A)(3) (stating that "[m]ere possession of an advanced degree or its equivalent is not sufficient for establishing a noncitizen's eligibility for this classification" and that a petitioner "must demonstrate that the position, and the industry as a whole, normally require that the position be filled by a person holding an advanced degree.")

construction, manufacturing, wholesale, and retail industries. The business plan states the Petitioner will occupy the senior position in the company as its “operations manager” and indicates he will oversee “all aspects of the company’s operations including client relations, maintenance, finances, team building and staffing development”; it does not indicate that he would be performing the duties of a truck driver.

In response to the Director’s specific request that the Petitioner provide evidence to demonstrate that his proposed occupation in the United States requires an advanced degree, he provided a letter from a professor of chemical sciences at [REDACTED] Technical University. The professor indicates that the Petitioner wrote his master’s thesis on the topic of “Safe Transportation of Chemicals,” in which he “identified nine classes of hazardous chemicals,” as well as “non-hazardous chemical goods,” and considered “all possible methods of transportation.” In an accompanying cover letter submitted with the RFE response, counsel referred to the professor’s statement, noting that “the skills that [the Petitioner] learned in transportation of chemicals will certainly transfer over to his professional career as a truck driver,” and that there is a “direct connection between the Beneficiary’s education and Truck Driving” which requires “knowing all the nuances of the transportation of this group of raw materials.” In the same letter, counsel stated that the Petitioner’s educational background is “the minimum requirement for entry into the occupation as a truck driver.” The Petitioner’s response to the RFE did not address how his new proposed endeavor (serving as the owner and operations manager for a company in the transportation and logistics sector) requires an advanced degree.

As noted, on appeal, the Petitioner indicates that the Director “mischaracterized” his proposed endeavor as “driving a truck,” and failed to consider that he will be a business owner making technical decisions that require the ability to “handle the complexities of shipping various specialized materials.” However, a petitioner must establish their eligibility for a requested benefit “at the time of filing the benefit request.” 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971) (requiring a noncitizen to qualify for a proposed job by the time of a petition’s filing). A petitioner also may not materially change a petition after its filing. *Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998). For the reasons stated in *Katigbak* and *Izummi*, we conclude that the Director did not err by basing the decision on the Petitioner’s initial proposed endeavor, which was to work as a truck driver.

Further, we agree with the Director’s determination that neither the initial evidence nor the Petitioner’s response to the RFE demonstrate that the intended occupation of “truck driver” or “truck driver entrepreneur” requires an advanced degree. On appeal, the Petitioner does not contest this determination.

Even if we considered the material change to the Petitioner’s intended proposed endeavor, the RFE response did not include evidence to establish that an advanced degree is required to own and operate a business in the transportation and logistics field. Rather, in response to the RFE, counsel maintained that the Petitioner’s educational background is “the minimum requirement for entry into the occupation as a truck driver.” Counsel now makes similar claims on appeal regarding the Petitioner’s proposed endeavor as a business owner and operations manager in the transportation field. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence.

Mere possession of an advanced degree, or its equivalent, is not sufficient to establish a petitioner's eligibility as a member of the professions possessing an advanced degree. The Petitioner must also demonstrate that his intended occupation or proposed endeavor normally requires the services of an individual with an advanced degree. Here, the Petitioner has not met that burden. Accordingly, he has not established his eligibility for the requested EB-2 classification.

B. National Interest Waiver

The Petitioner has not established his qualification for an EB-2 classification as a member of the professions holding an advanced degree and he has waived his prior claim that he qualifies as an individual of exceptional ability in the sciences, arts, or business. He is therefore not eligible for a national interest waiver. While the Petitioner asserts on appeal that he meets all three of the prongs under the *Dhanasar* analytical framework and that the Director erred in concluding otherwise, we will reserve these issues. *See INS v. Bagamasbad*, 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, 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 he is eligible to be classified as a member of the professions holding an advanced degree or that he is otherwise eligible for EB-2 classification. Accordingly, the petition will remain denied and 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.