



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

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

In Re: 26967078

Date: MAY 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a financial and investment analyst and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for the requested EB-2 classification. 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.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate their 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) of the Act. 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).<sup>1</sup> Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.<sup>2</sup> We will then conduct a final merits determination to determine whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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<sup>1</sup> 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).

<sup>2</sup> U.S. Citizenship and Immigration Services (USCIS) has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. *See generally*, 6 *USCIS Policy Manual* F.5(B)(2), <https://www.uscis.gov/policy-manual>.

Once a petitioner demonstrates eligibility as either a member of the professions holding an advanced degree or as 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 USCIS may, as matter of discretion, 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.

As noted, the Director denied the petition based on two independent and alternative grounds. First, the Director determined that the Petitioner did not establish his eligibility for classification as individual of exceptional ability in the sciences, arts, or business. The Director concluded that the Petitioner satisfied only two of the six initial evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), and therefore found him ineligible for this EB-2 classification without considering the evidence in the context of a final merits determination. Further, the Director concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. Specifically, the Director determined that the Petitioner did not demonstrate that he meets any of the three prongs of the *Dhanasar* analytical framework.

In his appellate brief, the Petitioner directly quotes the Director’s determination that “USCIS does not find the petitioner to be an individual of exceptional ability.” However, he does not otherwise address or contest the Director’s specific findings regarding his eligibility for this classification; the remainder of the brief solely discusses his eligibility for a national interest waiver under the *Dhanasar* framework. Therefore, we deem the Director’s adverse determination on the issue of the Petitioner’s eligibility for the requested EB-2 classification to be waived. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). Because a petitioner must demonstrate eligibility for the underlying EB-2 classification in order to be eligible for a national interest waiver of the classification’s job offer requirement, this issue is dispositive of the outcome of this case, and the petition cannot be approved.

Moreover, 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 his eligibility for a national interest waiver. *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).

The appeal will be dismissed because the Petitioner has not established his eligibility for EB-2 classification as an individual of exceptional ability in the sciences, arts, or business.

**ORDER:** The appeal is dismissed.