



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

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

In Re: 22755723

Date: OCT. 13, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a postsecondary education teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree or, in the alternative, classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 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, noting that “[a]fter the [P]etitioner has established . . . eligibility for second preference classification under section 203(b)(2)(A) of the [Act], [U.S. Citizenship and Immigration Services] may grant a national interest waiver if the [P]etitioner demonstrates by a preponderance of evidence that [the criteria established in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), have been satisfied].” The Director proceeded to conduct a *Dhanasar* analysis without first concluding whether the Petitioner qualifies for a second preference classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. In a prior request for evidence (RFE), the Director asserted:

[the record] establishes that the [Petitioner] holds a bachelor’s degree in mathematics and more than two years education and experience teaching mathematics and thus qualifies as a member of the professions holding an advanced degree. Therefore, at this time, USCIS does not need to evaluate whether the [Petitioner] also qualifies as an [individual] of exceptional ability.

The Director misstated the regulatory criteria for establishing the equivalent to an advanced degree and, therefore, erroneously concluded that the record established that the Petitioner satisfied the criteria. The regulations provide that a “United States baccalaureate degree or 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,” not a bachelor’s degree and more than two years of education and experience, as the Director stated. 8 C.F.R. § 204.5(k)(2).

Additionally, we note unresolved deficiencies in the record regarding the Petitioner’s work experience. The record indicates that the Petitioner’s work experience includes periods of overlapping

employment, in addition to teaching subjects unrelated to mathematics, such as “Technology in Business Management” and “Technology in Real Estate Business,” raising questions regarding the extent to which the Petitioner was accruing progressive experience in the specialty of mathematics education during certain periods. Relatedly, letters in the record from the Petitioner’s prior employers do not indicate whether the Petitioner worked on a full-time basis during any of the specified periods. For example, one letter asserts that the Petitioner “was our regular employee, teaching [m]athematics,” another letter states that the Petitioner “was part of this [e]ducation [i]nstitution . . . working as a teacher;” another letter asserts that the Petitioner “worked at the school institution . . . [w]ith the position of [m]athematics [p]rofessor for the high school course;” and another letter states that the Petitioner “worked in our school unit . . . performing the position of mathematics’ teacher.” Although the letters specify the period during which the Petitioner worked, none elaborate on whether the Petitioner worked on a full-time basis. The Director did not address these deficiencies in the record regarding the Petitioner’s work experience.

While we conduct *de novo* review on appeal, we conclude that a remand is warranted in this case because the Director’s decision is insufficient for review. As presently constituted, the record does not establish whether the Petitioner qualifies as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability. *See* section 203(b)(2) of the Act.

Accordingly, the matter will be remanded to the Director to determine if the Petitioner has established eligibility for the underlying classification as a member of the professions holding an advanced degree or, in the alternative, as an individual of exceptional ability, and to enter a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.