U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12260032

Date: MAR. 17, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks the second preference immigrant 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for the EB-2 classification as an individual of exceptional ability, and a national interest waiver.[1] The Petitioner has the burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

[1] The Petitioner does not assert nor does the record show that he is a member of the professions holding an advanced degree.

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

To determine eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations at 8 C.F.R. § 204.5(k)(3)(ii) further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(A) 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;

(B) 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other renumeration [*sic*] for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[3] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[4]

II. WILLFUL MISREPRESENTATION

After a preliminary review of the record, we notified the Petitioner of our intent to dismiss the appeal with a finding of willful misrepresentation of a material fact based on various inconsistent evidence. By issuing a notice of intent to dismiss (NOID), we gave the Petitioner an opportunity to respond to the derogatory information, as required by 8 C.F.R. § 103.2(b)(16)(i). We also advised the Petitioner that, if he did not overcome this information, then we would make a finding of willful misrepresentation of a material fact. The Petitioner responded to the NOID with the submission of additional evidence and explanations. However, we conclude that the Petitioner's response does not sufficiently address the derogatory information described in our NOID. For the reasons discussed below, we conclude that the Petitioner has willfully misrepresented his work experience and other qualifications, as well as his contributions to the field of endeavor submitted as evidence of his exceptional ability, and of his position to advance his proposed endeavor.

A. Evidence of Record

The Petitioner contends that he is an individual of exceptional ability in business and that he satisfies the requirements of the *Dhanasar* analytical framework. He intends to "work as [a] CEO in an environment focused enterprise which [he is] in the process of creating, which [he] envision[s] to be engaged in energy efficient electrical installations and plastics recycling."

As a preliminary matter, the record does not sufficiently substantiate the Petitioner's endeavor. For example, while the Petitioner claims he envisions being engaged in "energy efficient electrical installations and plastics recycling" through an environment focused enterprise, the record contains inconsistent evidence regarding the enterprise. The record reflects that shortly before filing the petition, he established a U.S. business, [B-]. However, according to his 2019 federal tax return, B-'s principal business activity is "janitorial services," not performing "energy efficient electrical installations and plastics recycling." The record does not establish how he would pursue his proposed endeavor through providing janitorial services. The Petitioner must resolve this inconsistency and ambiguity 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). [5]

---

[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[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] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[5] On appeal, the attorney also claims he has "exceptional ability in swing dance and extensive demonstrated track record

As evidence of his exceptional ability and his position to advance his proposed endeavor, he avers that he has "extensive experience in the field of environmentally friendly, sustainable engineering related to plastic recycling and energy saving solutions." The Petitioner submits documentation to support his assertions that largely focus on work activities that he performed within two organizations, [redacted] [O-P-] and [redacted] [D-S-], which we will discuss in turn.[6]

1. Employment with O-P-

The Petitioner misrepresented the nature of his employment with O-P-, which largely forms the foundation of his asserted eligibility as an individual possessing exceptional ability in business, and his eligibility for a national interest waiver. He asserts that "[i]n 2003, he was appointed to the position of CEO [at O-P-],"[7] and that his "responsibilities in the high-ranking managerial position of CEO encompassed a range of essential, business-critical duties." He further states that "[o]nly a professional of outstanding expertise and ability in the field of energy savings technology would have been capable of assuming this comprehensive role, precisely the reason why [O-P-] would have sought a candidate of [his] stature."

However, the record does not sufficiently corroborate his employment with O-P-. For example, as evidence of the Petitioner's claimed employment with O-P-, he submitted a copy of the certificate of public registration for a different entity - [P-LLC], reflecting that P- LLC was partially owned by the Petitioner's father. We observed in our NOID that the Petitioner did not establish how a certificate of public registration for P-LLC established his employment history at O-P-.

In response to our NOID, the Petitioner states that O-P- does business as P-LLC, but he provides insufficient evidence of O-P-'s business operations to show that O-P- actually *is* P-LLC. He also acknowledges that his "father was the general director of [O-P-], and the company's partial owner," and contends "[t]his is precisely what allowed him to fully evaluate my ability to perform in the high-ranking CEO position at this company." Nonetheless, even if O-P- and P-LLC are the same entity, the lack of prior disclosure regarding his father's ownership interests and the insufficient documentation about the nature of his employment with O-P- raises questions regarding whether the Petitioner was employed in a "high-ranking managerial position" by O-P- commencing in 2003. For instance, the Petitioner's "labor record book" which was initially issued in February 2002, makes no mention of his employment with O-P-, but instead reflects that he performed services as a "driver of the transport department" from that time for T- until July 2002, when he assumed a role for [I] as an "electrical officer" until March 2003. He also provided a 2006 attestation certificate in which his credentials as of 2003 are described as "unfinished vocational education" obtained at [redacted], and his place of employment and work status are described as "individual entrepreneur."

The Petitioner asserts in the NOID response that he "was hired [by O-P-] based on my experience at [I-] (which is duly reflected in my labor record book) as well as my future potential, and therefore, any suspicions that my prior experience as a driver should serve to negate credibility as to my managerial experience are unfounded." While the Petitioner points to his nine-month experience as

---

of success in this field." While this may be administrative error, we also note that in the support letter, the Beneficiary is frequently referred to in the wrong pronoun.

[6] While we may not discuss every document submitted, we have reviewed and considered each one.

[7] In 2003, the Petitioner was 19 years old.

an "electrical officer" for I-, and his "future potential" as factors for his appointment to the CEO position at his father's business, the record does not reflect that the Petitioner possessed *any* managerial experience at the time of his hire as a "CEO," nor does the limited information about the Petitioner's unfinished vocational school education - and work as a driver and an electrician suggest that he was "a professional of outstanding expertise and ability in the field of energy savings technology" in 2003. Within our NOID, we provided the Petitioner with an opportunity to resolve these inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The Petitioner has not adequately explained or documented how his level of education and work experience in 2003 provided him with the aforementioned expertise and ability in the field of endeavor.

Notably, the Petitioner has not submitted material from O-P- that sufficiently details his employment there, which is the required initial evidence to show eligibility under the exceptional ability criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B). The regulation at 8 C.F.R. § 204.5(g)(1), provides in pertinent part that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s)from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the [individual] or of the training received."

In response to the NOID, the Petitioner provided an undated letter from his father, which provides general statements about his work performance, such as "[h]is manager skills have allowed him to create a team of dedicated employees that has been with the company for over 10 years. . . [he] plays a key role in the company in management and sales. . . [he] signs contracts with large manufacturing companies, for which we produce components for their production, these are such large companies as [], and others." This letter does not comport with the regulatory requirements at 8 C.F.R. § 204.5(g)(1).

Without more, this letter does not demonstrate the Petitioner's employment with O-P- in an executive position from 2003 until at least 2018 as stated in the petition. For example, the Petitioner's father asserts that the Petitioner "has established international relations with the CIS countries, China, Europe, and the United States," and that his "communication skills allowed him to start working with large federal chain stores, such as [], etc., which have thousands of branches, thus our products are represented in every city of Russia." However, the Petitioner has not provided evidence that identifies the products which are produced by O-P-, and to whom they are sold. While the Petitioner claims that O-P- sells its products across Russia, and that he is responsible for establishing O-P-'s international relations with large companies across the globe, the record does not contain evidence to substantiate his assertions.

The Petitioner has not established that his responsibilities with O-P- involved "overseeing a large-scale plastic recycling operating and implementing innovative energy-efficient production solutions," as stated in a 2020 letter from O-P-'s general director. On appeal, the Petitioner states that his "patented technologies greatly improved [O-P-'s] ability to reduce the cost of waste disposal, decrease its use of landfills, and optimize the production of new raw materials." The Petitioner has not shown that he held "several patented technologies" relating to waste disposal or the production of new raw materials from recycled goods during his tenure with O-P-. The record contains one 2006 Russian patent that was issued to someone other than the Petitioner for a product called [redacted]," which according to the patent "refers to the bottles intended for the storage, transportation, and sale of beverages and other liquid products." The Petitioner's 2013 Russian patent is for an electric lamp,

and focuses on certain characteristics of the lamp, such as the "latches of the fixation element are L-shaped," and the "fixation element is made in the form of a strip from elastic material."

In response to the NOID, the Petitioner states that the other person's patent "was emailed to my attorney by mistake." He does not explain how his submitted 2013 patent for a light fixture is relevant to his assertions that he utilized his own patented technologies in O-P-'s plastic recycling projects, nor did he provide evidence that he held such patents while in O-P-'s employ. Here, the Petitioner has not provided probative objective evidence to resolve the inconsistencies in the evidence raised in our NOID. *Matter of Ho*, 19 I&N Dec. at 591-92.

Moreover, the Petitioner has also not provided contemporaneous, probative evidence about the projects he managed for O-P-, and the significance of his patented technologies, if any, used therein. For instance, O-P- indicates in its 2020 letter that the projects involving the Petitioner's "technology began in 2015 and [were] successfully completed in 2018." The letter expounds on the advantages of the Petitioner's technology, noting "it has great environmental importance," "allows reducing the number of landfills," and "provides the company with additional raw materials obtained by processing plastic." However, O-P- does not provide a plain language description about what the Petitioner's technology *actually is*, nor does it describe the scope and nature of the recycling projects in which this technology was used, other than to state that the goal of the projects "is to organize the processing and disposal of plastic waste." Further, the Petitioner did not submit additional evidence to corroborate these projects.

In the NOID response, the Petitioner provides evidence of a new Russian patent for an invention, [redacted], which was authored by the Petitioner and four other individuals. The Petitioner does explain how this patent, which was issued in June 2020, supports his assertion that his patented technologies were used in projects that were completed years prior to the approval of the patent. Further, the 2020 patent was issued to the Petitioner a year after the filing of the petition, thus the Petitioner's obtainment of a patent after the filing date cannot retroactively establish eligibility.[8] In his appeal brief, the Petitioner contends that his "significant contributions to his field," have been "confirmed by nationally and internationally recognized experts," but on balance, the limited evidence in the record is overwhelmingly at odds with his assertions, and therefore, is of little probative value. *Matter of Chawathe*, 25 I&N Dec. at 376.

For these reasons, we further conclude that the Petitioner has misrepresented his work history, his managerial expertise, and the significance of his accomplishments relating to his employment with O-P-, which in large part form the basis for his assertions regarding his eligibility for the benefit sought in this petition.

[8] The Petitioner must meet eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

2. Employment with D-S-

The Petitioner also asserts that he gained corporate executive expertise through concurrent employment with D-S while he was employed with O-P-, by acting as D-S-'s founding director. He avers that D-S- is a large entity "which provided communication services to 20% of the city of [redacted] Russia." In contrast, the Petitioner indicated in his 2017 nonimmigrant visa application that D-S- is engaged in providing "freight transportation" services, not "communication services." *Matter of Ho*, 19 I&N Dec. at 591-92.

He contends that in his founding director position with D-S- he "implemented a series of products towards the improved automation of production processes, as well as enterprise management and financial planning." The Petitioner provides undated letters from an individual who indicates that she is the head of human resources for D-S-, who states that the Petitioner "graduated from the [redacted] in] 2001, [where he] received a degree in electrical mechanics in the repair and maintenance of industrial equipment." She asserts that the Petitioner "held the position of Director in the [D-S-] company from March 2002 till March 2019." We observed in the NOID that the statements provided in her letter are inconsistent with other evidence in the record. For instance, the Petitioner's labor record book reflects that he was employed as a driver for T- from March until July of 2002, and the evidence from [redacted] shows that the Petitioner passed a course (but did not earn a degree) in electrical mechanics in 2002, not 2001. In the NOID response, the Petitioner provides an updated letter from the head of human resources in which she states "[p]lease be advised that we have made some errors in the original information letter regarding [the Petitioner's] employment dates. [He] completed his studies in 2002 and started work at [D-S-] in March 2003."

Collectively considering these letters and the other submitted evidence about the Petitioner's qualifications, we determine that the record does not adequately resolve the inconsistent information provided about the Petitioner's education credentials and his executive position with D-S. We informed the Petitioner in our NOID that the record does not substantiate the nature and scope of the services provided by D-S- and observed that the Petitioner did not include evidence in support of his assertion that D-S- "provided communication services to 20% of the city of [redacted] Russia" during his tenure there. Additionally, D-S-'s letters do not comport with the regulatory requirements for such evidence at 8 C.F.R. § 204.5(g)(1). The record of proceeding lacks consistent probative evidence about D-S-'s business operations to support the Petitioner's assertions on appeal that as the director of D-S- he exercised "far-reaching authority [in] closely overseeing the activities of the sales and marketing departments, developing, and maintaining client relationships, and managing the development of all company reports and internal documentation."

Due to the inconsistencies and unsubstantiated assertions in the record, the Petitioner has not sufficiently supported his assertions on appeal that he possesses "proven expertise in functioning in a corporate executive and managerial capacity," and that he "is an expert in the energy efficiency technologies essential to the success of his proposed endeavor in the United States." *Matter of Chawathe*, 25 I&N Dec. at 376.

B. Misrepresentation Analysis

The facts and evidence presented in the instant matter warrant a finding of willful misrepresentation of a material fact against the Petitioner. Based on the evidence in the record, the Petitioner made willful misrepresentations regarding his work experience and other qualifications for employment in the field of business, and his contributions to the field in order to support his claim that he is an individual of exceptional ability and of his position to advance his proposed endeavor. A misrepresentation is material when it tends to shut off a line of inquiry that is relevant to a foreign national's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). In addition, for a misrepresentation to be found willful, it must be determined that the (petitioner) was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

A misrepresentation of a material fact may lead to adverse immigration consequences. As outlined in the USCIS policy manual, a material misrepresentation requires that a (petitioner) willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *8 USCIS Policy Manual* J.2, https://www.uscis.gov/policy-manual. *See also Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). USCIS will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of a foreign national or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner does not resolve those errors and discrepancies given the opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the claims stated in the petition are not true. *Matter of Ho*, 19 I&N Dec. at 591-92.

In this case, the discrepancies in the documents submitted in support of the petition constitute substantial and probative evidence. The Petitioner submitted evidence purporting to show his exceptional ability in business and of his position to advance his proposed endeavor, which is material to meeting the requirements of the EB-2 classification and eligibility under the *Dhanasar* analytical framework. When given an opportunity to rebut our findings, the Petitioner offered insufficient rebuttal evidence and explanations for the inconsistencies in the petition. Furthermore, these misrepresentations raise questions regarding the origin and authenticity of the remaining documentation that the Petitioner has submitted in support of the petition. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591-92.

Here, the Petitioner falsely misrepresented the substantive nature of his employment with O-P- in 2003. He did not disclose that O-P was a family-owned business, asserting "[o]nly a professional of outstanding expertise and ability in the field of energy savings technology would have been capable of assuming this comprehensive role, precisely the reason why [O-P-] would have sought a candidate of [his] stature," when the record reflects he was 19 years-old and his education credentials and employment history at that time entailed unfinished vocational school education and short-term work as a driver and an electrician. The Petitioner also made unsubstantiated claims that he had many years of employment in executive-level management positions that involved, among other things, overseeing "large-scale" projects that utilized his "patented technologies [to] greatly improved [O-P-'s] ability to . . . . optimize the

production of new raw materials." As evidence of these patented technologies, he submitted patents for inventions unrelated to plastic recycling and renewable energy, one of which belonged to another individual. The Petitioner also asserts that he gained corporate executive expertise through concurrent employment with D-S while he was employed with O-P-, by acting as D-S-'s founding director. He indicates that D-S- is a large entity "which provided communication services to 20% of the city of [redacted] Russia," but did not provide probative evidence to overcome the inconsistent and insufficient evidence in the record about the nature of his employment with D-S-. When given the opportunity to address our findings, the Petitioner offered insufficient rebuttal for the inconsistencies in the petition.

Furthermore, the Petitioner signed Form I-140, Immigrant Petition for Alien Worker, certifying under penalty of perjury that the visa petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). Accompanying the signed petition, the Petitioner submitted false and misleading documentation as evidence in support of the petition. Part 8 of Form I-140 requires a petitioner to make the following affirmation: "I certify, under penalty of perjury of the United States of America, that this petition and the evidence submitted with it are all true and correct." Based on this affirmation, made under penalty of perjury, we find that the Petitioner willfully and knowingly made the misrepresentations.

As discussed, the misrepresented facts are material. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) calls for evidence "that the [individual] is an alien of exceptional ability in the sciences, arts, or business." In addition, one of the requirements set forth in the *Dhanasar* precedent decision is that the foreign national is well positioned to advance the proposed endeavor. *See Dhanasar*, 26 I&N Dec. at 889-890. As evidence of the Petitioner's exceptional ability in business and that he is well positioned to advance his proposed endeavor, he made willful misrepresentations regarding his work experience and other qualifications for employment in the field of business, and his contributions to the field of endeavor. Here, the Petitioner's misrepresentations could have affected the outcome of the petition because they purported to address, and to satisfy, his eligibility under section 203(b)(2) of the Act. Considering the falsified evidence discussed above, we find that the Petitioner's willful misrepresentations were material to his eligibility.

III. CONCLUSION

Based on the foregoing, because the Petitioner willfully misrepresented material facts to seek eligibility for the EB-2 classification as an individual of exceptional ability, and to procure a national interest waiver of the job offer requirement attached to this EB-2 classification, the Petitioner is ineligible for the benefit sought in the petition. This finding of willful misrepresentation may be considered in any future proceeding to determine that the Petitioner is inadmissible to the United States. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

ORDER: The appeal is dismissed.