U.S. Citizenship and Immigration Services

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

In Re: 28947272

Date: DEC. 11, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a veterinary food inspector and entrepreneur, seeks employment-based second preference (EB-2) 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 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, concluding that the record did not establish that the Petitioner merited a national interest waiver as a matter of discretion. 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 withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

## 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. If a doctoral degree is customarily required for the specialty, the non-citizen must a United States doctorate or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2).

If a petitioner demonstrates eligibility for the underlying EB-2 classification, 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 discretion[1], 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. EB-2 CLASSIFICATION

The Petitioner claims eligibility for the EB-2 immigrant classification as a member of the professions holding an advanced degree. In her decision, the Director concluded that the evidence, including the Petitioner's degree, transcripts, and letters documenting her work experience, established that she holds a foreign degree that is equivalent to a United States bachelor's degree and has at least five years of full-time, progressive experience working in her field after receiving her degree. We disagree and withdraw that portion of the Director's decision.

USCIS will deny a visa petition if the petitioner submits evidence which contains false information. *See* section 204(b) of the Act. A petition includes its supporting evidence - including a labor certification. 8 C.F.R. § 103.2(b)(1). Further, misrepresentation of a material fact may lead to multiple consequences in immigration proceedings. Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

A finding of material misrepresentation requires the following elements: the petitioner procured or sought to procure a benefit under U.S. immigration laws; they made a false representation; and the false representation was willfully made, material to the benefit sought, and made to a U.S. government official. *Id.*; *see generally* 8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual. Under Board precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the [noncitizen's] eligibility and which might well have resulted in a proper determination that he be excluded."[2] A willful misrepresentation requires that the individual knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled.[3] Material misrepresentation requires only a false statement that is material and willfully made. The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise.[4]

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[1] *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).
[2] *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).
[3] *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2d Cir. 2009) (citing *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).
[4] *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).

Here, the record establishes that the Petitioner holds the foreign equivalent of a bachelor's degree issued by an accredited college or university in the United States.[5] To show that she also has at least five years of progressive, post-degree experience, the Petitioner submitted the following letters:

- [redacted], head veterinarian, October 2015 to October 2016,
- [redacted], veterinarian (quality control), October 2015 to October 2016,
- [redacted], chief veterinarian with technical responsibility, June 2012 to October 2015,
- Accountant statement, [redacted], owner and partner providing emergency and regular clinical care for animals, August 2013 to March 2016,
- Former manager statement, [redacted] veterinarian with technical responsibility, September 2011 to September 2012.

The Petitioner also submitted employment contracts with each of the first three employers listed above. In responding to the Director's request for evidence, the Petitioner submitted slightly more detailed versions of the first three employer letters. The statements made in these letters regarding the Petitioner's dates of employment, hours of employment per week and duties generally match the Petitioner's statements regarding her employment history on the Form ETA 750B, Application for Alien Employment Certification, submitted with her petition. However, there are several discrepancies in the record which indicate that the Petitioner's statements and the employment letters contain willful misrepresentations of material fact.

Regarding the dates of her employment, the letters from [redacted] and [redacted] cover the same period, October 2015 to October 2016. We first note that even if the Petitioner could establish that she worked two full-time jobs during this period, this would still only show that she gained one year of qualifying experience. But more importantly, the Petitioner indicated on Form I-140 that her last date of arrival in the U.S. was April 28, 2016, which corresponds with United States Citizenship and Immigration Services (USCIS) records, and there is no indication that she has since departed. Despite the fact that the Petitioner left for the U.S. halfway through the stated period of employment, neither of the letters mention any change in her employment status, nor do they suggest that the work performed by the Petitioner could have been done while she was physically in the U.S. As such, both misrepresent the dates of her employment, which is material to her eligibility as a member of the professions holding an advanced degree.

As for the number of hours that the Petitioner worked for these employers, the letters from the first three employers listed above that were submitted in response to the Director's request for evidence (RFE) all state that she was employed full-time, with the letter from [redacted] specifically stating that she worked 40 hours per week. The same is true for the Petitioner's responses on the ETA 750B, which she signed under penalty of perjury. However, there are discrepancies between this evidence and the contracts between the Petitioner and the companies that employed her, all of which state that she was employed for 6 hours per week. The Petitioner must resolve these discrepancies in

[5] The Director's reliance on the educational evaluation in the record is misplaced, as it does not conclude that the Petitioner holds the foreign equivalent of a U.S. bachelor's degree, but reaches its conclusion by combining the Petitioner's education and work experience. However, the diploma and transcripts are sufficient to establish she earned the foreign equivalent of a U.S. bachelor's degree in veterinary medicine after more than four years of study.

the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Also, unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.; see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up).

On remand, the Director should reopen the petition and issue a notice of intent to deny (NOID), notifying the Petitioner of the material misrepresentations described above and providing her with an opportunity to respond. The Director should also consider the inconsistencies in the evidence, regardless of whether they are determined to stem from willful misrepresentations of material fact, in reassessing the Petitioner's eligibility as a member of the professions holding an advanced degree.

## III. NATIONAL INTEREST WAIVER

The Petitioner initially presented a broad range of activities that she intended to pursue in the United States, including providing health care for animals, working to protect public health, researching medical conditions of pets and livestock, and "identifying opportunities for business," but clearly indicated that her plan is to "work with American veterinarian clinics." In response to the Director's RFE, however, she submitted a business plan for a company called [redacted], stating that she is one of its owners and will act as its CEO and leading expert. According to the business plan, the company would offer food safety and sanitary inspection services.

### A. Substantial Merit and National Importance

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

In her decision, the Director determined that since the Petitioner's business plan was apparently created after the filing of the petition, it did not show that the Petitioner "will continue to work in the United States in the claimed field of expertise." We note that this is not a requirement that is found in the statute or regulations concerning national interest waivers, nor is it a part of the *Dhanasar* analytical framework.[6] However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). On remand, the Director should determine whether the business plan submitted in response to the RFE constituted an impermissible material change to the petition, and if so whether the Petitioner has demonstrated that her initially stated proposed endeavor is of national importance.

[6] A similar requirement is found at Section 203(b)(1)(A) of the Act, which pertains to petitions for individuals of extraordinary ability.

Also, in her analysis of the national importance of the Petitioner's proposed endeavor, the Director notes that the evidence does not show how the Petitioner intends to achieve the sales goals stated in the business plan for [redacted], or that other U.S. businesses have expressed interest in its services. But these are factors that are considered under the second prong of the *Dhanasar* framework, when determining whether a petitioner is well positioned to advance their proposed endeavor. On remand, the Director should focus on whether the Petitioner has shown that the potential prospective impact of her proposed endeavor is of national importance when determining her eligibility under the first prong.

In addition, when determining the Petitioner's eligibility under all three prongs of the Dhansar analytical framework on remand, the Director should consider and address the Petitioner's statements in her appeal brief.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.