U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27545076

Date: JUL. 26, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an artisanal silk weaver, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, 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 Nebraska Service Center initially approved the petition but subsequently revoked the approval on notice. The Director concluded that the Petitioner had submitted evidence which contained unresolved inconsistencies, thereby undermining the validity of all of the evidence in the record. 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 entry of a new decision consistent with the following analysis.

I. LAW

The Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition ...." Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any U.S. Citizenship and Immigration Services (USCIS) officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation (NOR). See 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals (the Board) has discussed revocations on notice as follows:

> [A] notice of intention to revoke a visa petition is properly issued for " "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be

sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.[1]

II. ANALYSIS

A. Revocation of the Petition

In his decision to revoke the petition, the Director explained that text and photographs from the book [redacted] which the Petitioner claimed to have authored appeared in an article bearing the same title on the website www.medium.com, and that it contained no publishing information or other features typically appearing in books. The Director also determined that the Petitioner's explanation, that he was unaware of this plagiarism in a book that he specifically claimed to author, was not persuasive. The Director did not, however, analyze or explain how the submission of the plagiarized book affected the Petitioner's eligibility for the requested classification.

An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). While we agree with the Director's analysis regarding this piece of evidence and the Petitioner's NOIR response, because the Director's decision did not provide the Petitioner with sufficient information that specifically explained the grounds for revocation, we will withdraw it and remand the matter for further action and entry of a new decision revoking the petition consistent with the following analysis.

On appeal, the Petitioner presents three very brief arguments, without citing to relevant caselaw or statutory or regulatory provisions, in support of his claim that the revocation of the approval of his petition was not warranted. He asserts that the evidence presented in response to the Director's notice of intent to revoke (NOIR) addressed the concerns raised, but does not point to any specific error made by the Director in analyzing this evidence. The evidence which was responsive to the NOIR consisted only of the Petitioner's statement declaring his ignorance of the plagiarism in the material he submitted, and a letter from a company called [redacted] claiming responsibility for the plagiarism.[2] Although both of these documents purport to explain the plagiarism at the time this material was supposedly published, neither addresses the fact that the Petitioner submitted this evidence with his petition and claimed to be its author. When the Petitioner signed Form I-140, Immigrant Petition for Alien Workers, he certified to the completeness, accuracy and correctness of the petition and all materials submitted with it. 8 C.F.R. § 103.2(a)(2).

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[1] *Matter of Ho*, 19 I&N Dec. 582. 590 (BIA 1988) *{citing Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). Upon the proper issuance of a notice of intent to revoke (NOIR) for good and sufficient cause, the petitioner bears the burden of proving eligibility the requested immigration benefit. *Id.* at 589.

[2] We note that other evidence submitted with the NOIR response did not relate to the identified discrepancies. In addition, we note that other than the letter, there is no evidence in the record showing that [redacted] published the Petitioner's book, or that it was published at all.

The Petitioner also asserts that the plagiarized book "does not represent material evidence warranting the revocation," and that it "does not outweigh the cumulative effect of rest of the evidence," despite the fact that he submitted it as supporting evidence for his petition. On remand, the Director should evaluate the evidence pertaining to each of the evidentiary criteria claimed by the Petitioner as an individual of exceptional ability. In particular, the Director should consider whether the Petitioner's degree in economics relates to his area of exceptional ability as a silk weaver, whether the evidence sufficiently establishes that he has ten years of full-time employment experience in the occupation he seeks despite the conflicting timeframes shown in the evidence of his education, and whether the association in which he claims membership is a professional one that requires its members to hold at least a bachelor's degree. If the Director concludes that he does meet at least three of criteria, he should then evaluate whether the totality of the evidence, including the multiple discrepancies identified in his claimed book, establishes that he is recognized as possessing a degree of expertise significantly above that ordinarily encountered in his field.

In addition, the Director should analyze the evidence under the three prongs of the *Dhanasar* analytical framework to determine whether the Petitioner is eligible for, and merits as a matter of discretion, a national interest waiver of the EB-2 classification's job offer requirement. In particular, the Director should consider whether the Petitioner has adequately described his proposed endeavor, and if so whether the evidence establishes that it is of substantial merit and national importance. In doing so, the Director should evaluate the potential prospective impact of the Petitioner's plan to create, display, and sell his silk fabrics and crafts. Also, the Director must evaluate the impact of the discrepancies in the Petitioner's evidence, together with the balance of the record, on his positioning to advance his proposed endeavor, especially concerning his record of success in related or similar efforts.

B. Misrepresentation of a Material Fact

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. 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."[3] A willful misrepresentation requires that the individual knowingly make a material misstatement to a government official for the purpose of obtaining an

[3] *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

immigration benefit to which one is not entitled.[4] 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.[5]

In addition to determining the impact of the identified discrepancies on the Petitioner's eligibility for the requested classification and waiver, the Director should also consider whether, based upon the evidence already in the record, the Petitioner has made a willful misrepresentation of a material fact. As discussed above, the Director should consider the Petitioner's NOIR response and his knowledge of the plagiarism at the time of filing his petition. Also similar to the above, the Director should then consider whether the plagiarized evidence submitted by the Petitioner directly affects his eligibility as an individual of exceptional ability and for a national interest waiver, and whether he knowingly and intentionally submitted the evidence.

III. CONCLUSION

For the above reasons, the Director should issue a new revocation decision in which he considers the sufficiency of the evidence already submitted, including the plagiarized book, in establishing the Petitioner's eligibility as an individual of exceptional ability and for a national interest waiver. In addition, the Director should evaluate whether by submitting the plagiarized book as evidence, the Petitioner willfully misrepresented a material fact.

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

[4] *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).

[5] See *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).