U.S. Citizenship and Immigration Services

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

In Re: 24227546

Date: JUN. 05, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an advanced degree professional. 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. Section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center revoked the approval of the petition, concluding that the record did not establish the Petitioner's eligibility because the Petitioner had willfully misrepresented material facts regarding his credentials and work history. 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.

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.

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 USCIS may, as matter of discretion[1], grant a national interest waiver if the petitioner demonstrates that:

[1] *See also Poursina v. USCIS*, 936 F.3d 868, 871-72 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

- 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.[2]

USCIS may revoke the approval of a petition "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. USCIS may issue a notice of intent to revoke (NOIR) a petition's approval for good and sufficient cause if the unexplained and unrebutted record at the time of the notice's issuance would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). The NOIR provides the opportunity to submit evidence in support of the petition and in opposition to the alleged grounds for revocation. 8 C.F.R. § 205.2(b). If the NOIR response does not rebut or resolve revocation grounds stated in the notice, USCIS properly revokes a petition's approval. *Matter of Estime*, 19 I&N Dec. at 451-52. However, a notice of revocation (NOR) is not valid unless it is based on evidence contained in the record of proceedings. *Id.*

First, it is noted that USCIS records indicate that the Petitioner has filed two subsequent Forms I-140, Immigrant Petition for Alien Workers, also seeking a national interest waiver, which have been approved.[3] However, in this case, the Director entered a finding of willful misrepresentation of a material fact against the Petitioner. Specifically, the Director determined that despite his claims to the contrary in the initial petition, the Petitioner is not a medical researcher; he has never been an associate professor; and he has not published any post-graduate work. A finding of willful misrepresentation will be considered in any future proceeding where the Petitioner's admissibility is an issue. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).

On appeal, the Petitioner denies that he misrepresented his medical profession. He states that he has published several research articles, that he was an associate professor, and that he has published post-graduate work.

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. The record indicates, and the Petitioner does not dispute, that the Petitioner made representations to U.S. government officials while seeking to procure an immigrant visa, which is a benefit under U.S. immigration laws. The remaining issues are therefore whether the Petitioner made a false representation, and if so, whether it was willful and material.

While the NOIR and NOR make specific factual allegations regarding the falsity and willfulness of the Petitioner's representations, they do not specify on what grounds those representations rendered the Petitioner ineligible for classification as an advanced degree professional or a waiver of the job offer requirement. This is insufficient to support the Director's finding of willful misrepresentation because it does not indicate why the Petitioner's statements were material. *Matter of D-R-*, 27 I&N Dec. 105, 113 (BIA 2017) ("[material] misrepresentation tends to shut off a line of inquiry that is

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

[3] The approved petitions are [redacted] They were both filed for the occupation of medical specialist.

relevant to the alien's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa . . ."); *see generally* 8 *USCIS Policy Manual* J.3(E)(2) ("A 'material' misrepresentation is a false representation concerning a fact that is relevant to the person's eligibility for an immigration benefit.").

Furthermore, at this time we are unable to address the merits of this case because the record is incomplete. The Director's decision indicates that the Petitioner submitted evidence in response to the NOIR, including but not limited to a statement. However, this response is not in the record. Thus, we cannot determine whether the Director properly considered all the relevant evidence in the record or whether the record at the time of the revocation would have warranted the petition's denial and the finding of willful misrepresentation of a material fact. *Matter of Estime*, 19 I&N Dec. at 452. The Director bears the responsibility of ensuring that the record is complete and contains all evidence that has been submitted by a petitioner or considered by USCIS in reaching its decision. *See* 8 C.F.R. § 103.2(b)(1); *cf. Matter of Gibson*, 16 I&N Dec. 58, 59 (BIA 1976). For the foregoing reasons, we will withdraw the Director's decision and remand this matter to the Director to review the entirety of the record and to issue a new NOIR concerning the Petitioner's eligibility for the underlying EB-2 classification, whether he merits a discretionary waiver of the job offer requirement in the national interest, and whether he willfully misrepresented material facts.

On remand, the Director should identify and incorporate any documents which may have been inadvertently omitted from the record of proceeding before reviewing the entire record and issuing the new NOIR, granting the Petitioner a reasonable opportunity to respond. Upon receipt of a timely response, or the expiration of the time period to respond, the Director should review the entire record, including the materials submitted on appeal, and enter a new decision.

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