U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35909215

Date: JUNE 10, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a civil engineer, 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 EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

SCOPS revoked the approval of the petition, concluding that the Petitioner willfully misrepresented material facts in support of the national interest waiver. SCOPS entered a finding of willful fraud and misrepresentation against the Petitioner. 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 decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act. If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act.

In 1998, under the legacy Immigration and Naturalization Service, we set forth an initial framework for adjudicating national interest waiver petitions in the precedent decision Matter of New York State Dep't of Transp. (NYSDOT), 22 I&N Dec. 215, 217-18 (Acting Assoc. Comm'r 1998). Under NYSDOT, a petitioner must first demonstrate that the individual seeks employment in an area of substantial intrinsic merit. Id. at 217. Next, a petitioner must show that the proposed benefit will be national in scope. Id. Finally, the petitioner seeking the waiver must establish that the individual will serve the national interest to a substantially greater degree than would an available U.S. worker having

the same minimum qualifications. Id. at 217-18. We vacated our NYSDOT precedent decision in December 2016 and set forth a new framework for adjudicating national interest waiver petitions in Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

At any time before an individual obtains lawful permanent residence, however, USCIS may revoke a petition's approval for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a petition's erroneous approval may justify its revocation. Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988). By itself, USCIS' realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. Id. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. Id. at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. Id.

By regulation, this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 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. See 8 C.F.R. § 205.2(b) and (c). A notice of intent to revoke (NOIR) "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." Matter of Estime, 19 I&N Dec. 450, 451 (BIA 1987). Per Matter of Estime, "[i]n determining what is 'good and sufficient cause' for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof." Id.

II. ANALYSIS

The Petitioner filed the Form I-140 in October 2014 and SCOPS approved the petition in April 2015 under the NYSDOT analytical framework. In September 2024, SCOPS issued a NOIR, stating that during the Petitioner's Form I-485 adjudication, "many inconsistencies were discovered in the record," calling into question his qualification for a national interest waiver. SCOPS revoked the petition finding that the Petitioner committed willful fraud and misrepresentation by willfully providing misleading information when applying for the immigration benefit. For the reasons discussed below, we are remanding the matter for SCOPS to provide a more comprehensive NOIR and enter a new decision.

The NOIR specified:

> [The Petitioner's] position as a journeyman level transportation engineer had marginal research responsibilities and was supervised by higher-level engineers. [The Petitioner] had minimal published technical publications in comparison to all of the engineering professionals that wrote letters of recommendation for him. Each technical publication on [the Petitioner's] resume was a group effort with at least three other engineers listed as co-authors.

The Petitioner responded, arguing the NOIR did not specify the derogatory information. He also

provided evidence addressing SCOPS' concerns of inconsistencies in the record and reiterated his qualifications for the national interest waiver. In the revocation decision, SCOPS explained,

> [o]n May 12, 2015, USCIS was informed that several recommendation letters provided as evidence with the Form I-140 were written by [the Petitioner]. [The Petitioner] embellished [the Petitioner's] own abilities and accomplishments in these letters, then had prominent researchers sign them as if they wrote the letters. USCIS confirmed the letters lacked credibility and that [the Petitioner] purposely exaggerates their past employment and job duties.

On appeal, the Petitioner asserts that SCOPS failed to show good and sufficient cause for revoking the petition. We agree with the Petitioner. Because SCOPS did not properly revoke the approved petition, we will remand the matter.

In the NOIR, SCOPS did not identify or explain the inconsistencies discovered in the record. The NOIR did not mention any concerning misrepresentations or fraud by the Petitioner or provide him an opportunity to respond to the derogatory information prior to the issuance of the revocation. See 8 U.S.C. § 103.2(b)(16)(i). USCIS is required to notify a petitioner of derogatory information of which he or she is unaware and to provide the petitioner with a rebuttal opportunity. Id. Although the NOIR mentions the Petitioner's recommendation letters, it does not provide any indication of misrepresentations or fraud based on the letters. Instead, SCOPS raises the derogatory information for the first time in the revocation decision.

Moreover, the NOIR does not explain how the evidence was insufficient to demonstrate the Petitioner's qualifications for the national interest waiver under the NYSDOT analytical framework. Instead, the NOIR makes vague assertions about the Petitioner's research responsibilities and publications without discussing why the Petitioner did not meet the requirements for the national interest waiver under NYSDOT. The Petitioner, therefore, was unable to adequately address these issues in his response to the NOIR.

In the revocation, although SCOPS acknowledged the Petitioner's submission of documentation, the revocation did not provide an analysis of the Petitioner's arguments and evidence or explain why the evidence did not overcome the grounds for the NOIR. Instead, the revocation raised additional derogatory information not discussed in the NOIR. Specifically, the recommendations letters written by the Petitioner and signed by researchers, the Petitioner's exaggerated past employment and job duties, and his embellished abilities and accomplishments.

The regulation provides that "if, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for revocation." 8 C.F.R. § 205.2(c). Here, the revocation does not specify which recommendation letters were written by the Petitioner and signed by researchers as if they wrote the letters. In addition, the revocation generally states that the Petitioner exaggerated his past employment and job duties and embellished his abilities and accomplishments, lacking details specific enough for him to provide meaningful arguments to appeal the decision. Because SCOPS did not fully explain the specific reasons for revoking the approved petition in this case or notify the Petitioner of the derogatory information with a rebuttal opportunity, we will remand the matter to

SCOPS for further proceedings.

As outlined by the Board of Immigration Appeals (Board), a material misrepresentation requires that the petitioner willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. Matter of Kai Hing Hui, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, in advertently, or in an honest belief that the facts are otherwise. See Matter of Healy and Goodchild, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." Matter of Ng, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, they must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and, 3) that the fact misrepresented was material. See Matter of M-, 6 I&N Dec. 149 (BIA 1954); Matter of L-L-, 9 I&N Dec. 324 (BIA 1961); Matter of Kai Hing Hui, 15 I&N Dec. at 288.

Here, SCOPS did not explain with specificity the facts and evidence for finding willful misrepresentations and fraud. For instance, SCOPS did not indicate which letters of recommendation it believes were written by the Petitioner and signed by prominent researchers. Also, the revocation only generally indicates, without any details, that the Petitioner embellished and purposely exaggerated his previous employment, job duties, accomplishments, and abilities. Beyond vague assertions, SCOPS did not identify the false representations, explain how any misrepresentations were willfully made by the Petitioner, and show that the misrepresentations were material to his qualifications for the national interest waiver. Moreover, the Petitioner was unable to meaningfully rebut this derogatory information prior to SCOPS revoking the petition and entering a finding of willful fraud and misrepresentation against him.

III. CONCLUSION

For the reasons discussed above, we will withdraw SCOPS' decision and finding of willful fraud and misrepresentation. We will remand the matter for issuance of a new NOIR and decision which consider the Petitioner's responses and his arguments on appeal. SCOPS should also determine whether the Petitioner willfully misrepresented a material fact. Finally, SCOPS should re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner is eligible for the EB-2 immigrant classification as an advanced degree professional and the related national interest waiver under the NYSDOT analytical framework, and to issue a new decision. SCOPS may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this matter on remand.

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