U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28599606

Date: MAY 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 Nebraska Service Center denied the petition, concluding that the Petitioner established he was an advanced degree professional, but had not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Petitioner asserts that he qualifies for a national interest waiver.

On January 30, 2024, we issued a notice of intent to dismiss (NOID). The Petitioner did not respond to the NOID. 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).

For the reasons below, we will dismiss the appeal and enter a separate finding of willful misrepresentation of a material fact against the Petitioner.

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.

"Advanced degree" means any U.S. academic or professional degree or a foreign equivalent degree above that of baccalaureate. 8 C.F.R. § 204.5(k)(2). A U.S. baccalaureate degree or a foreign equivalent degree followed by five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *Id.*

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having a degree of expertise significantly above that ordinarily encountered in the field.

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,[3] 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. WILLFULL MISREPRESENTATION

As mentioned above, we sent the Petitioner a NOID as a result of derogatory information and gave him an opportunity to respond as required by 8 C.F.R. § 103.2(b)(16)(i). We informed the Petitioner that, if he did not overcome the adverse findings, we would make a finding of willful misrepresentation of a material fact. We further advised that (1) while the Petitioner had the right to withdraw the petition, such a withdrawal would not prevent a finding of willful misrepresentation of a material fact and (2) we may dismiss his case if we did not receive a response within the provided timeframe. The Petitioner did not respond to the NOID.

A. Evidence

In support of his petition, the Petitioner submitted a photocopy of a book entitled [redacted] which he claimed to have written. As discussed in our NOID, further research did not corroborate the Petitioner's claimed authorship. For example, the Petitioner provided documentation indicating that the book was published on [redacted] 2021, by [redacted] and has sold 153,457 copies.[4] But, the Petitioner did not provide evidence to

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of aliens of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

[3] *See also Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[4] We also noted the book does not appear to have an International Standard Book Number, which is unusual for a scholarly work.

substantiate this information. According to the provided "Certificate of Incorporation of a Private Limited Company," [redacted] was not incorporated until [redacted] 2023, more than a year after the claimed publication date. In addition, we noted that the book may only be purchased through [redacted] which is owned by the Petitioner's brother. We further explained that there are numerous formatting, grammatical and typographical errors, and several religious references made in the first few pages of the book (and which are not found in the main body) that are not typically found in scientific works. Moreover, although there is a table of contents with sections and page numbers, the provided copies from the book do not include any page numbers and several pages of the book cite to previous figures and sections that are not actually found in the text. Furthermore, the book includes images and information that were plagiarized/copied directly from other sources, such as [redacted] Similarly, the recommendation letters that claim that the Petitioner authored the book also lack credibility and probative value.

B. Analysis

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the foreign national willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See 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, inadvertently, 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).

USCIS will deny a visa petition if a 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 when 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that an individual foreign national sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the foreign national is inadmissible to the United States based on the past misrepresentation.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides:

> Misrepresentation – (i) In general – Any alien 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.

To find a willful and material misrepresentation in visa petition proceedings, an immigration officer 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); *Kai Hing Hui*, 15 I&N Dec. at 288.

First, the Petitioner's submission of plagiarized material in support of his immigrant visa petition constitutes a false representation to a government official.

Second, the Petitioner willfully made the misrepresentations. The Petitioner has not provided a credible explanation or rebuttal that he submitted the evidence accidentally, inadvertently, or in an honest belief that the assertions previously offered in support of the petition were true.

Furthermore, the Petitioner signed Form I-140, Immigrant Petition for Alien Workers, 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). Specifically, part 8 of Form I-140 requires a petitioner to make the following affirmation: "I certify, under penalty of perjury, that I have reviewed this petition. I understand all of the information contained in, and submitted with, my petition, and all of this information is complete, true, and correct." The Petitioner submitted the evidence in support of the petition. On the basis of this affirmation, we find that the Petitioner willfully and knowingly made the misrepresentations.

Third, the misrepresented facts are material. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). The regulation at 8 C.F.R. § 204.5(k)(3)(ii) calls for evidence "that the alien is an alien of exceptional ability in the sciences, arts, or business." As evidence of his exceptional ability and national interest waiver, the Petitioner submitted the plagiarized documents. 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. For all of these reasons, we find that the Petitioner's misrepresentations were material to his eligibility.

III. EB-2 VISA CLASSIFICATION

The Director determined that the Petitioner is a member of the professions holding an advanced degree. However, upon de novo review, we disagree.

The Petitioner provided a copy of his "QCF Level 7 Postgraduate Diploma in Biomedical Science" from [redacted] along with a credential evaluation that states that this diploma is the equivalent of a U.S. master's degree in biomedical science. However, as we explained in our NOID, [redacted] does not appear to be an accredited institution in the United Kingdom as it is not listed in the United Kingdom's official Office for Students Register. In addition, the address listed at [redacted] website is a single-family residence.[5] Moreover, the accreditation section of the website lists several organizations which cannot be verified and do not

[5] *See* https://[redacted]org.uk/Home.

appear to be related to the areas of learning claimed, such as the United States Bar Council.[6] We further observe that the credential evaluation does not provide any analysis of [redacted] or of the Petitioner's coursework to support its conclusion.

For these reasons, the Petitioner has not established that his foreign diploma is equivalent to a U.S. master's degree, and we withdraw the Director's determination to the contrary.

The Petitioner also claimed he qualifies for EB-2 classification as an individual of exceptional ability, but the Director did not address this. Since the evidence in the record does not establish by a preponderance of the evidence that the Petitioner is eligible for, or otherwise merits, a national interest waiver as a matter of discretion, we will reserve the issue of whether he qualifies for EB-2 classification as an individual of exceptional ability for future consideration should the need arise. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

IV. NATIONAL INTEREST WAIVER

According to his "Statement of Intent," the Petitioner proposes to write international medical books for international research students, medical students, and allied health sciences researchers; gain employment at a hospital, university and/or other research center; and establish a research institute in the United States. In response to the Director's request for evidence, the Petitioner explained that he will first focus on establishing a medical research institution and working at a research center or university in the United States and then, his "journey and experience will be presented in his books to persuade students and professionals interested in learning about laboratory protocols, procedures, and techniques to create correct analyst methods."

The first prong of the *Dhanasar* framework, 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.

The Director determined that the evidence demonstrated the Petitioner's proposed endeavor has substantial merit; however, we disagree. We do agree with the Director's determination that the evidence did not establish that the proposed endeavor has national importance.

On appeal, the Petitioner relies in part on [redacted] and recommendation letters. The Petitioner contends that as the Director found that his proposed endeavor has substantial merit, the record further demonstrates that his proposed endeavor is of national importance. The Petitioner states that "these two criteria are interconnected and thus can be supported by the same type

[6] We also note that the provided webpage address uses a different spelling of the word "council" than the name of the organization and the email address.

of evidence." However, as an initial matter and as discussed above, the Petitioner was not the author of the book as he and the authors of the recommendation letters claim.

Given the willful misrepresentation already discussed, the Petitioner's credibility with regard to his proposed endeavor is reduced and the affirmations about his medical research have little evidentiary value. *See 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). Therefore, we cannot conclude that his proposed endeavor has substantial merit or national importance. Even if the Petitioner had not submitted plagiarized evidence, we would agree with the Director's conclusion that the Petitioner has not demonstrated the national importance of the proposed endeavor. Therefore, we adopt and affirm the Director's decision regarding this issue. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

For national importance, we observe that the Petitioner relies on a report by the National Science and Technology Council on "Critical and Emerging Technologies List Update" submitted to the White House in February 2022. However, the Petitioner does not address how this report demonstrates the national importance of his proposed endeavor other than that his endeavor is in the science, technology, engineering, and mathematics (STEM) fields. We recognize the importance of STEM fields and "the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security,"[7] but note that "with respect to the first [*Dhanasar*] prong, as in all cases, the evidence must demonstrate that a STEM endeavor has both substantial merit and national importance.[8] Here, the Petitioner has not sufficiently established that his proposed endeavor aims to advance STEM technologies or research. Also, the record does not show that his proposed endeavor would have an impact in a STEM field more broadly to establish its national importance.

For all of the above reasons, the Petitioner has not established he is eligible for or otherwise merits a national interest waiver. The Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong. *See Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7.

V. CONCLUSION

By filing the instant petition and falsely claiming authorship of the publication, the Petitioner sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. This finding may be considered in any future proceeding where admissibility is an issue.

ORDER: The appeal is dismissed.

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[7] *See generally 6 USCIS Policy Manual* F.5(D)(2), https://www.uscis.gov/policymanual.
[8] *Id.*