U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8234749

Date: SEP. 15, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a carpet weaver, seeks second preference immigrant classification as an individual of exceptional ability, 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he is an individual of exceptional ability. The Director also concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

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. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national

economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other renumeration [*sic*] for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

8 C.F.R. § 204.5(k)(3)(ii).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Director found that the Petitioner did not establish he is an individual of exceptional ability. The Petitioner does not assert that he qualifies for second-preference employment as a member of the professions holding an advanced degree. If the Petitioner does not establish eligibility as an individual of exceptional ability, we need not determine whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act. For the reasons discussed below, the Petitioner is ineligible for the requested benefit.

As documentation of your exceptional ability and work as a carpet weaver, the Petitioner submitted [redacted] a book which the Petitioner claims to have written, and which was purportedly published in 2012.[1] However, further research calls into question the Petitioner's claimed authorship of this book.[2]

The document the Petitioner submitted contains language that is identical to that found in several other sources. For example, the passage beginning on page 2 with the language '[redacted]' matches the language published by [redacted].[3] The passage beginning on page 7 with the language '[redacted]...' is identical to language published by [redacted] about a 4.1' x 5.4' [redacted] rug previously for sale in [redacted] Virginia.[4] Next, the passage beginning on page 10 with the language '[redacted]' matches language published by the [redacted] about [redacted] or carpet weaving.[5] Next, the passage beginning on page 12 with the language '[redacted]

[1] The publication page for this book lists its publication date as "November 2012."

[2] We sent the Petitioner a notice of intent to dismiss (NOID), discussing the issues described below, and included a photocopy of the sources we discussed. The only response we received was a one-page letter from the Petitioner's attorney, requesting to withdraw her appearance as attorney of record, and stating that she "was not aware or advised prior to the filing of the disingenuine [*sic*] documents with the USCIS."

[3] *See* [redacted] available at https:[redacted] (last visited Sep. 15, 2021).

[4] *See* Th[redacted] *Lot 25*, available at https:[redacted] (last visited Sep. 15, 2021).

[5] *See* [redacted] available at http[redacted] (last visited Sep. 15, 2021).

[redacted]' is identical to language published by [redacted] about [redacted].[6]

The passage beginning on page 15 with the language [redacted] matches language published by [redacted].[7] The passage beginning on page 16 with the language "[redacted]' is identical to language published by several websites, including [redacted].[8] The passage beginning on page 16 with the language '[redacted]" matches language published by [redacted] about [redacted] carpet weaving.[9] The passage beginning on page 28 with the language "[redacted]' is identical to language published by [redacted].[10] The passage beginning on page 29 with the language [redacted]." matches language from [redacted] a book written by [redacted] and published in 1997.[11]

Based on the above, it appears that the Petitioner falsely claimed the work of other individuals as his own and submitted it as evidence of his exceptional ability and of his position to advance the proposed endeavor.[12]

U.S. Citizenship and Immigration Services (USCIS) will deny a visa petition if the petitioner submits evidence which contains false information. Further, misrepresentation of a material fact may lead to multiple consequences in immigration proceedings. 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. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Under Board of Immigration Appeals precedent, a material misrepresentation is 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."[13] A willful misrepresentation requires that the individual knowingly make a material misstatement to a government official for the purpose of obtaining an

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[6] *See* [redacted] available at https:/[redacted] (last visited Sep. 15, 2021).

[7] *See* [redacted] available at https:/[redacted] (last visited Sep. 15, 2021).

[8] *See* [redacted] available at https:/[redacted] (last visited Sep. 15, 2021).

[9] *See* [redacted] available at https:/[redacted] (last visited Sep. 15, 2021).

[10] *See* [redacted] available at https://[redacted] (last visited Sep. 15, 2021).

[11] *See* [redacted] (1997).

[12] We also note that the photograph on page 8 of the non-English-language version of the book, omitted from the English-language version of the book, is identical to the photograph in the non-English-language version of the article titled '[redacted]' published by [redacted] in July 2016, identified as exhibit C-1 in the response to the Director's request for evidence (RFE). The presence of an identical photograph in multiple documents submitted at the same time but ostensibly written by different authors, years apart, raises questions regarding the authenticity of the documents.

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

immigration benefit to which one is not entitled.[14] Material misrepresentation requires only a false statement that is material and willfully made.[15] The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise.[16]

The "Penalties" section at page 9 of the "Instructions for Petition for Alien Worker" corresponding to the instant petition includes this warning:

> If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-140, we will deny your Form I-140 and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Further, the "USCIS Compliance Review and Monitoring" section on the same page of the instructions states, in part:

> By signing this form, you have stated under penalty of perjury (28 U.S.C. 1746) that all information and documentation submitted with this form are complete, true, and correct. You also authorize the release of any information from your records that USCIS may need to determine eligibility for the benefit you are seeking and consent to USCIS verifying such information.

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." In addition, *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) provides a framework for adjudicating national interest waiver petitions. One of the requirements set forth in the *Dhanasar* precedent decision is that the foreign national is well positioned to advance the proposed endeavor. *Id.* at 889. As evidence of the Petitioner's exceptional ability in the arts and that he is well positioned to advance the proposed endeavor, the Petitioner submitted [redacted] Both the "Table of Contents" accompanying the RFE response and the cover sheet for the exhibit listed the book as "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Therefore, the Petitioner's claimed authorship of this book is material to whether he is eligibile under section 203(b)(2) of the Act. Based on the information referenced above, it appears that the Petitioner misrepresented material facts regarding his authorship of the aforementioned book.

Furthermore, these misrepresentations raise questions regarding origin and authenticity of the remaining documentation that the Petitioner have submitted in support of the petition. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the foregoing, because the Petitioner by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a national interest waiver of the job offer requirement attached to this EB-2 classification, as provided by section 203(b)(2) of the Act, 8 U.S.C.

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[14] *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).

[15] *See* 9 FAM 40.63 N2; *see also Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998) (*en banc*) (Rosenberg, concurring).

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

§ 1153(b)(2), the Petitioner is ineligible for the requested classification and, furthermore, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

III. CONCLUSION

The Petitioner is ineligible for the requested classification by seeking to procure a benefit provided by the Act by fraud or willful misrepresentation of a material fact.

ORDER: The appeal is dismissed.