U.S. Citizenship and Immigration Services

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

In Re: 20603148

Date: MAY 12, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a travel management specialist, seeks second preference 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).

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner qualified for the underlying classification as a member of the professions holding an advanced degree, she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, which we dismissed. The matter is again before us on a motion to reconsider.[1]

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

## 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.

[1] A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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. –
>
> (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.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he 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.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition to the definition of "advanced degree" provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty."

To demonstrate eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[3], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *See Id.* at 888-91, for elaboration on these three prongs.

## II. ANALYSIS

### A. Eligibility for the Requested Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. In our dismissal of the prior appeal, we withdrew the Director's conclusion that the Petitioner had established eligibility as an advanced degree professional.[4] As we explained, the regulation at 8 C.F.R. § 204.5(k)(2) defines a profession, in pertinent part, as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation."

The Petitioner indicated in Part 6., Basic Information About the Proposed Employment, of the Form I-140, Immigrant Petition for Alien Worker, that her job title would be "Travel Management Specialist" and that the standard occupational classification (SOC) code is 39-7012, which corresponds to the occupation of "travel guide."[5] On the U.S. Department of Labor, Employment and Training Administration, Form ETA 750 Part B, Application for Alien Employment Certification, the Petitioner confirmed that she would be a "Travel Management Specialist" under "Occupation in which Alien is Seeking Work."

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[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[3] *See also Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[4] We also note concerns with the submitted education evaluation which concluded that the Applicant holds the equivalent of a U.S. master's degree in hospitality management. Although the evaluator provided a conclusion regarding the combination of the Petitioner's education and experience, he does not claim to have reviewed any employment letters to establish the Petitioner's work history or experience, as required by 8 C.F.R. § 204.5(k)(3)(i)(B). Further, the basis for such statements as the Petitioner served "in positions of progressively increasing responsibility and sophistication, characterized by the theoretical and practical application of specialized knowledge and training by superiors, together with peers, with advanced-level education in Hospitality Management and related areas" has not been established.

[5] *See* https://www.onetonline.org/link/summary/39-7012.00

Here, the Petitioner has not established that a travel management specialist is a profession as defined by section 101(a)(32) of the Act and 8 C.F.R. § 204.5(k)(2). However, the Petitioner also claims that she is an individual of exceptional ability. We, therefore, find it appropriate to remand the matter for the Director to make an initial determination regarding exceptional ability.

B. Submitted Evidence

The record contains a variety of evidence to support the Petitioner's assertions that she meets the three prongs of the *Dhanasar* analysis. For example, the Petitioner submitted printouts from her claimed website at [redacted] First, we note that, as of today, the provided internet address indicates that "the domain is not connected to a website." Further, the Petitioner appears to have copied much of the language verbatim from a number of other company's websites. On the page listing "Services," the section "Destination, branding, marketing and digital" is identical to the language from the section with the same name on https://www.team-tourism.com/consultancy-services/. Similarly, the section "Anti-crisis consulting and management" appears to have been copied from portions of the website at https://cantortactical.com/travel-security-consulting/. In addition, the information from the "About" page, contains verbatim language from the "Travel & Tourism" page at https://www.consultants-managers.com/travel-tourism.html.

The Petitioner's business plan and presentation also contain language that appears to have been copied from a variety of other sources. For example, her discussion of the potential challenges for customers, hotels, and technology, uses verbatim language from an article posted at http://www.virtual-reality-in-tourism.com/vr-future-selling-hotel-rooms/. In addition, her business model description contains identical language to that found in TripAdvisor's annual report at http://annualreport.stocklight.com/NASDAQ/TRIP/19625684.pdf. Further, much of her business plan appears to have been copied from https://ptgconsulting.com/.

We further note that it is unclear whether the Petitioner was able to pursue two bachelor's degrees in different fields at two different universities while also working full-time between July 2009 and September 2011 as claimed.

The Petitioner must resolve the above with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

## III. CONCLUSION

For the reasons discussed above, we are remanding the petition for the Director to consider whether the Petitioner qualifies for EB-2 classification as an individual of exceptional ability. The Director may also wish to consider whether the Petitioner's submission of evidence which appears to have been copied from other sources without acknowledgement constitutes willful misrepresentation of a

material fact.[6] The Director may request any additional evidence considered pertinent to the new determination.

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

[6] 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.