U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20228185

Date: MAR. 22, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a regulatory research consultant, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree and/or an individual of exceptional ability], 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 revoked the approval of the petition. 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.

I. LAW

The Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition . . . ." Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 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). The Board of Immigration Appeals has discussed revocations on notice as follows:

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including

any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.[1]

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.

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).

II. ANALYSIS

The Petitioner filed the petition in March 2015, and the Director approved that petition under the *NYSDOT* analytical framework in December 2016. After issuing a notice of intent to revoke (NOIR) in January 2021 regarding inconsistencies between evidence filed with the petition and information provided in her interview at the U.S. Consulate, the Director revoked the petition.[2] However, while we agree with the Director's ultimate conclusion that the petition should be revoked, for the reasons below, we are remanding the matter for the Director to provide a more comprehensive NOIR.

As part of the initial filing on March 13, 2015, the Petitioner submitted her resume which listed "[redacted] School of Engineering and [A]pplied Science" with the date "June 2015" as the first university under "Educational [Q]ualification," along with reference letters which mentioned studies at [redacted][3] As explained by the Director in the NOIR, at her interview, the Petitioner stated that she had not attended [redacted] and provided corrected information subsequent to the filing, but could not provide evidence of such a submission. In response, the Petitioner claimed that her resume included the language "in-view" and pointed to her personal statement "I am in the process of pursuing a first-class professional education on Bioengineering Health Research at the prestigious [redacted] School of Engineering and [A]pplied Sciences, [redacted] from June 2015." As a result, she asserted that she "communicated appropriately [her] intention and plans to study [at] [redacted] at a future date." She further stated that "[t]he current status of the proposed Bioengineering study at [redacted] is that [she] was advised by one of

[1] *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

[2] The "Signature of Petitioner" section on page 5 of the Form I-140, Immigrant Petition for Alien Worker, states that "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct."

[3] Although the Director only addressed one letter in the NOIR, the remaining three letters also mention the PhD program at [redacted]

the admission officers that the Bioengineering department typically prefer[s] to consider candidates who have [a] prior engineering background." Although the Director briefly acknowledged a portion of the Petitioner's response, he did not sufficiently address it. For example, not only did her initially submitted resume not include the language "in-view"[4] as claimed, but she did not provided a credible or logical explanation as to why she would include [redacted] with a June 2015 date on her resume under her educational qualifications alongside the other universities she attended and graduated from when there is no evidence she had even applied for admission.[5] Similarly, the repeated statements in the recommendation letters referencing her pursuit of the degree, rather than her intention to apply for example, imply that she was currently attending [redacted] with either an expected graduation (or start) date of June 2015.

The record contains additional inconsistencies and potential misrepresentations which the Director did not address. For example, the Petitioner made repeated claims regarding her "research work," which she asserts "focuses mainly on oncology:"

> My research work as part of [previous employer]'s global oncology team focused on the development of break through oncology therapies like [list of medications]. These medicinal oncology products are currently widely used in the treatment of [] cancer. This has not only immensely contributed to meeting unmet medical needs in medical science but are also approved for use by the US Food and Drug Administration (FDA) and currently widely used in the US for the treatment of some of the NIH's common listed cancer conditions. Subsequently my biomedical research expertise is significantly useful to the United States national interest.[6]

She also made a variety of claims regarding her research contributions, including that she "authored or co-authored over 10 original research papers in reputable, peer-reviewed international scientific journals, and [] presented at a wide variety of regional, national, and international scientific conferences during [her] career," has "published more extensively than [her] peers of similar experience" and "has made critical research findings of enormous significance to public health around the world." As evidence, she provided a list of "presentations at conference/workshops," but did not submit accompanying documentation. We note, for example, she alleged to have presented a paper at the 5th African Biological Safety Association Scientific Conference in November 2013. However, it appears they held their 4th Annual Biological Safety Conference in March 2015 and their 3rd Annual Biological Scientific Conference in June 2012.[7] In addition, we were unable to corroborate her claims regarding her publications. More importantly, it is unclear how an individual whose stated focus is on regulatory affairs would be performing and publishing research in the field of oncology.[8]

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[4] The Petitioner, in the subsequent submission of her resume, also added parentheses around the "June 2015-in view" date.
[5] The Petitioner did submit an email exchange regarding her interest in attending a single course at the [redacted] School of Public Health Executive and Continuing Professional Education and asking whether they offered a PhD program.
[6] The Petitioner's unsupported statements regarding her research are not sufficient to establish eligibility for the requested classification.
[7] *See https://conferencealerts.com/show-event?id=148207* and *https://ivbw.wildapricot.org/event-506645*
[8] Notably, her resume does not include any information regarding publications nor indicate that she is performing cancer research.

In response to the Director's NOIR, when discussing her work for the previous employer above, she does not include any references to performing research of any kind. In fact, she states (note: errors in original):

> I am assigned assets which I am responsible for taking through its development stages. For my assigned assets, I project manage clinical studies activities of these assets (liaise with clinical research associates to complete site identification, patient enrolment, site monitory visits and close out visits on completion of clinical study), I strategically and tactically plan for license registration and manage licence maintenance activities like addition of new indication, post authorization safety studies, making labelling changes to the licensed marketed drug etc. . .
>
> For my assigned melanoma (skin cancer assets) we created product information documents in the form of, briefing document, Summary of product information SmPC), Labelling and Leaflet wherein we also detail information about the disease being treated, the symptoms which gives a level of indication of the presence of the disease and referral to the appropriate healthcare professional to coordinate relevant diagnosis for confirmation.

The above duties resemble the duties of a regulatory affairs specialist as described by the Occupational Information Network (O*NET) which states that they generally "[c]oordinate and document internal regulatory processes, such as internal audits, inspections, license renewals, or registrations" and "[m]ay compile and prepare materials for submission to regulatory agencies.[9]

In addition, according to the Petitioner's resume, she has been in the regulatory arena since September 2006. However, on her July 2011 nonimmigrant visa (NIV) application, she stated that her "primary occupation" was "communications" and described her "duties" as "resolving day to day enquiries of [redacted] Television customers, updating the [redacted] customers database to reflect the nature, outcome of daily enquiries and other escalated customer service issues." Similarly, the Petitioner's November 2010 NIV application described her duties as a "resid[e]ntial child support worker" who was "providing support to children with learning disability[ies] and challenging behaviour to facilitate learning."[10]

We also note concerns with the recommendation letters. For example, the letter from Dr. U- U-, the head of regulatory affairs for an international pharmaceutical company in West Africa, is unsigned and the letterhead lists an address in the United Kingdom, not West Africa. The letterhead for the National Agency for Food and Drug Administration is fuzzy and incomplete even though the body of the letter is not[11] and includes a variety of font sizes and inconsistent spacing issues.

The Petitioner must resolve these inconsistencies and discrepancies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

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[9] *See* https://www.onetonline.org/link/summary/13-1041.07

[10] Neither of the positions listed on her NIV applications are included on her resume.

[11] The word "DRUG" is illegible. Further, the letterhead sizing is inconsistent with the employment verification letter provided from the same organization which stated that she worked for the agency "as part of the compulsory [n]ational youth service project."

III. CONCLUSION

Because the Director did not sufficiently address the response to the NOIR or notify the Petitioner of additional derogatory information and evidentiary deficiencies, we will remand the matter for issuance of a new NOIR and decision which consider both the Petitioner's responses and its arguments on appeal. *See* 8 C.F.R. § 103.2(b)(16)(i) (requiring USCIS to notify a petitioner of derogatory information of which it is unaware and to provide it with a rebuttal opportunity). The Director should also determine whether the Petitioner willfully misrepresented a material fact.[12] Finally, the Director should determine anew whether the Petitioner qualifies for a national interest waiver under the *NYSDOT* framework.[13]

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

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[12] 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.

For an immigration officer to find a willful and material misrepresentation of fact, he or she must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (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). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *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. Further, misrepresentation of a material fact may lead to multiple consequences in immigration proceedings.

[13] The Director's decision incorrectly stated that "no representations have been made that the beneficiary has exceptional ability." The Director's request for evidence specifically addressed exceptional ability.