U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26384334

Date: MAY 15, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an analytical strategist consultant, 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 Acting Director of the Texas Service Center denied the petition, concluding that the Petitioner willfully misrepresented a material fact. 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 Acting Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. An advanced degree is any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree.

Once 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,[1] 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. ANALYSIS

A. Willful Misrepresentation of a Material Fact

Upon review of the initial filing the Director issued a notice of intent to deny (NOID) the petition. The sole issue raised in the NOID was whether the Petitioner willfully misrepresented material facts in a previously filed Form I-140, Immigrant Petition for Alien Worker, requesting classification of the Petitioner as a multinational manager or executive.[2]

The Petitioner responded to the NOID and the Acting Director denied the petition. The sole basis for denial is that the Petitioner misrepresented his employment history in the previous petition. The Acting Director also entered a finding of willful misrepresentation of a material fact against the Petitioner. The decision does not address the documentary evidence submitted with the Petitioner's NOID response, nor does it explain how the purportedly misrepresented information in the previous petition is relevant to these proceedings. The Acting Director provided no analysis of the Petitioner's eligibility for the EB-2 advanced degree classification or for a national interest waiver.

On appeal, the Petitioner reiterates his claims made in response to the NOID, that he did not misrepresent his employment related to the prior filing. He asserts that the law firm that prepared the previous Form I-140 provided incorrect information with the petition. He notes that the information regarding his salary on the Form I-140 was for his "proposed employment" and did not represent his current salary with the Florida company. He further states that, at the time the previous petition was filed, his income stemmed from the Brazilian affiliate of the Florida company, and he was not paid a salary from the U.S. entity.

In these immigrant petition proceedings, USCIS' determination of a willful misrepresentation is a "finding of fact," not an admissibility finding.[3] However, because the Acting Director did not render

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

[2] In the previous petition, the Petitioner described his proposed employment as the President and co-owner of [redacted] with an annual salary of $300,000. The petition indicated that [redacted] a Florida corporation in the business of motor vehicle financing, employed four individuals. The Director noted that this was inconsistent with records from the Florida Department of Revenue which stated that the company had not paid wages to any employee. The Director did not raise these inconsistencies during the pendency of the previous petition, and the Petitioner withdrew that petition before it was adjudicated.

[3] The Petitioner need not establish his admissibility with the instant petition. The Act authorizes officers of the U.S. Departments of State and Homeland Security to make admissibility findings on applications for: immigrant visas at consulates, *see* section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A); admissions at ports of entry, *see* section 202(a)(1)(B) of the Act, 8 U.S.C. § 1152(a)(1)(B); and adjustments of status at USCIS offices, *see* section 245 of the Act, 8

a determination on the Petitioner's eligibility for the underlying EB-2 visa classification and on the merits of his request for a national interest waiver, we will withdraw the decision, including the finding of misrepresentation. We will remand the matter for entry of a new decision consistent with the following analysis. Should the Director find, after further examination, that this record presents any willful misrepresentation, the Director should afford proper notice to the Petitioner and explain the basis of any misrepresentation.

B. Member of the Professions Holding an Advanced Degree

The Petitioner states that he qualifies as an advanced degree professional based upon his master of business administration degree in "strategic management, human resources and talents," and his bachelor of law degree.[4] The record includes copies of the Petitioner's "Certificado Concluiu … Curso" issued in 2010 and "Bacharel em Direito" issued in 2006, both from Brazil. However, the record does not include academic transcripts for either of the Petitioner's academic programs.

According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),[5]

> The *Bacharel em Direito* represents attainment of a level of education comparable to a bachelor's degree in the United States.
>
> The *Certificado de Conclusão de Curso* represents attainment of a level of education comparable to university study in the United States. Credit may be awarded on a course-by-course basis.

However, the record does not include the Petitioner's academic transcripts listing the courses he completed or the number of years of study of each academic program in order to make a full and accurate determination of any equivalency. Nor does the record include any evaluation of the Petitioner's academic records to demonstrate the U.S. equivalency of each.

In light of the above, the Director should determine whether the Petitioner has sufficiently demonstrated that he holds the foreign equivalent of a U.S. advanced degree as required by the regulations at 8 C.F.R. § 204.5(k)(2) and (3)(i)(B). If the Director determines that the Petitioner has demonstrated that he holds the foreign equivalent of a U.S. bachelor's degree, he should then consider whether Petitioner has established that he has at least five years of post-baccalaureate experience in the specialty.

U.S.C. § 1255. Thus, these I-140 petition proceedings are not the appropriate forum to determine the Beneficiary's admissibility. *See Matter of O-*, 8 I&N Dec. 295, 296-98 (BIA 1959). Nor would a finding of his inadmissibility warrant the I-140 petition's denial.

[4] The Petitioner does not claim to qualify as an individual with exceptional ability in the sciences, arts or business.

[5] We consider EDGE to be a reliable source of information about foreign credential equivalencies. *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

C. National Interest Waiver

In describing his proposed endeavor as an analytical strategist, the Petitioner states that he will "continue working to revive and expand his company and further diversify his businesses, creating development ... with the potential to grow and generate jobs." He further states, "In addition to working his field of expertise, [the Petitioner] proposes to support training activities in the U.S."

The first prong, 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. *Matter of Dhanasar*, 26 I&N Dec. at 889.

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well-positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The third prong requires a petitioner to demonstrate 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. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, establish 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. *Id.* at 890-91.

On remand, the Director should analyze the evidence in the record and determine whether the Petitioner has demonstrated that he meets each of the three prongs of the *Dhanasar* framework, including whether the Petitioner's endeavor is sufficiently defined to meet the standard of national importance.

III. CONCLUSION

For the reasons discussed above, we are remanding the petition for the Director to consider whether the Petitioner 1) qualifies for EB-2 classification, the threshold determination in national interest waiver cases, and 2) has provided sufficient information regarding his proposed endeavor such that the Director may determine whether a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director may request any additional evidence considered pertinent to the new determination.

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