



**U.S. Citizenship
and Immigration
Services**

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

In Re: 28962812

Date: JAN. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a behavioral researcher, 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 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 Texas Service Center revoked the approval of the petition, concluding that the Petitioner had “fabricated and exaggerated” his experience and that he willfully made a false representation that is material to his eligibility for the requested benefit. The Director therefore entered a finding of willful misrepresentation against the Petitioner, who then filed a motion to reopen and reconsider the revocation. The Director dismissed the motion, and 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 conclude that the Director did not offer a complete and accurate analysis of the submitted evidence. We will therefore withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the analysis below.

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. 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,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.

In addition, a motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and 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).

II. BASIS FOR REMAND

As previously indicated, the Director's decision did not offer a complete analysis of the basis for dismissing the motion or explain the deficiencies in the evidence. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

A. Procedural and Factual Background

As a preliminary matter, we will summarize the facts and circumstances which led to the filing of the appeal that is currently before us.

The record shows that upon obtaining derogatory information after this petition's approval, the Director issued a notice of intent to revoke (NOIR) which focuses on the Petitioner's submission of a recommendation letter bearing the false signature of [REDACTED], the letter's claimed author. The Director deemed the misrepresentation of [REDACTED] signature to be material to the Petitioner's eligibility and determined that these facts, if not rebutted and overcome, warranted a finding of "willful misrepresentation."

In response to the NOIR, the Petitioner provided two statements and three affidavits, including one bearing the signature of [REDACTED] elaborating on the underlying circumstances of the recommendation letter's creation and false signature. Although the Director issued a revocation notice stating that "all of the evidence in the record" had been reviewed, the decision contained no discussion of the letters and affidavits that were submitted in rebuttal of the NOIR, and thus the Petitioner was not offered a meaningful explanation of how the NOIR response evidence was deficient in overcoming the intended revocation and finding of material misrepresentation.

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).

Following the revocation, the Petitioner filed a motion to reopen and reconsider claiming that the recommendation letter in question neither willfully misrepresented the facts nor provided a false representation of the facts, and that the letter therefore does not support the Director's finding of material misrepresentation.² The Petitioner also pointed to two other letters of recommendation that had been initially submitted in support of the petition, highlighting that the information in those letters is consistent with the letter that is the subject of the Director's finding of material misrepresentation. Based on the totality of these arguments, the Petitioner asserted that the Director erred when he made a finding of material misrepresentation.

In dismissing the Petitioner's motion, the Director listed the evidence the Petitioner submitted in support of the motion and determined that the Petitioner restated information that was previously submitted. The Director therefore concluded that the Petitioner offered no new facts in support of the motion. The Director also noted that the Petitioner did not address the false signature issue when the petition was filed, concluding that the Petitioner did not establish that the revocation decision was incorrect based on the evidence in the record at the time the decision was issued.

B. Analysis

On appeal, the Petitioner reiterates the explanations contained in previously provided letters and affidavits and contends that the letter of recommendation in question did not contain false representations. Alternatively, the Petitioner states that "even if any representation may have been falsely made [it] was not willful." In sum, the Petitioner asserts that the facts do not support a finding of willful misrepresentation.

To make a finding of willful misrepresentation of a material fact 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); *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that one willfully makes a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. at 289-90. 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 Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *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).

In the matter at hand, although the Director issued a revocation notice stating that "all of the evidence in the record" had been reviewed, the decision contained no discussion of the letters and affidavits that

² Despite referring to his filing as an appeal, the Petitioner checked the box 1.f on the Form I-290B, Notice of Appeal or Motion, which corresponds with the filing of a motion to reopen and reconsider, rather than box 1.a, 1.b, or 1.c, any of which correspond with the filing of an appeal. As such, the Director correctly treated the Petitioner's filing as a motion rather than as an appeal.

were submitted in response to the NOIR. Moreover, it is critical to note that neither the original revocation decision nor the dismissal of the subsequent motion addressed the evidence that the Petitioner submitted to rebut the preliminary misrepresentation finding stated in the NOIR. Thus, while the Director was technically correct that the Petitioner's restatement of previously offered information did not constitute new facts in support of a motion to reopen and reconsider, the record shows that the Director had not addressed the previously submitted evidence when it was originally submitted, thereby effectively offering the Petitioner no meaningful explanation to clarify how the NOIR response evidence was deficient in overcoming the intended revocation and finding of material misrepresentation.

Furthermore, both the NOIR response and the legal brief submitted in support of the prior motion directly address elements of material misrepresentation. As discussed earlier, the Petitioner asserted that the recommendation letter in question did not contain false representations or, alternatively, that any representations that were false were inadvertent or accidental and were not willful. The Director did not, however, address these claims either in the revocation or in the decision dismissing the subsequent motion to reopen and reconsider.

And although the Director determined that the Petitioner's experience "has been fabricated and exaggerated," he did not adequately explain how the letter in question is material to the Petitioner's eligibility for a national interest waiver. Nor did the Director explain why, if the issue of work experience is material, he did not further evaluate and discuss the contents of the two other recommendation letters from Professor [redacted] at [redacted] University and Professor [redacted] at the University of [redacted] respectively, given that both letters, like the letter containing the false signature, also discussed the Petitioner's prior research and education.

If the Director determines that a finding of willful misrepresentation is warranted, a new NOIR must be issued in which the Director shall: (1) clearly address the elements of willful misrepresentation, and (2) include a detailed analysis highlighting the factors that may support that finding.

C. National Interest Waiver

Notwithstanding the deficiencies in the Director's decision and our withdrawal thereof, the evidence of record does not appear to demonstrate that the Petitioner met the requirements of the analytical framework set forth in *Dhanasar*, which requires the Petitioner to demonstrate that: (1) his endeavor has substantial merit and national importance, (2) he is well-positioned to advance the endeavor, and (3) on balance, waiving the job offer requirement would benefit the United States.

Here, the Director's revocation focused on a single recommendation letter to the exclusion of all other supporting evidence. Likewise, the Director's most recent decision dismissing the Petitioner's motion to reopen and reconsider also included no discussion of the submitted evidence and whether the Petitioner has satisfied the requirements of the *Dhanasar* framework. We note that if a new NOIR is issued, it must state all grounds for the intended revocation, including issues concerning the Petitioner's eligibility for a national interest waiver, as discussed above. *See* 8 C.F.R. § 205.2(b) (requiring that a petitioner must be notified and given an opportunity to address any intended adverse findings that will serve as grounds for a revocation).

III. CONCLUSION

In light of the deficiencies described above, we hereby withdraw the Director's decision and finding of willful misrepresentation and remand the matter for further consideration of the evidence.

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