



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

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

In Re: 26180669

Date: JUN. 7, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a medical scientist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center initially approved the petition. However, the Director subsequently revoked the approval, determining the Petitioner willfully misrepresented material facts in support of a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.¹

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

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. Next, a petitioner must then demonstrate they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016) provides that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner shows:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and

¹ The Petitioner simultaneously filed a combined motion to reopen and reconsider, which the Director subsequently dismissed.

² 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).

- On balance, waiving the job offer requirement would benefit the United States.

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that 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 approved by him under section 204.” Regarding revocation on notice, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that 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.

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

By itself, the Director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

In support of his proposed endeavor for a national interest waiver, the Petitioner initially submitted a “Personal Statement” indicating:

I plan to research and develop high quality products through education and advertisement of the importance of diets to American consumers, based on my abundant medical (clinical) experience and knowledge in Korea. In addition, I will focus on the development of safe medical devices to ensure that there will be no side effects of pain. My efforts will contribute greatly to American society, as well as to the health and well-being of the American people.

In addition, the Petitioner provided a business plan for [] in order to “plan to further [his] professional activities in the form of business establishment and continuance thereof in the United States.” Regarding his claims of meeting the three-prong *Dhanasar* analytical framework for national interest waivers, the Petitioner submitted evidence, such as recommendation letters, employment documentation, professional training, published articles, awards, memberships, media coverage, and professional licenses. Ultimately, the Director approved the petition, and the Petitioner appeared at the U.S. Embassy in Seoul, South Korea for an immigrant visa interview. Based on the interview responses and derogatory information, the Embassy returned the petition to the Director and recommended revocation. The Director issued a notice of intent to revoke (NOIR) and informed the Petitioner of the following:

[I]t appears that the Petitioner misrepresented his role in research and his letters of recommendation, which is material to whether the [the Petitioner] is eligible for the requested benefit. In the petition was an assertion that [the Petitioner] was highly involved in the research that was published an article called ‘[redacted]’ on British Medical Journal. An online search of the article shows three authors: [redacted]
[redacted] The article did not include [the Petitioner] as an author or any evidence showing he was included in the research. [The Petitioner] admitted he did not receive any credit for the research, because he was not directly involved in the paper. It appears that [the Petitioner] exaggerated his research experience and material submission, in addition to submitting questionable letters of recommendation.

Furthermore, the Director discussed the requirements for meeting each of the three prongs under the *Dhanasar* precedent decision and concluded:

. . . [T]he evidence does not show the [Petitioner] is eligible for, and merits, a national interest waiver.

In conclusion, the [P]etitioner did not establish that it has satisfied each adjudicative element to establish eligibility for the requested benefit. Therefore, the following issues independently form the basis for this intended revocation:

- Misrepresentations and false information provided

In response to the NOIR, the Petitioner claimed “[t]here was a slight translation error in the recommendation letter of [redacted] and offered an updated letter from him and a statement from a translator addressing the purported translation error. Moreover, the Petitioner contended “[t]he translation error was immaterial” and “it only points to the one research project and one recommendation letter” and “[t]he other 3 recommendation letters and the ample objective evidence in Exhibits 3 through 10 were not in question.” The Petitioner also submitted a letter from [redacted]
[redacted]

In revoking the petition’s approval, the Director acknowledged the Petitioner’s documentation and stated the updated letter from [redacted] did “not overcome the misrepresentation of the [Petitioner’s] experience and importance of his role and the effect of his work in the field.” In addition, the Director found:

[I]t appears that the [Petitioner] misrepresented research experience and material submissions, in addition to submitting questionable letters of recommendation. In [the Petitioner’s] case, email exchanges between the self-petitioner and the individuals who signed the letters of recommendation confirm that [the Petitioner’s] immigration lawyer drafted all of the letters, and the only role that the signers took was to provide a signature. According to [the Petitioner], letters of recommendation from [redacted]
[redacted] were all prepared by [the Petitioner] in Korean

and later translated by the law office in English. Three reference writers also confirmed that the letters were prepared by [the Petitioner] and his lawyer but claimed they read and made some edits before signing the letters. However, email exchanges between [the Petitioner] and these writers show the only changes made to the letters were minor changes about themselves at the beginning of the letters and no one made any changes regarding [the Petitioner's] work described in the letters. These misrepresentations call into question particularly the second and third prongs of Matter of Dhanasar 26 I&N Dec. 884 (AAO 2016) as to [the Petitioner's] ability to advance his proposed endeavor in the United States, and whether it would be beneficial to do so, which is material to whether the beneficiary is eligible for the requested benefit.

....

By claiming his work experience with false information, the [P]etitioner willfully made a false representation, and it is material to whether the [Petitioner] is eligible for the requested benefit.

USCIS will enter a finding of willful misrepresentation of a material fact against the [P]etitioner.

If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for revocation. 8 C.F.R. § 205.2(c). Because the Director did not properly revoke the approved petition, we will remand the matter for the following reasons.

In the NOIR, the Director referenced “letters of recommendation” and “questionable letters of recommendation.” However, the Director did not specifically identify the letters. While he indicated a letter claiming the Petitioner’s role and research in a *British Medical Journal* article, the Director did not elaborate or explain why the other letters were “questionable.” Moreover, although the NOIR mentioned the three-prong *Dhanasar* analytical framework, the Director did not discuss why the Petitioner did not fulfill the three prongs. Instead, the Director generally stated the Petitioner “did not establish that it has satisfied each adjudicative element to establish eligibility for the requested benefit.” Here, the Director did not provide the Petitioner sufficient information that specifically explained the proposed grounds for revocation.

In the revocation, although he acknowledged the Petitioner’s submission of documentation, the Director did not explain why the evidence did not overcome the grounds in the NOIR. In addition, the Director did not address the Petitioner’s arguments made in response to the NOIR. Furthermore, the Director raised additional derogatory information not discussed in the NOIR. Specifically, the email exchanges between the Petitioner and the signers of the letters, the immigration lawyer who drafted the letters, and the signature role of the claimed authors. Moreover, while he indicated the misrepresentations called into question the second and third prongs of *Dhanasar*’s analytical framework, the Director did not further elaborate and conduct an analysis of these two prongs.

III. CONCLUSION

The Director did not properly revoke the approved petition. The Director did not include information in the NOIR that was later used as a basis for revocation; this did not afford the Petitioner the opportunity of addressing the issues presented in the final revocation. Additionally, the final revocation notice did not address some rebuttal claims and evidence the Petitioner provided. Further, the Director did not conduct a proper *Dhanasar* analysis, discussing the evidence in the record and explaining the Petitioner's ineligibility for the second and third prongs. We will therefore remand the matter to the Director to issue a new NOIR, covering these issues and also considering the additional arguments and evidence on appeal.

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