U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32169181

Date: SEP. 16, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a physiotherapist, 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 Director of the Texas Service Center denied the petition, concluding that although the Petitioner appeared to meet the relevant criteria for EB-2 classification as an advanced degree professional, she did not establish eligibility for a national interest waiver.

On appeal, the Petitioner reasserts eligibility for a national interest waiver as an advanced degree professional.

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 dismiss the appeal and enter a finding of willful misrepresentation of a material fact.

I. LAW

To qualify for a national interest waiver, a petitioner must first show eligibility 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.

An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A U.S. 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. 8 C.F.R. § 204.5(k)(2). To show that a noncitizen holds a qualifying advanced degree, the petition must be accompanied by an official academic record showing that the noncitizen has a U.S. advanced degree or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(3)(i)(A).[1]

[1] The Petitioner does not claim, and the record does not show that she has a United States advanced degree or foreign equivalent degree.

Alternatively, to establish eligibility for EB-2 visa classification as an advanced degree professional, a noncitizen may present an official academic record showing that they have a U.S. baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that they have at least five years of progressive post-baccalaureate experience in the specialty. 8 C.F.R. § 204.5(k)(3)(i)(B).

If the petitioner shows that they qualify for the underlying EB-2 classification, they must then demonstrate 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), sets forth the analytical framework for adjudicating national interest waiver petitions. *Dhanasar* provides that U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that: (1) their proposed endeavor has both substantial merit and national importance; (2) they are well-positioned to advance their proposed endeavor; and (3) on balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The issues on appeal are whether the Petitioner has established eligibility for the underlying EB-2 visa classification and, if so, whether she meets the criteria for a national interest waiver.

We have reviewed the record, and for the reasons discussed below, we conclude that the Petitioner has not established eligibility for EB-2 visa classification and that she misrepresented facts material to her eligibility for such classification. Because the Petitioner does not qualify for a national interest waiver on that basis alone, we will not address whether she meets the waiver criteria under the *Dhanasar* analytical framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant is otherwise ineligible).

A. The Petitioner's Representations and Evidence Concerning EB-2 Eligibility

On the Form ETA-750 submitted with the petition, which she signed under penalty of perjury, the Petitioner represented that in August 1997 she obtained a bachelor's degree in physiotherapy and thereafter completed two years of specialized training in respiratory physiotherapy. Regarding her work history, the Petitioner represented, in relevant part, that:

1. From March 2000 to April 2005, she was a "co-owner/director and physiotherapist" at F- clinic[3] in [redacted] Brazil (clinic), working 40 hours per week;[4]

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Ninth, Eleventh, and D.C. Circuit Courts (and Third in an unpublished decision) in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

[3] We use initials for privacy when possible.

[4] The Petitioner listed her duties during this period as follows: "Management of the administrative /financial department –

2. From April 2005 to November 2013, she continued to work at the same clinic 40 hours per week as a "physiotherapist"; and
3. From December 2012 to August 2014, she was a freelance physiotherapist working 40 hours per week.

The Petitioner repeated these representations on the resume incorporated in her business plan, adding that between July 2005 and March 2014 she taught three different physiotherapy courses for pregnant women.

As corroborating evidence, the Petitioner provided a *Title of Physiotherapist* diploma from Brazil (diploma), academic transcripts, an evaluation of her education and work experience, a business plan, and several letters confirming her past employment in various occupations, including two letters from the above-referenced clinic in Brazil. In the first letter, Dr. M-H-M-, who identified himself as a physiotherapist, declared that the Petitioner was his partner at the clinic "from March 2000 to April 2005, exercising the role of Physiotherapist" and that she was responsible for: physical evaluation of patients and treatment preparation; care in cardiorespiratory, orthopedics, and neurological areas; care in the global postural reeducation (GPR) and temporomandibular joint (TMJ); and preparation and implementation of courses for pregnant women. In the second letter, C- M- S-, HR, declared that the Petitioner worked at the clinic "in the role of Physiotherapist in the period from April 2005 to November 2013," and that her responsibilities were the same as indicated in the first letter. In response to the Director's subsequent request for evidence, the Petitioner additionally provided a certificate of specialization and another letter from Dr. M-H-M-, now identified as the clinic's owner, who declared that the Petitioner was "a part of [the clinic's] staff from April 2005 to November 2013 holding the position of Chief Physiotherapist" and that she "worked full-time for 40 hours per week and received compensation for her services." The Petitioner also resubmitted the evaluation of her education and work experience.

The Director determined based on this evidence that the Petitioner held "a U.S. equivalent baccalaureate degree in Physical Therapy" and further found, referencing the letter from Dr. M-H-M- confirming the Petitioner's 2005-2013 employment as a chief physiotherapist, that "it appear[ed]" she also possessed "at least five years of progressive, post-baccalaureate experience in the specialty." Thus, the Director concluded that the Petitioner qualified for the requested EB-2 classification as a member of the professions holding an advanced degree but ultimately denied the petition finding her ineligible for a national interest waiver.

B. Notice of Intent to Dismiss (NOID)

After a preliminary review of the record on appeal, we noted a number of inconsistencies and conflicting statements that raised questions about the Petitioner's level of education and claimed work experience. Accordingly, we notified the Petitioner of our intent to dismiss her appeal with a finding of willful misrepresentation of a material fact based in part on information outside of the record of proceeding. In issuing the NOID, we gave the Petitioner an opportunity to rebut the conflicting and

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cash flow, payment control, relationship with suppliers, management of the medical and administrative team. Physiotherapy assessment of patients and preparation of treatment. Care in cardiorespiratory, orthopedics and neurological physiotherapy. Care in the global postural reeducation - GPR."

inconsistent information, as required under the regulation at 8 C.F.R. § 103.2(b)(16)(i). We also advised the Petitioner that if she did not respond to the NOID we might dismiss her case and enter a finding of willful misrepresentation of a material fact. To date, we have not received a response or any other correspondence from the Petitioner.

C. Possession of United States Baccalaureate Degree or a Foreign Equivalent Degree Not Established

To show that she has a foreign equivalent of a U.S. baccalaureate degree, the Petitioner submitted a diploma from Brazil, academic transcripts, and an evaluation of her education and work experience. We advised the Petitioner in the NOID that the academic evaluation was not consistent with the information in her Brazilian diploma, and we could not therefore give it significant weight as evidence that she had a foreign equivalent of a U.S. baccalaureate degree. Specifically, we pointed out that although an evaluator for a credential evaluations service referred to the Petitioner's diploma as a "degree certificate" and confirmed that she was "awarded a *Bachelor's Degree in Physiotherapy*", neither the original document nor its two certified English translations include any references to the level of academic degree she may have obtained. Rather, the 2020 certified English translation of the diploma (by F- G- S. Corp.) reflects only that "in light of the completion of Physiotherapy Program on August 22, 1997," the principal of [redacted] "confer[red] the title of Physiotherapist upon [the Petitioner]," and "grant[ed] [her] this Diploma so that [she] can make use of all legal rights and prerogatives awarded to this title by the Laws of the Federative Republic of Brazil." Similarly, the certified English translation dated in 2022 reflects that "upon completion of the physical therapy [course] on August 22, 1997," the dean of [redacted] "confer[red] the title of physical therapist upon [the Petitioner]," and "award[ed] [her] this Certificate with all the rights and prerogatives thereunto appertaining in the Federative Republic of Brazil."

We also advised the Petitioner that the evaluator's opinion that she held "no less than the equivalent of a Master of Science in Physical Therapy" through obtaining "a Bachelor's Degree followed by more than five years of full-time work experience in Physical Therapy," did not have significant probative value because it was based, in part, on the assessment of her self-reported "progressive work experience in the specialty," which is beyond the scope of the evaluator's expertise, and not based solely on her academic record. We further noted inapplicability of the "3-for-1 Rule," on which the evaluator relied to conclude that "[the Petitioner] attained sufficient years of specialized training and work experience to equate to the college coursework in Physical Therapy." Specifically, we explained that although the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) provides for the application of a "three-for-one" ratio analysis of work experience to education in *nonimmigrant* visa proceedings under section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), this regulation does not apply in *immigrant* visa petition proceedings under section 203(b)(2) of the Act.

Thus, we informed the Petitioner in the NOID that the evaluator's statements were unreliable, and we could not afford them significant weight as evidence that she had a foreign degree equivalent of a U.S. bachelor's degree, as she claimed. Because the Petitioner has not responded to the NOID, we must conclude that the record remains insufficient to establish that she has a foreign equivalent of a U.S. baccalaureate degree. *See* 8 C.F.R. §§ 204.5(k)(2) and 204.5(k)(3)(i)(B). Accordingly, we withdraw the Director's determination to the contrary.

D. At Least Five Years of Progressive Experience in the Specialty Not Established

As stated, the Petitioner represented that she was employed in Brazil as a physiotherapist on a full-time basis from March 2000 through April 2005, from April 2005 through November 2013, and from December 2012 through August 2014. We informed the Petitioner in the NOID that the evidence she submitted to substantiate these representations is not only internally inconsistent, but also materially conflicts with the statements she made before the U.S. Department of State (DOS) in her 2008 and 2013 nonimmigrant visa proceedings.

Firstly, the Petitioner's claim of working 40 hours per week as a physiotherapist at the clinic from April 2005 through November 2013, is inconsistent with her claim that for approximately a year during this period (beginning in December 2012) she also worked 40 hours per week as a freelance physiotherapist. Moreover, the three employment verification letters confirming her employment at the clinic from March 2000 until November 2013 are not consistent with her own statements and with each other. Specifically, while the Petitioner represented that from March 2000 until April 2005 she was a co-owner, director and physiotherapist at the clinic, in his 2019 letter Dr. M-H-M- indicated that during this period she was employed there as a physiotherapist; he did not indicate that she was the clinic's co-owner and director or that she performed any managerial and administrative duties. In addition, while C-M-S-, HR, declared in her letter that the Petitioner worked at the clinic as a physiotherapist from April 2005 to November 2013, in his 2023 letter Dr. M- H-M- stated that during this period she was employed there as the *chief* physiotherapist. Neither writer mentions the Petitioner's freelance full-time physiotherapy work which she claimed began in December 2012, while she was employed full-time at the clinic. These inconsistencies undermine the reliability of the information in the letters and, thus, the veracity of the Petitioner's claim that she has "at least five years of progressive post-baccalaureate experience in the specialty," required under the regulations at 8 C.F.R. §§ 204.5(k)(2) and 204.5(k)(3)(i)(B). We advised the Petitioner in the NOID that she must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the Petitioner has not responded to the NOID, the inconsistencies concerning her claimed work experience remain unresolved.

Furthermore, the Petitioner's representations of full-time employment in Brazil as a physiotherapist from April 2005 to November 2013 conflict with the information she previously provided to DOS while applying for U.S. nonimmigrant visas. Specifically, the record reflects that the Petitioner appeared for an interview at the U.S. consulate in Brasilia, Brazil, in August 2008 seeking a nonimmigrant visitor (B1/B2) visa to visit her sister in Texas. During that visa interview she indicated that she was a gas station owner and did not mention any other employment. The record further shows that in April 2013 the Petitioner submitted a nonimmigrant visa application to DOS seeking another B1/B2 visa. The DOS regulation at 22 C.F.R. § 41.103 provides in pertinent parts:

> Every [noncitizen] seeking a nonimmigrant visa must make an electronic application on Form DS-160 or as directed by a consular officer, an application on Form DS-156. The Form DS-160 must be signed electronically by clicking the box designated "Sign Application" in the certification section of the application. . .. This electronic signature

attests to the applicant's familiarity with and intent to be bound by all statements in the NIV application under penalty of perjury.

On her B1/B2 visa application, which she signed under penalty of perjury, the Petitioner represented that as of April 2013 she was a homemaker and that she previously had been employed in Brazil from November 1, 2009, to November 1, 2012, as a construction company owner responsible for the management of the company in general, financial transactions, and sales. These representations materially conflict with the Petitioner's claim in the instant proceeding and the letters she submitted as evidence that from April 2005 until November 2013 she was employed in Brazil as a physiotherapist on a full-time basis, as well as her claim of concurrent full-time self-employment in that occupation since December 2012.

We explained in the NOID that we intended to dismiss the Petitioner's appeal, in part, because the inconsistent and conflicting statements and evidence she provided in support of the petition was not sufficient to establish that she has a foreign equivalent of a U.S. baccalaureate degree, followed by five years of progressive experience in the specialty, as she claimed. *See* 8 C.F.R. §§ 204.5(k)(2) and 204.5(k)(3)(i)(B). We also advised the Petitioner that she had to resolve any inconsistencies in the record with independent objective evidence. The Petitioner has not done so, because she has not responded to the NOID.

Given these substantial unresolved discrepancies concerning the Petitioner's work in Brazil as a physiotherapist, we withdraw the Director's determination that the Petitioner has at least five years of progressive, post-baccalaureate experience in the specialty.

E. Willful Misrepresentation of a Material Fact

For the reasons discussed above, we further conclude that the Petitioner has made claims and presented evidence that materially misrepresented the specific qualifications she relied upon to establish her eligibility for the immigration benefit she sought through this petition, including her claim that she qualifies for EB-2 visa classification as an advanced degree professional.

USCIS will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question a noncitizen's credibility in a proceeding for obtaining an immigration benefit. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner does not resolve them despite given the opportunity to do so, then the inconsistencies may lead to a conclusion that the claims stated in the petition are not credible. *Matter of Ho*, 19 I&N Dec. at 591-92 (stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition, and that attempts to explain or reconcile conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice); *Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) (stating that "by submitting fabricated evidence, [the noncitizen] compromised the integrity of [their] entire claim.") (internal citation omitted).

To find that a noncitizen made a willful misrepresentation, there must be at least some evidence that would permit a reasonable person to conclude that the noncitizen willfully misrepresented a material

fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit to which they are not otherwise entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975); *see also generally* 8 *USCIS Policy Manual* J.3(A)(1), https://www.uscis.gov/policy-manual. A finding of willful misrepresentation in a visa petition may be considered in any future proceeding to determine that a noncitizen is inadmissible to the United States. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

A misrepresentation is *material* when it tends to shut off a line of inquiry that is relevant to a noncitizen's admissibility and that would predictably have disclosed other facts relevant to their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105, 113 (BIA 2017). Here, the Petitioner's assertions and evidence concerning her foreign academic degree and work experience as a physiotherapist are material to her eligibility for the requested EB-2 visa classification.

For a misrepresentation to be found *willful*, it must be determined that the noncitizen was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

The "Penalties" section on page 10 of USCIS *Form I-140 Instructions 05/31/22*, corresponding to the instant petition includes the following warning: "If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-140, we will deny your Form I-140 and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution."

The Petitioner signed the instant Form I-140 petition certifying under penalty of perjury that she has reviewed the petition, that she understood all of the information contained in, and submitted with the petition, and that all of this information was complete, true, and correct. The Petitioner's signature on the petition creates a strong presumption that she knew the petition's contents and assented to it. *Matter of Valdez*, 27 I&N Dec. 496, 502 (BIA 2018).

To summarize, the Petitioner filed the instant Form I-140 asserting eligibility for EB-2 immigrant visa classification as an advanced degree professional. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) required her to provide evidence that she has a U.S. bachelor's degree or its foreign equivalent, along with at least five years of post-baccalaureate experience in the specialty. To establish that she met these criteria, the Petitioner submitted evidence of her education and work experience discussed above that is internally inconsistent and materially conflicts with the employment claims she previously made before DOS in nonimmigrant visa proceedings. The Petitioner's statements and documents concerning her academic degree and work experience are material to her eligibility for EB-2 classification under section 203(b)(2) of the Act. The Petitioner was given an opportunity to rebut the conflicting statements and evidence, but she did not respond to the NOID and did not otherwise address our concerns about the discrepancies in the record.

We therefore conclude that the Petitioner willfully provided false information regarding her academic credentials and work experience, both of which are material to her claim of eligibility for the EB-2 visa classification as an advanced degree professional.

III. CONCLUSION

The Petitioner has not met her burden of proof to establish that she qualifies for the EB-2 visa classification, which is a threshold requirement for a national interest waiver. Furthermore, by filing the instant petition and falsely claiming that she has a foreign equivalent of a U.S. bachelor's degree and at least five years of post-baccalaureate progressive work experience as a physiotherapist, the Petitioner sought to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act through willful misrepresentation of a material fact, which may render her inadmissible under section 212(a)(6)(C)(i) of the Act in future proceedings.

ORDER: The appeal is dismissed.