



U.S. Citizenship
and Immigration
Services

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Office: TEXAS SERVICE CENTER

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Petitioner:

Beneficiary:

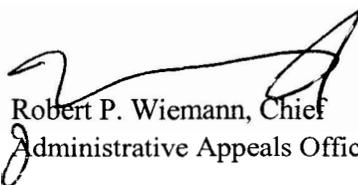


PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Texas Service Center. Upon review of a memorandum of adverse information discovered during an investigation conducted by Citizenship and Immigration Services (CIS), the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of her intention to revoke the approval of the preference visa petition, and her reasons therefore. The director ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The AAO will also enter a separate finding of fraud and willful misrepresentation of a material fact.

The petitioner is a Florida corporation claiming to be engaged in the business of providing fitness programs for children. It claims to be a subsidiary of an Indian entity, which was claimed to be the beneficiary's overseas employer. The petitioner seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

Upon review of adverse information gathered by CIS and upon further analysis of the record, the director determined that the petitioner failed to establish its eligibility on the following grounds: 1) the petitioner failed to establish that the beneficiary was employed abroad by a qualifying entity; 2) the petitioner failed to establish that it has a qualifying relationship with a foreign entity; 3) the petitioner failed to establish that it is doing business; and 4) the petitioner failed to establish that at the time the Form I-140 was filed through the present it had and continues to have the ability to pay the beneficiary's proffered wage.

On appeal, the beneficiary disputes the grounds for the revocation.¹ The beneficiary requests that the charge of fraud be waived and asserts that he had been "duped" by his previous immigration attorney, Ms. Catherine Henin-Clark, among others. The petitioner asserts that these individuals are responsible for filing the fraudulent petition and that he and his family are the victims of fraudulent activity. In support of the appeal, the beneficiary submitted a document titled "Cheating Homeland Security & the US with L-1 Fraud," authored by the beneficiary, that details how the initial fraudulent Form I-129 nonimmigrant petition was prepared and filed.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

¹ Only the petitioner may appeal the denial of an immigrant visa petition. 8 C.F.R. § 103.3(a)(1)(iii)(B). The appeal was filed by [REDACTED] acting as the president and owner of the petitioning corporation. Because [REDACTED] is also the beneficiary of the revoked immigrant visa petition, the AAO will refer to him as the beneficiary throughout the decision. Although the petitioner and beneficiary were previously represented by [REDACTED] the beneficiary alleges that Ms. [REDACTED] committed the immigration fraud that is the subject of this appeal and states that he has withdrawn her representation as his attorney. Accordingly, the petitioner and beneficiary will be treated as self-represented. See 8 C.F.R. § 292.4(a).

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

Section 205 of the Act, 8 U.S.C. § 1155, states: "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 the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . 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 un rebutted, 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 Estime*, 19 I&N Dec. 450 (BIA 1987)).

On March 14, 2005, the director issued a notice of intent to revoke disclosing the adverse information that had been obtained by the Fraud Prevention Unit of the United States Consulate General in Mumbai, India. The director provided the petitioner 30 days to submit a rebuttal. After reviewing the petitioner's response, the director issued the revocation decision dated April 18, 2005, determining that the petitioner secured approval of the immigrant petition on the basis of fraud.

In both the notice of intent to revoke and the final revocation, the director provided a full discussion of all four grounds that served as the basis for the revocation and disclosed various facts that were gathered by the Consulate General in Mumbai, India. With regard to the foreign entity that claims a qualifying relationship with the U.S. petitioner, the investigation revealed that no one at the foreign entity was familiar with the beneficiary's name or his claimed employment with the entity. The investigation further revealed that the foreign company's existence ceased in 2001, thereby giving rise to questions regarding the validity of the foreign entity's earnings statements for the period of 2001 through March 2002.

With regard to the petitioner itself, the director stated that a local investigation of public records from Florida Department of Revenue (FDR) showed that the petitioner paid no wages from the end of the third quarter of 2002 through the fourth quarter of 2004 despite the fact that five employees were claimed in the petitioner's Form I-140. Although the director acknowledged the applicant's submission of Forms 1099 for 2003 showing miscellaneous income for independently contracted employees, he noted that the FDR showed no wages or salaries paid for 2003 and also commented on the fact that the forms were handwritten and failed to match the Internal Revenue Service records.

Lastly, with regard to the petitioner's ability to pay, the director noted that the petitioner had reported a net income of \$490 and (\$290) in its tax returns for 2003 and 2004, respectively. The director properly determined that such information suggests that the petitioner did not have the ability to compensate the beneficiary's yearly proffered wage of \$44,980. *See* 8 C.F.R. § 204.5(g)(2).

Based on all of the above adverse findings, which the petitioner failed to overcome, the director determined that the petitioner failed to meet the statutory requirements to classify the beneficiary as a multinational manager or executive. Accordingly, the director revoked approval of the immigrant visa petition.

Although the petitioner's prior counsel previously disputed the director's adverse findings of fraud, the beneficiary has since provided a detailed letter titled, "Cheating Homeland Security & the US with L1 Fraud" (hereinafter "L-1 Fraud Letter"), explaining the steps that were taken by himself and others in order to secure his initial L-1 nonimmigrant visa and ultimately an approved Form I-140 petition in order to obtain an immigrant visa. However, the beneficiary denies having had any knowledge that fraud was being perpetrated by him at the time the initial petition was filed. More specifically, the beneficiary states that key paperwork was generated by his attorney and claims that his signature was obtained without his formal knowledge as to the significance of the paperwork he was actually signing.

Despite laying blame on his immigration attorney, the beneficiary's L-1 Fraud Letter concedes the fraudulent nature of the petitions. The beneficiary also discloses in the L-1 Fraud Letter that he knowingly signed the fraudulent documents that were submitted in support of both the nonimmigrant extension petition and the current immigrant visa petition. For example, he states that prior to filing for his L-1 visa extension, he learned that the petition contained false information regarding his overseas employment but that he signed the papers "because we were already in the country for more than a year now and had spent so much money already." (L-1 Fraud Letter, at page 4.)

With regard to the revoked immigrant visa petition that is currently before the AAO on appeal, the beneficiary states that his attorney sent him a fraudulent letter for his signature in November 2003, representing that he was paid \$45,000 per year plus travel expenses. Although the beneficiary professes shock that his attorney would prepare such a letter, the record of proceeding contains the original letter, dated November 16, 2003, and the AAO notes that the beneficiary signed the letter. (Form I-140, Petitioner's Exhibit 4.) This letter was submitted as the key piece of evidence in support of his immigrant visa petition. *See* 8 C.F.R. § 204.5(j)(3)(i). The AAO also notes that the beneficiary signed the Form I-140 petition in Part 8 on November 17, 2003, after the letter was prepared, certifying under penalty of perjury that the petition and the evidence are all true and correct.

In summary, despite the beneficiary's claim that he has been the victim of an elaborate scheme, the beneficiary has confirmed that he participated in the scheme and signed documents that were material to the fraudulent claim.

Upon review, the beneficiary's assertions are not persuasive.

An act is done willfully if it is done intentionally and deliberately and if it is not "the result of innocent mistake, negligence or inadvertence." *Emokah v. Mukasey*, --- F.3d ----, 2008 WL 1788268 (2nd Cir.) (citing *United States v. Dixon*, 536 F.2d 1388, 1397 (2d Cir. 1976)). For purposes of the Immigration and Nationality Act, the requirement of fraud or willful misrepresentation is satisfied by a finding that the misrepresentation was "deliberate and voluntary." *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995). Proof of an intent to deceive is not required, but rather knowledge of the falsity of a representation is sufficient. *Id.*

By his own admission, the beneficiary had knowledge of the fraudulent letter that was prepared by his immigration attorney in November 2003. The beneficiary has not established that his signature was "the result of innocent mistake, negligence or inadvertence." *Dixon*, 536 F.2d at 1397. The AAO therefore concludes that the evidence establishes that the petitioner's misrepresentation was willful in nature.

In the November 2003 letter, the beneficiary made numerous misrepresentations regarding the petitioner's eligibility as well as his own qualifications for the proffered position. Specifically, the beneficiary made the following claims: that the petitioner was formed as a subsidiary of Corner Stone Construction in India; that as technical and administrative manager, he had over three years of managerial experience with the Indian company; and that his annual salary of \$45,000 would be paid by the company in India. All of these representations are material to the beneficiary's eligibility under section 203(b)(1)(C) of the Act. *See also*, 8 C.F.R. § 204.5(g)(2) (requiring petitioner to demonstrate its ability to pay the proffered wage); § 204.5(j)(3)(i) (requiring a letter from the U.S. petitioner attesting to the beneficiary's overseas experience and the prospective employer's relationship to the overseas employer). Additionally, all of these representations were demonstrated to be false or fabricated by the overseas investigation and by the petitioner's failure to submit countervailing evidence.

The beneficiary's misrepresentations were clearly material to the petition's approval. If the adjudicating CIS officer had known that these representations were false, the officer would not have approved the petition. "[A] concealment or misrepresentation is material if it 'has a natural tendency to influence or was capable of

influencing, the decision of the decision-making body to which it was addressed." *Monter v. Gonzales*, 430 F.3d 546, 553 (2d Cir.2005) (quoting *Kungys v. United States*, 485 U.S. 759, 770 (1988)).

Although the beneficiary attempts to lay blame for the immigration fraud with his attorney, the AAO notes that the beneficiary did not dismiss his attorney until after the adverse findings from the CIS overseas investigation were formally issued in the director's notices. In fact, the beneficiary conveniently maintained his silence while he obtained his nonimmigrant L-1 visa, the subsequent extension, and an approval of an immigrant petition, which would have ultimately enabled him to adjust his status to that of a permanent resident and possibly naturalize as a United States citizen. The detailed manner in which the beneficiary described the fraudulent scheme employed to obtain the immigration benefits indicates that he was aware of the fraud prior to CIS's adverse findings.

In general, the beneficiary's assertion that he was the victim of a fraudulent scheme from which he derived considerable immigration benefits is simply without merit. While the beneficiary now finds himself in a disadvantageous position, this end result is only due to the fact that the fraudulent scheme was discovered by U.S. government officials, not as a result of the scheme itself. If the scheme had remained undiscovered, the beneficiary would have likely remained silent and netted a windfall of immigration benefits. The beneficiary's choice to come forth with information that is contrary to his own interests appears to be little more than an attempt to mitigate the damages caused by his involvement in a fraudulent immigration scheme.

Despite the attempt to implicate his attorney, the beneficiary has failed to make a competent claim of ineffective assistance of counsel. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The beneficiary has failed to satisfy these requirements.

The AAO finds that the beneficiary knowingly submitted documents containing false statements in an effort to mislead CIS on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of fraud and willful misrepresentation.²

² In the context of this visa petition, the AAO determination is a "finding of fact" and not an admissibility determination. The immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). However, the Administrative Procedure Act (APA) requires that the AAO decision include a statement of findings and conclusions on all material issues of law or fact, which would necessarily include findings of fraud and material misrepresentation. 5 U.S.C. § 557(c). After the AAO enters the finding of fact in this decision, the alien may be found inadmissible at a later date in separate proceedings.

Regarding the merits of the appeal, the beneficiary concedes the fraudulent nature of the immigrant visa petition and has failed to address the director's three grounds for revocation. The director's findings are affirmed. The fraudulent evidence is not credible and will not be given any weight in this appellate proceeding. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Moreover, the petitioner's submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As stated in section 205 of the Act, 8 U.S.C. § 1155: "The Attorney General 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." In view of the above, the AAO determines that the director's decision to revoke her prior approval of the petitioner's Form I-140 visa petition was based on good and sufficient cause. Therefore, the approval will remain revoked.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

FURTHER ORDER: The AAO finds that the beneficiary knowingly submitted documents containing false statements in an effort to mislead CIS on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.