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U.S. Citizenship
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Services

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FILE: [Redacted]
EAC-02-030-51999

Office: VERMONT SERVICE CENTER

Date: JUL 27 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



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 Director, Vermont Service Center (VSC), revoked approval of the visa petition. The director's decision was appealed to the Administrative Appeals Office (AAO), and the AAO remanded the matter for additional consideration and action by the director in order to clarify various issues relating to the visa petition. The director sent a letter dated June 1, 2005 to the petitioner in which the director sought additional information and provided an opportunity for the petitioner to clarify various inconsistencies in the record. The director received counsel's response on August 1, 2005. The director issued a decision on October 5, 2005, finding that counsel's response and the additional evidence submitted did not adequately respond to the requests made, and the inconsistencies in the record had not been resolved through competent objective evidence. Accordingly, the director revoked the approval of the petition and invalidated the Form ETA 750 Application for Alien Employment Certification. Consistent with this office's previous order, the matter has been certified to the AAO. The AAO will affirm the director's decision to revoke the approval of the visa petition and invalidate the labor certification.

The petitioner is a donut manufacturer and retailer. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification that was filed on February 26, 2001 and approved by the Department of Labor (DOL) on August 28, 2001. According to the Form ETA 750, the minimum experience required for the proffered position is four years of experience in the job offered or in a related occupation. On the Form ETA 750B, the beneficiary claimed to have worked as an assistant manager at a convenience store and as a manager at a motel. The director found inconsistencies in the evidence provided to substantiate the beneficiary's claims. In particular, the director found that the beneficiary lacked the qualifications required to perform the job, had no relevant experience from abroad, and had submitted false information. This resulted in the director determining that the petitioner has not established that the beneficiary met the qualifications as stated on the Form ETA 750 and revoking approval of the petition. The AAO, in a decision dated March 10, 2005, remanded the matter to the director for additional consideration and in order to give the petitioner an opportunity to provide additional evidence and clarify certain identified inconsistencies. The AAO's decision dated March 10, 2005 identified three major areas requiring additional evidence or clarification: the beneficiary's undisclosed ownership of [REDACTED] discrepancies in the record regarding the beneficiary's claimed experience, and the beneficiary's possible business connections to the petitioner. The concerns are explained in significant detail in the AAO's decision dated March 10, 2005, and the decision made a number of recommendations as to additional evidence that should be obtained in order to clarify and resolve these concerns. The director, after considering the evidence and clarification provided by the petitioner and the beneficiary, determined in her Notice of Certification dated October 15, 2005 that the petition is revocable and the labor certification should be invalidated. This decision will now address the director's Notice of Certification and counsel's Rebuttal to VSC Certification submitted on November 14, 2005. The AAO will also take into consideration counsel's Addendum to Rebuttal to VSC Certification and additional evidence submitted on May 5, 2006.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 205 of the Act, 8 U.S.C. § 1155, provides that an approved visa petition may be revoked at any time for good and sufficient cause. Once Citizenship and Immigration Services (CIS) has provided some evidence to show cause for revoking the petition, the alien retains the ultimate burden of proving eligibility. *Matter of Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

Following the AAO's remand of the case, the director sent a letter to the petitioner, through counsel, seeking specific information and supporting documents in order to clarify and explain the matters pertaining to the petition that had been raised by the AAO. The AAO notes at the outset that the circumstances surrounding the submission of much of the evidence in support of the petition raise considerable doubt regarding the proof submitted in support of the petition. Such doubts raise significant questions regarding the validity of the evidence in the record as a whole, and the petitioner must resolve those inconsistencies through the submission of independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The AAO now will address the issues raised by the director in her Notice of Certification and counsel's rebuttal to the director's conclusions on the issues.

The Beneficiary's Employment at [REDACTED]

The record contains a letter from [REDACTED] dated January 22, 2003 that was submitted in response to the director's Notice of Revocation. According to [REDACTED] (no last name was given), the author of the letter, "[the beneficiary] worked for me in the capacity of manager from the beginning of 1991 to March of 1993" and "[h]e was an excellent employee and manager and I would not hesitate to recommend him for any management opportunities that may come his way." The letter also describes the beneficiary's duties in detail, including the number of workers supervised by the beneficiary. The letter ends with the title president under [REDACTED] name. The record also contains an undated letter on the personal letterhead of [REDACTED] Patel stating that "I, [REDACTED] go by nick name as [REDACTED]. A copy of the first page of [REDACTED] passport indicates that [REDACTED] date of birth is February 5, 1975.

The director determined that the two letters described above and the first page of [REDACTED] passport indicate that [REDACTED] was born in 1975 and hired to be the President of [REDACTED] in 1991 at the age of 15. It appears unlikely that a 15-year old child could assume the responsibilities associated with that position, particularly in light of his daily school attendance." The director also stated that the beneficiary's past work experience with [REDACTED] was not listed on the Form ETA 750B, which the beneficiary signed on February 1, 2001. The director then stated that "[i]t appears that the beneficiary omitted his experience on the [Form] ETA-750 as a manager of [REDACTED] for a Corporate President who was 15 years of age at the time employment commenced. The submission of such evidence coming at this late date on appeal raises serious credibility concerns."

Counsel states that a letter from [REDACTED] submitted with counsel's rebuttal explains that [REDACTED] was speaking on behalf of the company and verifying employment and job duties [in the letter dated January 22, 2003]. The letter was not intended to convey that [the beneficiary] worked for [REDACTED] from 1991 to 1993." Counsel also states that according to the instruction on the Form ETA 750B, "it is common practice not to include other jobs when the jobs held during the last three years qualify the beneficiary for the job offered." Counsel likewise asserts that "[i]t is our contention that the information relating to [the beneficiary's] work experience with [REDACTED] from 1991 to 1993 was not necessary for the Labor Certification process." A letter on a different [REDACTED] letterhead dated November 9, 2005 states:

My letter of January 22, 2003 was intended to verify the employment and job duties of [the beneficiary] with [REDACTED] during the period of 1991 to 1993. I used the word "me" in the general sense in that I was speaking on behalf of the company. The letter was not intended to convey that [the beneficiary] worked for me directly during that time period.

Sincerely,

[signature]

President

The AAO finds that counsel's statements and assertions on this issue fail to overcome the director's determination that the evidence raises serious credibility concerns because the explanations provided regarding Neil and the omission of this work experience on the Form ETA 750 are unreasonable and unpersuasive. Moreover, counsel errs in stating that information regarding the beneficiary's work experience at [REDACTED] is unnecessary.

First, the explanation provided regarding [REDACTED] is unreasonable. The letter from [REDACTED] dated January 22, 2003 specifically states that the beneficiary "worked for *me* in the capacity of manager from the beginning of 1991 to March 1993." (Emphasis added). The letter uses very specific language. If the letter had been written to reflect that [REDACTED] was speaking on behalf of the company, as suggested by the letter dated November 9, 2005 [REDACTED] would have more likely used "us" or the name of the company instead of "me." The letter also uses a tone of familiarity in describing the beneficiary's work experience and in talking about the author's willingness to recommend the beneficiary for other managerial positions. No reference was made in the letter to an examination of corporate records or an evaluation of the beneficiary's work from which the conclusions were drawn. The clear inference of the letter's language is that the beneficiary worked under the author's supervision. Moreover, no explanation was given as to why [REDACTED] would nonetheless recommend the beneficiary without having personally worked with the beneficiary. Thus, counsel's assertion, supported by another letter from [REDACTED] on a different letterhead dated November 9, 2005, that [REDACTED] was speaking on behalf of the company when using the pronoun "me" is not reasonable in light of the contents of the original letter. In addition, the letter from [REDACTED] dated November 9, 2005 is not independent objective evidence because of concerns regarding its author as will be discussed below. Since the explanation is found to be unreasonable and is not supported by independent objective evidence, the AAO is left to conclude that the letter dated January 22, 2003 is fraudulent. By its clear language, the letter dated January 22, 2003 states that the author supervised the beneficiary at the age of 15, an unlikely situation and one that is disavowed by [REDACTED] in the subsequent letter. Nevertheless, as discussed above, the alternative explanation in the second letter is likewise not credible. Given these letters' problems, the preponderance of the evidence in the record does not demonstrate that the beneficiary obtained any experience at [REDACTED].

Second, the explanation provided regarding the omission of this work experience on the Form ETA 750 is not persuasive. On the Form ETA 750B, the instruction for item 15 states "[l]ist all jobs held during the last three (3) years. Also, list any other jobs related to the occupation for which the alien is seeking certification as indicated in item 9." Thus, the plain language of the instruction clearly requires the inclusion of any job related to the occupation for which the beneficiary is seeking certification. In the case at hand, the occupation in which the beneficiary is seeking work is the manager of a donut manufacturer and retailer. As the beneficiary's claimed experience at [REDACTED] is that of a manager of a donut shop, the beneficiary's past work experience with [REDACTED] qualifies as "any other jobs related to the occupation for which the alien is seeking certification" and is required on the Form ETA 750B per the instruction for item 15. On the Form ETA 750B, where three spaces are provided for past employment, the beneficiary listed his past work experience as an assistant manager for a convenience store and as a manager of a motel. Even though those two managerial positions are relevant positions, counsel's argument that it is common for the beneficiaries to not include other jobs not held during the last three years is not persuasive in light of the fact

that the beneficiary's position at [REDACTED] is relevant and according to the instruction, should have been listed. To add it now, especially given these concerns, raises additional issues of credibility.

The AAO notes that the beneficiary signed the Form ETA 750B with only two past experiences listed under item 15 for "all jobs held during the last three (3) years . . . [and] any other jobs related to the occupation [of a manager]." It is only after the director's issuance of a Notice of Revocation on the issue that the petitioner has not demonstrated the beneficiary's qualifications that the information about the beneficiary's experience as a donut shop manager came into light. The delayed disclosure of such relevant experience casts doubts on the credibility of the evidence.

Information regarding the beneficiary's work experience at [REDACTED] is necessary for an additional reason. Counsel asserts that the inclusion of the [REDACTED] work experience is unnecessary for the labor certification process. Primarily, it is necessary because it is required by the instruction for line 15 of the Form ETA 750B. Moreover, according to the Form ETA 750, four years of experience in the job offered or four years of experience in a related occupation is required.¹ On the Form ETA 750B, the beneficiary included his experience as an assistant manager at [REDACTED] from June 1998 and continuing through the date of the Form ETA 750B and as a manager at [REDACTED] from June 1995 and continuing through the date of the Form ETA 750B. The beneficiary signed the Form ETA 750B on February 1, 2001. Thus, the beneficiary has about two-and-a-half years of experience with [REDACTED] and about five-and-a-half years of experience with [REDACTED]. If questions arise in regard to the beneficiary's experience with [REDACTED] or with [REDACTED] that result in either the [REDACTED] experience or both experiences not being considered, then the beneficiary would lack the four years of experience required to meet the qualifications for the proffered position.² The beneficiary's experience with [REDACTED] especially if only the [REDACTED] experience is discounted, would be necessary in determining whether the beneficiary qualifies for the proffered position. Nevertheless, as a result of unresolved inconsistencies regarding the experience letter and the fact that this experience is not listed on the Form ETA 750B, the AAO finds that the preponderance of the evidence does not demonstrate that the beneficiary has any work experience with [REDACTED]. Thus, the beneficiary's alleged experience at [REDACTED] cannot be considered when determining whether the beneficiary has met the qualifications requirement as stated on the Form ETA 750.

The Relationship Between the Petitioner's Owner and the Beneficiary [REDACTED] and [REDACTED]
The Relationship Between the Beneficiary and Both [REDACTED] and [REDACTED]

Counsel's response to the director's request for evidence and clarification submitted on August 1, 2005 lists the relationship between [REDACTED] the petitioner's owner, with the beneficiary, [REDACTED] and [REDACTED] the alleged owner of [REDACTED] according to a letter dated December 20, 1998), is: [REDACTED] brother-in-law; [REDACTED] the alleged president of [REDACTED] is the nephew of [REDACTED] the beneficiary's wife, is [REDACTED] sister-in-law. Counsel's response also shows that [REDACTED] the beneficiary's brother-in-law and [REDACTED] is the nephew of the beneficiary's wife.

¹ To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In the case at hand, the beneficiary must possess the requisite experience as of February 26, 2001.

² The director's original revocation of the petition was based on the director's finding that the beneficiary's experience at [REDACTED] and [REDACTED] was not sufficiently related to the position of a donut shop manager.

The director determined that necessary detail was not provided to clarify the nature of the relationships among the individuals listed. Counsel states on rebuttal that “[t]he [request for evidence] only asked for clarification of the parties’ relationship, it did not specify the type of relationship information or amount of detail it sought.” Counsel also states that information regarding business relationships among the individuals listed is provided in response to separate requests from the director.

The director requested clarification of the relationships among the individuals, which counsel provided both in counsel’s response dated July 28, 2005 and reiterated in the rebuttal, and separately requested clarification of the business relationships among the individuals, which counsel addressed in the response dated July 28, 2005 and on appeal. The director did not explain why this is material or what necessary detail was lacking, and if the director was referring to details regarding the business relationships, such information was provided by counsel under separate requests from the director. This issue, generally, will not be discussed further in this decision. However, the various relationships among the individuals named in the record can be material when CIS weighs the credibility of evidence in the record and will thus be discussed as they are relevant to other material issues.

The Beneficiary’s Relationship with

According to the Form ETA 750B, the beneficiary claimed to have worked at [REDACTED] as a manager from June 1995 and continuing through February 1, 2001.³ [REDACTED] address as listed on the Form ETA 750B is [REDACTED]. The description of the duties performed by the beneficiary specifically states that “[u]nder the direction of the manager, [the beneficiary] manages motel to ensure efficient and profitable operation.” The record contains a letter from [REDACTED] dated December 20, 1998 stating that the beneficiary worked “as Assistant Manager in my motel from May 1[,] 1993 to December 16, 1998.” According to the letter, [REDACTED] is the owner of [REDACTED]. The record also contains the beneficiary’s Form 1040 U.S. Individual Income Tax return for 2001 which includes a Schedule C, Profit or Loss from Business (Sole Proprietorship), filed for [REDACTED] with the beneficiary as the proprietor. In addition, the record includes warranty deeds for [REDACTED] indicating that the property at that location was sold to the beneficiary and [REDACTED] in February 1993, transferred from [REDACTED] to the beneficiary on December 16, 1997, and transferred from the beneficiary to two other individuals on October 22, 2003.

The director determined that the record shows that the beneficiary became sole owner of the [REDACTED] on December 8, 1997, and the beneficiary “claimed to have gained experience while concealing his ownership of that entity.” The director likewise determined that [REDACTED] signed a document dated December 20, 1998, even though he no longer owned the motel as of December 8, 1997.” According to the documents in the record, the warranty deed transferring the property located at [REDACTED] from [REDACTED] to the beneficiary is dated December 16, 1997, not December 8, 1997.

Counsel states that “[the] Form ETA-750 does not ask whether the beneficiary has an ownership interest in the place of business where he obtained his experience . . . [n]ot volunteering information which is not requested should not be mischaracterized as concealment.” Counsel also states that “[t]he date of the letter [from [REDACTED]] should not be allowed to detract from the information contained in the letter that is relevant to the beneficiary’s qualifications for the job offer.”

³ According to counsel’s response to the director’s request for evidence and clarification submitted on August 1, 2005, the letter from [REDACTED] contains the correct dates the beneficiary was employed there and “the June 1995 start date listed [o]n the [Form] ETA-750 is . . . incorrect and can only be attributable to clerical error.”

Even though the Form ETA 750 does not require disclosure of the beneficiary's ownership interest in the place where the beneficiary obtained his past work experience, the discovery of the beneficiary's ownership interest that results in inconsistencies in the record does call into question the credibility of this past work experience. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

In the case at hand, the beneficiary's experience letter regarding [REDACTED] contains one statement that was not true at the time the author signed the letter—that [REDACTED] was the hotel's owner when he signed the letter as such. On the ETA-750, the beneficiary claimed to have worked for [REDACTED] "under the direction of manager" from June 1995 and continuing through February 1, 2001, and the letter from [REDACTED] dated December 20, 1998 corroborates that the beneficiary worked at [REDACTED] when [REDACTED] was the owner. The beneficiary's tax return for 2001 lists him as the sole proprietor of [REDACTED] and a warranty deed transferred the property located at [REDACTED] address from [REDACTED] to the beneficiary on December 16, 1997. The two sets of information clearly contradict each other because the first set of information indicates that the beneficiary worked under the direction of others as a manager whereas the latter set of information indicates that the beneficiary was the sole owner of the business at the same time that the beneficiary was supposedly working under [REDACTED] and no explanation was offered. Rather, counsel simply states that "[t]he date of the letter [from [REDACTED]] should not be allowed to detract from the information contained in the letter." The letter contains a false statement and thus cannot be considered as credible evidence of the beneficiary's experience.

In *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986), the beneficiary was identified as a chef who would be supervised by the president of the petitioning entity, and the record included a letter from an individual claiming to be the president. The Commissioner discovered that the beneficiary in that case was in fact a principal and owner of the petitioning entity, and stated in dicta that in light of the revealed information, "it is evidence that information contained in the labor certification is incorrect in two regards. First, the beneficiary is not, in fact, supervised by [REDACTED] who signed the petition as president." *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. at 402. Even though [REDACTED] not the petitioning entity, the dicta from *Matter of Silver Dragon Chinese Restaurant* is on point because just as the labor certification in that case is incorrect because the beneficiary could not have supervised himself, the same holds true for this case in that the beneficiary could not have worked "under the direction of manager" when he himself was the sole proprietor and owner of the [REDACTED]. Thus, the labor certification contains erroneous information. The AAO finds that no independent objective evidence has been provided to resolve the inconsistencies in the record regarding the beneficiary's past work experience at [REDACTED]. Thus, the preponderance of the evidence does not demonstrate that the beneficiary worked as a manager at [REDACTED], and this past experience will not be taken into account when considering whether the beneficiary has met the qualifications requirement as stated on the Form ETA 750.

Furthermore, the letter from [REDACTED] dated December 20, 1998 is evidence of willful misrepresentation. [REDACTED] signed the letter and listed himself as the owner of [REDACTED]. However, according to the warranty deed, he was not the owner of [REDACTED] on December 20, 1998. In addition, the letter states that the beneficiary "work[ed] as Assistant Manager in my motel from May 1st 1993 to December 16, 1998," but according to the warranty deed signed by [REDACTED], [REDACTED] relinquished his part-ownership of [REDACTED] to the beneficiary on December 16, 1997. The beneficiary submitted the letter from [REDACTED]

knowing that the experience letter contains erroneous information. Aside from counsel's assertion that the dates should not matter, no explanation or clarification was provided to explain away the issue.

Finally, the AAO notes that the address of [REDACTED], Arizona [REDACTED] is the same address listed as the beneficiary's address on his 2001 tax return, and is the same address listed for [REDACTED] on [REDACTED] Articles of Organization and its Application For Employer Identification Number. The address listed on the Form ETA 750B for [REDACTED] is a different address. The AAO questions whether the [REDACTED] two entities that the beneficiary had work experience from, are indeed two distinct entities.

The Beneficiary's Relationship with [REDACTED]

According to the Form ETA 750B, the beneficiary claimed to have worked at [REDACTED] as an assistant manager from June 1998 and continuing through February 1, 2001. The description of the duties performed by the beneficiary specifically states that "[u]nder the direction of manager, [the beneficiary] manages convenience store." The beneficiary is one of [REDACTED] two members according to its Articles of Organization dated June 15, 1998, the beneficiary signed [REDACTED] Application for Employer Identification Number, the beneficiary's 2001 tax return lists [REDACTED] as a partnership that the beneficiary received an income or loss from, and the beneficiary had the same address as [REDACTED] Documents in the record show that [REDACTED] is doing business as [REDACTED]

The director determined that based on the evidence, "it appears that the beneficiary wished to establish that he gained experience as an assistant manager at [REDACTED] while concealing the fact that he was part owner of that entity." Counsel states in the rebuttal that "[a]s already established, [the] Form ETA-750 does not request information on ownership interest in the place where the beneficiary obtained the experience as he was not required to provide that information."

The AAO finds that similar to issues regarding the beneficiary's past experience with [REDACTED] the dicta in *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 402 (Comm. 1986), is likewise applicable in this case. Even though there appears to be another individual who co-owned [REDACTED] with the beneficiary, the beneficiary signed the Application for Employer Identification Number and the beneficiary had the same address as [REDACTED]. Thus, it is questionable whether the beneficiary was in fact employed as an assistant manager "[u]nder the direction of manager" when the beneficiary himself is part owner of the entity. The AAO finds that "information contained in the labor certification is incorrect." *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec at 402. No independent objective evidence has been provided to explain the inconsistency, and the AAO will not consider this experience in determining whether the beneficiary has met the qualifications requirement as stated on the Form ETA 750. As stated earlier, the beneficiary's experience letter from [REDACTED] contains unresolved inconsistencies and the beneficiary's experience letter from [REDACTED] contains a false statement. When inconsistencies exist, the rest of the record will be examined closely. See *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The Beneficiary and the Petitioner's Relationship with [REDACTED]

The beneficiary's 2001 tax return lists [REDACTED] Group as an S Corporation that the beneficiary received an income or loss from and shows that the beneficiary received interest from [REDACTED] in 2001. Counsel's response to the director's request for evidence and clarification, dated July 28, 2005 indicates that both the beneficiary and the owner of the petitioner are members of this organization.

The director listed information regarding the beneficiary and the petitioner's relationship to [REDACTED]. Counsel states that [REDACTED] is listed on the beneficiary's 2001 tax return as the same as [REDACTED] before it filed its Articles of Organization in 2004. However, the copy of the Articles of Organization in the record lists the corporation's name as [REDACTED] the Arizona Corporate Commission as accessed on November 29, 2004 lists the corporation's name as [REDACTED] and the beneficiary's 2001 tax return uses [REDACTED]. Thus, it is unclear what counsel is referring to when stating that the name of the corporation is now [REDACTED].

Regardless, counsel's response to the director's request for evidence and clarification dated July 28, 2005 indicates that both the petitioner and the beneficiary have an interest in [REDACTED] as both are members of the entity. This information is relevant as it reveals the relationship between the petitioner and the beneficiary, which the AAO will address later in the decision.

The Beneficiary's Relationship with [REDACTED]

According to the letterheads used by [REDACTED] is the same entity as [REDACTED]. The director stated that "counsel indicated there is no relationship between [REDACTED] and petitioner[//]owner and the beneficiary or the beneficiary's wife. Yet, counsel's letter had indicated [REDACTED] President of this Corporation, is nephew through marriage to both the petitioner and the beneficiary." Counsel responds that the beneficiary and his wife "do not have a relationship to [REDACTED] corporation because they do not own any part of it . . . [and] [t]he fact that [REDACTED] nephew was irrelevant to the information requested." Based on the evidence in the record, it appears that the beneficiary and the petitioner both have a familial relationship with [REDACTED] the alleged president of [REDACTED]. However, the AAO agrees with counsel that the evidence in the record does not indicate that the petitioner or the beneficiary has any business relationship with [REDACTED]. The AAO notes that the lack of any business relationship between [REDACTED] and the beneficiary and between [REDACTED] and the petitioner does not affect the decision of the AAO in this case.

The Beneficiary and the Petitioner's Relationship with [REDACTED]

The beneficiary's 2001 tax return indicates that [REDACTED] is an S Corporation that the beneficiary received an income or loss from. A copy of the Corporate Resolution indicates that [REDACTED] the owner of the petitioning entity, owns 100% of [REDACTED] shares as of December 9, 2003, and prior to that [REDACTED] owned 40% of the shares and the beneficiary owned 20% of the shares. Based on the information in the record, the director determined that "the beneficiary shared an interest with the owner of the petitioning entity, [REDACTED] in [REDACTED]. Counsel states that "the beneficiary relinquished his interest in that corporation in 2003. This information should have no bearing on the instant immigration petition because the beneficiary does not own shares of the petitioning company."

Counsel errs in stating that this information is irrelevant to the instant petition because it does call into question the relationship, especially business relationship, between the petitioner and the beneficiary, as the AAO will address later in the decision.

The Beneficiary's Relationship with the Petitioner.

The director stated that no documents regarding the petitioner [REDACTED] were submitted. Specifically, "[the] [p]etitioner failed to provide any information regarding [REDACTED] and also failed to provide any

explanation for the lack of a response.” The director further stated that two of the eight pages of the petitioner’s Certificate of Incorporation are missing from the record.

Counsel states that the lack of response was an oversight, and counsel submits the two missing pages of the petitioner’s Certificate of Incorporation with his rebuttal. Certified copies of the petitioner’s Form 1120S U.S. Income Tax Returns for an S Corporation for 2001, 2002, 2003, and 2004 were submitted on May 5, 2006.

According to the Schedule K-1 of the petitioner’s tax returns for 2001, 2002, 2003, and 2004, [REDACTED] is the sole owner of the petitioning entity. Thus, based on the evidence in the record, the beneficiary does not appear to have any financial interest in the petitioning entity. The AAO notes that the lack of any business relationship between the beneficiary and the petitioner does not affect the decision of the AAO in this case.

The Petitioner and the Beneficiary’s Certified Tax Returns.

The director determined, based on the record before her, that “[u]ncertified copies of the requested tax returns were submitted; however, the return most relevant to this inquiry[,] specifically[,] the tax return for tax year 2001 filed by [REDACTED] appear to be fraught with discrepancies.” The record before the director contains two different copies of the petitioner’s Form 1120S U.S. Income Tax Return for an S Corporation for 2001. The two copies contain different figures, including on line 19, line 20, and line 21 of page one. In addition, some figures appear to be missing on one of the copies’ Schedule K. The director also pointed out that figures in one of the copies do not add up.

Counsel states that the certified copies of the petitioner’s 2001, 2002, 2003, and 2004 tax returns will be submitted late, and “[a]ny perceived discrepancies noted by CIS in the 2001 tax return will be resolved by the [Internal Revenue Service (IRS)] certified copies.” As stated above, certified copies of the petitioner’s Form 1120S U.S. Income Tax Returns for an S Corporation for 2001, 2002, 2003, and 2004 were submitted on May 5, 2006. However, the inconsistencies between the two copies of the petitioner’s 2001 tax return is still unresolved because the certified copy is the same as one of the copies submitted, but no explanation is offered as to why the petitioner has two different copies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

While the certified copy of the petitioner’s 2001 tax return does show which 2001 tax return was filed with the IRS, the fact remains that the petitioner submitted tax returns with incorrect information to the director.

Evidence Clarifying Inconsistencies Regarding the Beneficiary’s Employment.

The director determined that the petitioner provided no documentary evidence to clarify the inconsistencies regarding the conflicting statements relating to the beneficiary’s employment. Counsel states in the rebuttal that the inconsistencies are the result of clerical error, and “[i]t appears that no amount of explaining will satisfy CIS because it prefers to view the clerical errors as intentional misrepresentations.”

The AAO finds that even if some of the errors, such as the beneficiary’s start date with [REDACTED] listed on the Form ETA 750B, can be attributed to clerical errors, other inconsistencies are still unresolved. For instance, the letter from [REDACTED] dated December 20, 1998 lists [REDACTED] as the owner of [REDACTED]

when other evidence in the record indicates that the beneficiary became [REDACTED] owner on December 16, 1997. The same letter states that the beneficiary worked as an assistant manager at [REDACTED]'s motel from 1993 to December 16, 1998 when other evidence in the record indicates that the beneficiary owned the hotel since December 16, 1997. The AAO does not believe that these inconsistencies can be attributed to clerical error as the letter was signed by [REDACTED]. Likewise, the two copies of the petitioner's 2001 tax return are different from each other, and even if figures on one of the copies can be attributed to clerical error, then the question arises as to why two separate 2001 tax returns exist. Moreover, there is the issue of the letter from [REDACTED] and subsequent evidence revealing that [REDACTED] would only have been 15 years old in 1991, when, based on the plain language of the letter, he claimed to have supervised the beneficiary. Counsel's explanation that [REDACTED] was speaking on behalf of the company was corroborated by another letter from [REDACTED] but, as stated above, the AAO finds the explanation to be unreasonable and unpersuasive given the plain language of the first letter. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The letter from [REDACTED] dated November 9, 2005 is not independent objective evidence. The undated letter on personal letterhead from [REDACTED] and his date of birth as listed on his passport raised questions regarding his position at [REDACTED] and his relationship with the beneficiary, and the letter from [REDACTED] written by [REDACTED] or [REDACTED] and dated November 9, 2005 is the only evidence submitted to clarify the issue. Thus, this inconsistency is also unresolved.

Corroborating Evidence.

The director determined that "[n]o corroborating evidence was provided to establish the factual allegations asserted by counsel relating to the beneficiary's experience other than to establish through documentation submitted in response to other requests, that the beneficiary was part or full owner of the establishments through which he purportedly gained experience."

Counsel states that the petitioner provided "all available evidence CIS requested." Counsel also states that "[b]ecause the form does not ask whether the employee had an ownership interest in the company where he obtained the qualifying experience that information was not given. It should be noted that such information would have no bearing on the labor certification process as it is irrelevant." Counsel likewise states that CIS "already has employment letters and documents, and thus corroborating evidence is unnecessary."

The petitioner has provided corroborating evidence, both in the forms of letters and other documents, regarding the beneficiary's past experience. However, the AAO, as discussed above, has discounted some of the evidence provided, such as evidence regarding [REDACTED] evidence regarding the beneficiary's past work experience at [REDACTED]. In addition, the AAO disagrees with counsel's assertion that information regarding the beneficiary's ownership interests in [REDACTED] irrelevant to the labor certification process. Even though neither [REDACTED] the petitioner, the fact that the beneficiary claimed on the Form ETA 750B that he performed his duties "under" the direction of a manager when he was the owner of [REDACTED] and part-owner of [REDACTED] is evidence of provision of incorrect information on the Form ETA 750B.

The issue of concern is not the beneficiary's ownership of [REDACTED] per se, although that could raise some other issues. Rather, the issue of concern is that the beneficiary's statements on the ETA-750 and experience letters contain statements that are not, and were not at the time, true. The beneficiary could not have worked at [REDACTED] under the supervision of a manager when he was the owner. Similarly, the beneficiary, per [REDACTED] second letter, did not work under the supervision of [REDACTED] despite the clear language in [REDACTED] first letter stating that the beneficiary did so.

Material Misrepresentation.

The director determined that "the beneficiary appears to have made a material misrepresentation on the [Form] ETA-750 relating to the claimed experience." The director also cites to *Matter of Summart 374, 00-INA-93* (BALCA May 15, 2000) as support for the proposition that a relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by blood, financial ties, marriage, or through friendship.

Counsel states that "there was no fraud or willful misrepresentation in the labor certificate application. Information was given in response to the questions contained in the form." Counsel also questions the significance of *Matter of Summart* in regard to the case at hand, and states that "[i]f CIS meant to infer that the labor certification should be invalidated because the petitioner is the beneficiary's sister-in-law, the law does not support such a determination." Counsel likewise states that "CIS reliance on the familial relationship between the petitioner and the beneficiary to invalidate the labor certification is misplaced."

First, counsel is incorrect in stating that no fraud or willful misrepresentation exists in the Form ETA 750. The beneficiary signed the Form ETA 750B on February 1, 2001, thereby declaring that the foregoing information within the Form ETA 750B is true and correct under penalty of perjury. On the Form ETA 750B, the beneficiary claimed to have worked under the direction of a manager at both [REDACTED] during the time when the beneficiary was the sole owner of [REDACTED] and co-owner of [REDACTED]. The AAO finds that this is willful misrepresentation.

Aside from the Form ETA 750B, there is also evidence of willful misrepresentation in the record. In support of his past work experience, a letter from [REDACTED] the alleged owner of [REDACTED] was submitted. [REDACTED] claimed to be the owner of [REDACTED] and to have the beneficiary work for him as an assistant manager during the time when the beneficiary was the actual owner of [REDACTED] and the beneficiary submitted this letter as evidence. The AAO finds that this is willful misrepresentation.

Second, the AAO is not relying on familial relationship in invalidating the labor certification. Under 20 C.F.R. 656.20(c)(8) and 656.3, the petitioner has the burden, when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Summart 374, 00-INA-93* (BALCA May 15, 2000). Where the petitioner is owned by the person applying for the position, it is not a *bona fide* offer. See *Bulk Farms, Inc. v. Martin*, 963 F.2d 1286 (9th Cir. 1992); *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986).

In the case at hand, the petitioner's owner, the beneficiary, the beneficiary's wife, the alleged president of [REDACTED] and the alleged owner of [REDACTED] are all related either by marriage or by blood. The relationships among these individuals alone do not automatically invalidate the labor certification, but familial relationship does raise the question of whether the job offer was a *bona fide* offer. See *Matter of Summart*

374, 00-INA-93 (BALCA May 15, 2000). In addition to the familial relationship, the beneficiary and the petitioner's owner also had a business relationship in that they both had or currently have interests in [REDACTED] and [REDACTED]. In *Matter of Silver Dragon Chinese Restaurant*, the Commissioner stated that "the alien's ownership of his/her potential corporate employer should cause the certifying officer to examine more carefully whether the job opportunity is clearly opened to qualified U.S. workers, and whether U.S. workers applying for the job were rejected solely for lawful job-related reasons." 19 I&N Dec. at 402. While the entities that both the beneficiary and the petitioner's owner had or currently have an interest in are not the petitioning entity, *Matter of Silver Dragon Chinese Restaurant* is applicable because the facts in the case at hand, especially the familial relationship and the business relationship between the beneficiary and the petitioner's owner, raise the question of whether the proffered position was in fact open to qualified U.S. workers as required by 20 C.F.R. § 656.20(c)(8).

As stated earlier, the AAO is not relying on familial relationship in invalidating the labor certification even though the familial and business relationships between the beneficiary and the petitioner do raise questions. However, willful misrepresentation, as laid out above, exists in this case, and the misrepresentation in the record is material because it relates to the beneficiary's qualifications for the proffered position.

In conclusion, the AAO finds that the director had good and sufficient cause to revoke the approved visa petition. The beneficiary has claimed past employment in three positions to demonstrate that he meets the requirements for the proffered position. The letter from [REDACTED] contains a false statement. The first letter from [REDACTED] contains clear language stating that the beneficiary worked under the supervision of the company's 15-year old president. That statement has been disavowed by the author, who provided an unsatisfactory explanation. Finally, the ownership of [REDACTED] the third source of the beneficiary's experience, raises issues, unresolved by the record, of credibility regarding that job claim. Misrepresentation and incorrect information regarding the beneficiary's past work experience at [REDACTED] result in the AAO not according weight to the letters stating the beneficiary's experiences as a manager. In addition, the instruction for item 15 on the Form ETA 750B clearly requires the listing of all jobs held by the beneficiary in the past three years and "any other jobs related to the occupation for which the alien is seeking certification," and the beneficiary did not indicate that he worked as a manager at [REDACTED] on the Form ETA 750B even though his experience at [REDACTED] is clearly required based on the plain language of the instruction. Thus, the AAO finds that the preponderance of the evidence does not show that this past work experience exists. Therefore, the AAO does not consider the beneficiary's experience at [REDACTED] in determining whether the beneficiary met the qualifications requirement. The record does not contain evidence showing any other work experience. Thus, the petitioner has not established that the beneficiary had met the qualifications required by the petitioner on the Form ETA 750.

Furthermore, inconsistencies in the record have not been resolved. The beneficiary claimed to have worked at [REDACTED] and evidence submitted in support of this claim indicates that the president of [REDACTED] who supervised him was a 15-year old relative. No independent objective evidence, as required by *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), exists in the record. The dates on the letter from [REDACTED] authored by [REDACTED] do not comport with other evidence in the record regarding [REDACTED] and no evidence or explanation was provided. The record contains two different 2001 tax returns for the petitioner, and even though a certified copy of the petitioner's 2001 tax return was submitted later to the AAO, no explanation was given as to why two different tax returns were submitted to CIS. Moreover, the AAO discovers that the same address was used for [REDACTED] and [REDACTED], two distinct entities that the beneficiary claimed to have worked for, and no explanation or clarification exists in the record. These inconsistencies further call into question the beneficiary's past work experience and results in a

finding that the petitioner has not established that the beneficiary met the qualifications as listed on the Form ETA 750.

Thus, the AAO finds that the director correctly determined that the visa petition is revocable because the petitioner has not established that the beneficiary had met the qualifications required by the petitioner on the Form ETA 750.

The AAO also finds that willful material misrepresentation exists, and the director correctly determined that the labor certification should be invalidated. The beneficiary intentionally provided misleading information on the Form ETA 750B that he worked under the supervision of others when he himself was the sole owner or co-owner of the entities he worked for. The beneficiary signed the Form ETA 750B on February 1, 2001, thereby declaring that the foregoing information contained in the Form ETA 750B is true and correct under penalty of perjury even though he was intentionally providing false information. This is willful misrepresentation.

Additionally, Dinesh Patel claimed to be the owner of Tiki Motel and supervised the beneficiary during the time when the beneficiary was the actual owner of Tiki Motel in a letter, and the beneficiary submitted this letter as corroborating evidence. This is willful misrepresentation.

Aside from willful misrepresentation, the AAO notes that the familial and business relationships among the petitioner's owner, the beneficiary, and owners of other entities where the beneficiary claimed to have gained work experience call into question whether the job offer in this case is a *bona fide* job offer. Willful misrepresentation alone is enough for invalidation of the labor certification, and the familial and business relationships between the beneficiary and the petitioner's owner do further bolster the director's decision to invalidate the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The director's decision to revoke the approval of the visa petition and invalidate the labor certification is affirmed.