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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B6

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 04 2007  
EAC 03 108 52214

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:  
[REDACTED]

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, initially approved the preference visa petition. Subsequent to obtaining information regarding the petition, the director served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner produces and sells various telecommunication products and services. It seeks to employ the beneficiary permanently in the United States as a sales manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner's prior attorney had pled guilty to criminal counts of money laundering and conspiracy to commit immigration fraud that cast doubt on the bona fides of the job offer and Form ETA 750 and denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's original September 9, 2004 revocation, the single issue in this case is whether or not the petitioner's Forms ETA 750 and I-140 were fraudulently prepared and submitted to Citizenship and Immigration Services (CIS) by the petitioner's prior attorney.

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 or seasonal nature, for which qualified workers are not available in the United States.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department 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." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). A Notice of Intent to Revoke 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. *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The AAO takes a *de novo* look at issues raised in the revocation of this petition. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal<sup>1</sup>.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

On appeal, counsel submits a statement and indicates that a brief would be submitted within thirty days. However, in response to a fax from the AAO, dated October 18, 2006, reminding counsel of his pledge to provide a brief, counsel states that he did not file a brief or evidence in support of the appeal as indicated on Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO). Therefore, a decision will be determined based on the record, as it is currently constituted.

Relevant evidence submitted on appeal includes counsel's statement, affidavits from the petitioner and the beneficiary, and a copy of Form G-639, Freedom of Information/Privacy Act Request. Other relevant evidence includes counsel's response to the NOIR; copies of the petitioner's Forms I-140 and ETA 750 showing the correct signatures of the petitioner and the beneficiary; a corrected copy of the beneficiary's prior work experience; a letter from the petitioner; a copy of the petitioner's prior attorney's Form G-28, Notice of Entry of Appearance as Attorney or Representative; a copy of the petitioner's notice of approval, dated November 26, 2003; an affidavit from the petitioner; a copy of the petitioner's commercial lease agreement; pictures of the petitioner's office; a copy of the petitioner's listing in the *Yellow Pages* and *White Pages*; a copy of the petitioner's *Articles of Incorporation*; copies of the petitioner's 2001 through 2003 Forms 1120, U.S. Corporation Income Tax Return; copies of invoices; copies of bank statements; a copy of the petitioner's organization chart; copies of the petitioner's 2001 through 2003 Forms W-3, Transmittal of Wage and Tax Statements; copies of the petitioner's 2001 through 2003 Forms W-2, Wage and Tax Statements, for all the petitioner's employees; copies of the petitioner's 2001 through June 2004 Forms 941, Employer's Quarterly Federal Tax Returns; a copy of the proposed job description for the beneficiary; a copy of an unofficial transcript from the University of Maryland; and an affidavit from the beneficiary. The record does not contain any other evidence relevant to prior counsel's filing of the Forms ETA 750 and I-140.

On appeal, counsel states:

International Science & Technology Corp. (Int'l Science), employer and [REDACTED] beneficiary, were victims of a criminal enterprise (fraud) perpetrated upon them by the law firm of [REDACTED] through Attorney [REDACTED] attached affidavit of [REDACTED] dated 9-22-04 and statement of [REDACTED] owner of Int'l Science dated July 20, 2004). They were ineffectively represented by the counsel of [REDACTED] who committed fraud upon them. They were vulnerable victims among a class of persons who shared particular susceptibility and were scammed by [REDACTED] who had higher knowledge than they and who misled, deceived and totally took advantage of them, *U.S. v. Mendoza*, 262 F3rd 957 (9<sup>th</sup> Circuit 2001). Such deception by [REDACTED] was so extreme and calculated that beneficiary should be able to avail himself of a U non-immigrant visa based on humanitarian & public policy grounds. There was never any attempt on the part of employer and beneficiary to deceive the Immigration Service and they were at all times truthful with [REDACTED] deliberately and without their knowledge and consent, filed fraudulent forms with Immigration on behalf of employer and beneficiary in order to continue [REDACTED]'s criminal scheme. At all times employer and beneficiary had a bona fide job offer, qualified employer and beneficiary who paid for legitimate legal services. At no time did they know [REDACTED] were undertaking criminal activity until it was published in the newspaper in late 2003. At that time irreparable harm had been exacted upon them by [REDACTED]. [REDACTED] subsequently plead [sic] guilty to to [sic] their criminal activity and employer and beneficiary were able to obtain their file which revealed activity and information placed on Immigration forms which was incorrect. As a result, Immigration revoked the prior approved petition. Presently, [REDACTED] beneficiary, who retained the legal services of [REDACTED] [sic], filed, along with 60 others, a grievance with

the Virginia State Bar to intercede on his behalf. The case is now before the Circuit Court of Fairfax County being handled by Attorney [REDACTED] as a receiver for the court, Case # [REDACTED]. A Freedom of Information Request has been filed (copy attached) with Immigration to find out if there were other illegal acts done by [REDACTED]. Upon receipt, additional documentation will be forthcoming within 30 days after receipt. It is requested that Immigration approve the petitions filed and accord the benefits sought or reconsider its revocation and give Int'l Science & [REDACTED] the opportunity to refile without penalty.

On appeal, the beneficiary's notarized affidavit contends that the beneficiary found the prior attorney, [REDACTED], through a newspaper advertisement. The beneficiary informed his employer that [REDACTED] would help him get permanent residence through his employment with the petitioner. The beneficiary reports that he paid [REDACTED] a total of \$6,000 in checks and additional amounts in cash; however, he has no receipts to corroborate the cash payments. The beneficiary was given documents to sign, and claims to have corrected attorney [REDACTED] regarding the mistake made on the day his employment began with the petitioner (February 2000 instead June). The beneficiary states that he was instructed to provide an experience letter from his prior employer in Korea, but was never told that he needed his prior salary included. The beneficiary claims that at "no time did I attempt to commit any acts which were not true and lawful. . . I am a victim of an immigration scam and was taken advantage of by a person with superior knowledge than me. At all time(s) there was a bona fide job offer, a bona fide employer, bona fide experience and references. There was never an attempt to deceive or mislead the Immigration on the part of me or my employer."

On appeal, the petitioner states:

The person [REDACTED] or entity (International Science and Engineering Corp.) named as the petitioner on Form I-140 intended, and stills intends, to employ the beneficiary (Nam Il Cho) named on Form I-140 and /or ETA-750 filed with the United States Government.

The petitioner [REDACTED] retained [REDACTED] (through the beneficiary, Nam Il Cho) to file a Form I-140 and/or ETA-750 on behalf of the beneficiary.

The person whose signature appears on Form I-140 and/or ETA-750 [REDACTED] is the president and owner of International Science and Engineering Corp.

The signatures appearing on the forms submitted to the United States Government are NOT genuine. I have no way of knowing why the forms with my genuine signatures were not used, other than what the beneficiary was told by a person then working for [REDACTED]. Specifically, I was told by [REDACTED] who was told by [REDACTED] that to speedup the petition process, [REDACTED] & [REDACTED] was exercising its power of attorney to sign the documents on my behalf. I did not know of this at the time of the application. I learned of this after receiving the Service's letter dated 12 May 2004, which prompted me to ask questions.

There is NO familiar relationship between any of the officers of the petitioning entity (International Science and Engineering Corp.) and the beneficiary [REDACTED].

The regulation at 20 C.F.R. § 656.30(d) provides that CIS, the Department of State or a court may invalidate a labor certification upon a determination of fraud or willful misrepresentation of a material fact involving the application for labor certification. In the instant case, it is a known fact that the petitioner's prior attorney,

██████████ pled guilty to conspiracy to commit immigration fraud. In addition, since the petitioner admitted, under oath, that the signatures on the Forms I-140 and ETA 750 were not his, and, therefore, not genuine, CIS can only assume that those forms, submitted to the Department of Labor (DOL) and to CIS, were fraudulent. Therefore, the director correctly invalidated the Form ETA 750 for fraud.

Counsel claims that the petitioner and the beneficiary were “vulnerable victims among a class of persons who shared particular susceptibility and were scammed by ██████████ who had higher knowledge than they and who misled, deceived and totally took advantage of them.” Counsel cites *U.S. v. Mendoza*, 262 F.3d at 957, in support of his contention. Counsel’s reliance upon *Mendoza* is misplaced. *Mendoza* involves sentencing guidelines for criminals, who also happened to be immigrants, and sets forth no precedent for immigrants claiming they were victims of fraudulent conduct by their attorney representatives. *Mendoza*’s facts are quite distinguishable from the case at hand since neither the petitioner nor the beneficiary are claiming to be criminals seeking a reduction of a punitive sentence for their criminal conduct.

Even if *U.S. v. Mendoza* were not distinguishable, the AAO does not agree with counsel. First, counsel does not explain how the petitioner and beneficiary meet the vulnerable victim classification. *U.S. v. Mendoza* defines vulnerable victim as a person unusually vulnerable to the offense because of “age, or physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.”<sup>2</sup> It explains that the subsection at issue applies to offenses involving an unusually vulnerable victim in which the defendant knows or should have known of the victim’s unusual vulnerability. . . .<sup>3</sup> While both the petitioner and beneficiary may have been unfamiliar with United States immigration law, it is not reasonable to suppose that either one would be a vulnerable victim as the beneficiary is only thirty six years of age, and has an education above high school level (including speaking and reading English). The petitioner has owned and operated a business since 1988 with revenues ranging from over \$8,000,000 to over \$26,000,000. It is, therefore, unlikely that someone who has dealt with attorneys before and has successfully operated a business of such magnitude would not be aware or willing to question certain dubious acts of his former attorney. In fact, for the petitioner’s prior attorney to use a power of attorney, the petitioner would have needed to sign a form giving the attorney the power of attorney. In the instant case, it appears that the petitioner and beneficiary are not vulnerable victims, but instead contributed to the fraudulent conduct through their own negligence or indifference.

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 him 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.

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<sup>2</sup> U.S.S.G. § 3A1.1, n.2

<sup>3</sup> *Id.*

*Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988). The instant case does not meet the requirements of *Lozada* with regard to the petitioner's and beneficiary's claim of ineffective assistance of counsel.

In his decision, the director pointed out several discrepancies that cast doubt on the evidence submitted. The director listed those discrepancies as follows:

First, the ETA-750 Part B submitted with the initial petition indicates that the beneficiary was continuously unemployed from November 1991 at least through the time the form was prepared on April 21, 2001. The beneficiary submitted a notarized statement asserting that the information on the ETA-750 Part B was correct as of the date of filing on April 21, 2001. However, the beneficiary also submitted a newly completed Part B which indicates that he began employment with the petitioner in February 2000, fourteen months prior to the filing of the original Part B. The petitioner's statement also claims that the beneficiary began employment February 1, 2000. There is no explanation as to why the original Part B did not list this employment, and no explanation as to why the beneficiary would swear under penalty of perjury that the original Part B was correct if it showed him being unemployed between February 2000 through April 2001. As an additional discrepancy, the beneficiary has filed a Form I-485, Application to Register Permanent Resident or Adjust Status. This was accompanied by a Form G-325A, Biographic Information, completed and signed by the beneficiary on January 16, 2003. At that time, the beneficiary claimed to have started his employment with the petitioner in June 2000, not February 2000. There is no explanation for any of these discrepancies, and no clear evidence as to the truth regarding the beneficiary's employment history.

Further, the petitioner states that in February of 2002, the beneficiary was promoted from the position of Sales Manager Trainee to Regional Sales Manager. However, the W-2 wage statements provided contradict this claim. Specifically, the petitioner submitted W-2 forms for 2001, 2002, and 2003. The beneficiary's wages decreased with every year, from \$81,113.58 in 2001 to \$65,342.76 in 2002 to \$53,087.35 in 2003. It is unclear why the beneficiary's wages would go down if he has been promoted to a higher position. It is also noted that all of these wages are less than the proffered wage for the offered position of Sales Manager, which calls into question the petitioner's intent to abide by the wage listed on the ETA-750.

On appeal, the beneficiary submits an affidavit, dated September 22, 2004, in an attempt to explain some of the discrepancies. The beneficiary claims that he began working for the petitioner since February 2000 instead of June 2000, and that he informed his prior attorney of that fact at a meeting to sign some forms. The beneficiary also states that his salary decreased due to increased competition and a decline in market share. However, the beneficiary asserts that "this did not mean that once I received my permanent residence, my employer did not intend to pay me the wage offered on the labor forms. I fully expected to be paid the wage offered." The beneficiary has not, however, submitted any evidence that corroborates his claims. In order to clarify the discrepancies, the beneficiary must submit verifiable evidence that supports the entire record. He has not done so. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C) states in pertinent part:

*Misrepresentation.* – (i) *In general.* – Any alien who, by fraud or willfully misrepresenting a material fact seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

*Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: “Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.” *Matter of Ho*, 19 I&N Dec. at 591-592 also 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 AAO finds that the petitioner has not established that its Forms ETA 750 and I-140 were not fraudulently prepared and submitted to CIS by the petitioner’s prior attorney as the petitioner confirmed that the signatures on the Forms I-140 and ETA 750 were not his, and, therefore, not genuine. In addition, there are several inconsistencies in fact or misrepresentations throughout the record of proceeding concerning the beneficiary’s work history. The AAO also finds that the director demonstrated good and sufficient cause in revoking the approval of the petition as the petitioner and beneficiary have not submitted to the record of proceeding verifiable evidence that would clarify the discrepancies in this case. Furthermore, the AAO finds that the labor certification was obtained by fraud. Therefore, the labor certification was correctly invalidated on that basis, which basis has not been overcome on appeal.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal do not overcome the decision of the director.

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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.