

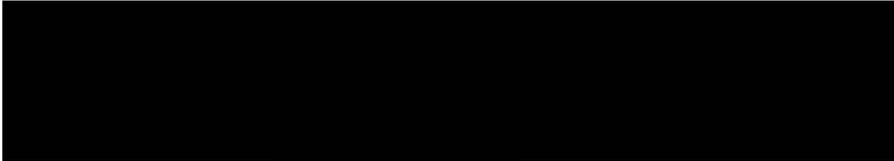


U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

B6



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: APR 23 2007  
EAC 02 244 52590

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

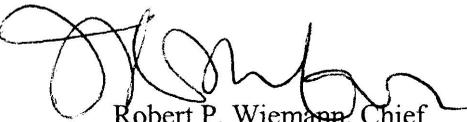
PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 203(b)(3)  
of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was a law firm. It seeks to employ the beneficiary permanently in the United States as a secretary. 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 owners and representatives had pled guilty to criminal counts of money laundering and conspiracy to commit immigration fraud, that the position offered to the beneficiary was not presently valid, and that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition and invalidated the labor certification 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 August 26, 2004 denial, the issues in this case are 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, whether the position offered to the beneficiary is presently valid, and whether the petitioner has established its continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 27, 2001. The proffered wage as stated on the Form ETA 750 is \$16.00 per hour or \$33,280 annually.

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>.

Relevant evidence submitted on appeal includes counsel's brief; copies of the petitioner's previously submitted 2001 and 2002 Forms 1040, U.S. Individual Income Tax Returns, including Schedule C, Profit or Loss From Business; a copy of a CIS Interoffice Memorandum, dated May 4, 2004, titled *Determination of Ability to Pay under 8 C.F.R. § 204.5(g)(2)*, from William R. Yates, Associate Director for Operations; a copy of an affidavit, dated September 13, 2004, from [REDACTED] Receiver appointed pursuant to §54.1-3900.01 Virginia Code; a copy of an affidavit, dated September 20, 2004, from the beneficiary; and copies of the initial and updated Part B of Form ETA 750, Identification Page of Passport, EAD Card, and Driver's License for the beneficiary. Other Relevant evidence includes an affidavit, dated June 30, 2004, from [REDACTED], partner of the petitioner; a copy of an affidavit, dated June 28, 2004, from the beneficiary; a copy of an affidavit, dated June 28, 2004, from [REDACTED]; a copy of the Order for the Appointment of a Receiver from the Circuit Court of Fairfax County, Virginia, dated September 17, 2003; copies of pay stubs issued by the petitioner for the beneficiary for the pay periods of April 11, 2003, April 25, 2003, May 9, 2003, May 23, 2003, June 6, 2003, August 15, 2003, October 31, 2003, and November 14, 2003; copies of the petitioner's 2002 and first three quarter of 2003 Forms 941, Employer's Quarterly Federal Tax Returns; a copy of the beneficiary's 2003 Form W-2, Wage and Tax Statement; and a copy of the beneficiary's 2003 Form 1040. The record does not contain any other evidence relevant to the petitioner's filing of the Forms ETA 750 and I-140, to the validity of the job offered, or to the petitioner's continuing ability to pay the proffered wage beginning on the priority date of the visa petition.

The petitioner's 2001 and 2002 Forms 1040 reflect adjusted gross incomes of \$85,365 and \$125,169, respectively.

The petitioner's 2001 Schedule C reflects gross receipts of \$529,885, gross profit of \$529,885, wages paid of \$109,444, and net profit of \$90,404.

The petitioner's 2002 Schedule C reflects gross receipts of \$557,144, gross profit of \$557,144, wages paid of \$56,570, and net profit of \$130,389.

The copies of pay stubs issued by the petitioner for the beneficiary for the pay periods of April 11, 2003, April 25, 2003, May 9, 2003, May 23, 2003, June 6, 2003, August 15, 2003, October 31, 2003, and November 14, 2003 reflect wages paid of \$1,288.50, \$1,288.50, \$1,288.50, \$1,288.50, \$1,288.50, \$1,288.50, \$1,403, and \$545, respectively.

The petitioner's 2002 and first three quarter of 2003 Forms 941 show that the beneficiary was not employed by the petitioner until the second half of 2003, and her Form W-2 reflects wages earned in 2003 of \$7,731.

The affidavit, dated June 30, 2004, from [REDACTED] maintains that he was a partner with the petitioner (no length of time given), that the firm consisted of three full-time attorneys, three of-counsel attorneys, and three

---

<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).

office staff, that there is no familial or other personal relationship between the beneficiary and any member or officer of the firm, and that in March 2003,<sup>2</sup> the beneficiary began working as a secretary for the petitioner.

The affidavit of [REDACTED], dated June 28, 2004 states that he is an attorney with the law firm of [REDACTED], that he is the court appointed receiver of the petitioner, and that he affirms that the beneficiary worked as a secretary for the petitioner.

The Order for the Appointment of a Receiver, dated September 17, 2003, ordered:

[REDACTED], a discreet and competent attorney-at-law, shall be, and, hereby is, appointed to receive all client files, and all funds of property belonging to or subject to the control of the Respondents in their law practice, such appointments to be effective immediately and to continue until further Order of the Court. . . .

The above named Receiver shall take the following actions:

- a) Prepare and file with the Virginia State Bar an inventory of all case files under the control of the Respondent;
- b) Notify all the Respondent's clients of the appointment of the Receiver and take whatever action is necessary to protect the interests of the clients until such time as the clients have had an opportunity to obtain substitute counsel;
- c) Identify all bank accounts, trust or otherwise, over which the Respondent had signatory authority in his law practice and take control of the trust and operating accounts;
- d) Attempt to collect any accounts receivable related to the Respondent's law practice;
- e) Terminate the Respondent's law practice;
- f) Reduce to cash all of the assets of the Respondent's law practice;
- g) Determine the nature and amount of all claims of creditors, including clients, of the Respondent's law practice; and
- h) Prepare and file with the court a report of such assets and claims proposing a distribution to such creditors.

It is further ordered that the Receiver is bound by the attorney-client privilege with respect to the records of individual clients and shall not disclose any information contained in the files so inventoried without the consent of the client to whom the file relates, except as required to carry out an order of the court.

It is further ordered that the Receiver shall file a written preliminary report of his actions on or before November 7, 2003, and appear at the Fairfax Circuit Court on November 14, 2003, at 11:30 a.m.

It is further ordered that the Receiver appointed by this Court shall enter, inspect, copy, and take possession of as necessary, all client's records, paper, files, computer entries or any other data located at Respondents' law office at . . .

---

<sup>2</sup> It is noted that the petitioner's Forms 941 do not show the beneficiary beginning work with the petitioner until the second half of 2003.

It is further ordered that the Clerk cause the appropriate Sheriff to serve a copy of the Order on the Respondents and Co-Respondents noticed herein, at the addresses listed above, and that the Clerk mail a copy to [REDACTED], the receiver appointed herein, at . . .

The affidavit from [REDACTED], dated September 13, 2004, states that "as the Receiver of the said [REDACTED] also known as [REDACTED], I am the successor in interest to the said persons and entity, individually and collectively."

The affidavit from the beneficiary, dated September 20, 2004, states:

I affirm that I did not sign Part B of the April 10, 2001 Form ETA 750 submitted on my behalf by [REDACTED] for the position of Secretary. Rather, the signature on Part B of the April 10, 2001 Form ETA 750 is that of my prior employer, [REDACTED], President of Four Season Consulting Real Estate Brokerage Co., Ltd., in Seoul, Korea. I had him sign this form based upon my understanding that he was required to do so in order to confirm my prior employment as a Secretary with his company as stated at Item 15(d) just above the signature line on Part B of the April 10, 2001 Form ETA 750.

I further affirm that the signature on the identification page of my passport is my true Korean language signature and that my signature on the June 28, 2004 Part B of Form ETA 750 is my true English language signature.

I further affirm the bona fides of the Forms ETA 750 and I-140 as a Secretary with [REDACTED] as evidenced by my actual employment with this petitioning employer and its successor-in-interest.

On appeal, counsel states:

The NSC erroneously denied petitioner's Form I-140 and erroneously invalidated the underlying Form ETA-750, pursuant to 20 C.F.R. § 656.30(d). Petitioner submitted more than ample evidence of the bona fides of the job offer to the beneficiary, including notarized affidavits from the firm's principal attorney, [REDACTED] the beneficiary, [REDACTED] as well as by [REDACTED] the Court-appointed Receiver and successor-in-interest of the petitioner, [REDACTED]. The petitioner submitted pay records, evidencing that the beneficiary was actually employed as a secretary at its firm. Petitioner also submitted ample evidence of its ability to pay the proffered wage, including Schedule C of [REDACTED] 2001 and 2002 federal income tax return, evidencing more than ample income to pay the beneficiary's annualized salary of \$33,280. Actual payment of less than the proffered wage is not dispositive, as long as the petitioner demonstrates its ability to pay the wage. Petitioner submits herewith an affidavit from [REDACTED] the Court-appointed Receiver of [REDACTED], affirming that he is the successor-in-interest of the firm. The validity of the approved Form ETA-750 and Form I-140 continue through the successor-in-interest once the predecessor firm demonstrates of [sic] has the financial resources at the time of filing the petition to pay the beneficiary. *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). Petitioner has rebutted the NSC's conclusion that the Forms ETA 750 and I-140 are fraudulent. The NSC bears a heavy burden of "clear, unequivocal and convincing" evidence that the petitions are fraudulent, and it has not met this burden. Any inconsistencies in the Form ETA 750 and the signatures of the

beneficiary are explained sufficiently in the new evidence submitted herewith, and are not sufficiently material to result in a finding of fraud. The petitioner actually employed the beneficiary as a secretary in its firm, and as such the job offer is bona fide, and the Form I-140 denial must be overturned.

It is noted that at the outset counsel used the wrong burden of proof standard. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Nothing in the record of proceeding contains any type of notice from the director or any other CIS representative that would have misled counsel into his assertion that CIS requires “convincing” or “persuading” beyond what legal authority guides the agency in statute, regulatory interpretation, precedent case law and administrative law and procedure. Generally, when something is to be established by a preponderance of evidence, it is sufficient that the proof establish that it is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The evidence in each case is judged by its probative value and credibility. Each piece of relevant evidence is examined and determinations are made as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. Truth is to be determined not by the quantity of evidence alone, but by its quality. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner’s ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, CIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary’s proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner’s ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner’s ability to pay the proffered wage. In the instant case, on the Form ETA 750B, signed by the beneficiary on April 20, 2001, the beneficiary did not claim the petitioner as a past or present employer. On a new ETA750B, signed by the beneficiary on April 10, 2004 in response to a request from the director, the beneficiary claimed to have been employed by the petitioner from March 2003 through August 2003. Counsel has provided copies of the petitioner’s 2002 and first three quarters of 2003 Forms 941 and a copy of the beneficiary’s 2003 Form W-2 issued by the petitioner showing that the petitioner employed the beneficiary in part of 2003.<sup>3</sup> The petitioner is obligated to establish that it had sufficient funds to pay the difference between the proffered wage of \$33,280 and the actual wages paid of \$7,731 to the beneficiary in 2003. That difference is \$25,549 for 2003.

---

<sup>3</sup> It is noted that while the beneficiary claims to have been employed by the petitioner from March 2003 through August 2003, the petitioner’s Forms 941 reveal that the petitioner actually did not employ the beneficiary until the last half of 2003. The beneficiary earned \$7,731 in 2003.

The petitioner provided copies of its 2001 and 2002 Forms 1040 for Steven Yee as proof of its ability to pay the proffered wage of \$33,280. However, in the instant case, the petitioner is structured as a PLLC, a professional limited liability company organized for the purpose of providing professional services. Usually, professions where the state requires a license to provide services, such as a doctor, chiropractor, lawyer, accountant, architect, or engineer, require the formation of a professional corporations or PLLC. A limited liability company (LLC) is an entity formed under state law by filing articles of organization. An LLC may be classified for federal income tax purposes as if it were a sole proprietorship, a partnership or a corporation. If the LLC has only one owner, it will automatically be treated as a sole proprietorship unless an election is made to be treated as a corporation. If the LLC has two or more owners, it will automatically be considered to be a partnership unless an election is made to be treated as a corporation. If the LLC does not elect its classification, a default classification of partnership (multi-member LLC) or disregarded entity (taxed as if it were a sole proprietorship) will apply. *See* 26 C.F.R. § 301.7701-3. The election referred to is made using IRS Form 8832, Entity Classification Election. In the instant case, the petitioner, a PLLC formed under Virginia law, is considered to be a partnership for federal tax purposes.<sup>4</sup>

Under Virginia Code § 13.1-1102. *Definitions.*

“Professional limited liability company” means a limited liability company whose articles of organization set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers or land surveyors, or using a title other than that of certified landscape architects or certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its members only persons or professional business entities that themselves are duly licensed or otherwise legally authorized to render the same professional service as the professional limited liability company and of which members at least one is duly licensed or otherwise legally authorized to render such professional service within the Commonwealth; or . . .

“Professional services” means any type of personal service to the public that requires as a condition precedent to the rendering of that service or the use of that title the obtaining of a license, certification, or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, . . . attorneys at law, . . .

In the current case, although structured and taxed as a partnership, its owners enjoy limited liability similar to owners of a corporation. A LLC, like a corporation is a legal entity separate and distinct from its owners. The debts and obligations of the company generally are not the debts and obligations of the owners or anyone else.<sup>5</sup> An investor’s liability is limited to his or her initial investment. As the owners and others only are liable to his or her initial investment, the total income and assets of the owners and others and their ability, if they wished so, to pay the company’s debts and obligations, cannot be utilized to demonstrate the petitioner’s ability to pay the proffered wage. The petitioner must show the ability to pay the proffered wage out of its own funds. Therefore, the personal income tax returns for only one of the owner’s/partner’s is not sufficient evidence of the petitioner’s ability to pay the proffered wage of \$33,280. The petitioner’s Forms 1065, U.S. Partnership Return of Income,

---

<sup>4</sup> *See* affidavit of \_\_\_\_\_ dated June 30, 2004, claiming to be a partner in the petitioner.

<sup>5</sup> Although this general rule might be amenable to alteration pursuant to contract or otherwise, no evidence appears in the record to indicate that the general rule is inapplicable in the instant case.

would be needed to determine the petitioner's ability to pay the proffered wage. The petitioner has not established its continuing ability to pay the proffered wage as of the priority date of the visa petition.

It is noted that the affidavit, dated September 13, 2004, from [REDACTED] states, "As the Receiver<sup>6</sup> of the said [REDACTED] also known as L [REDACTED] I am the successor in interest to the said persons and entity, individually and collectively." However, on March 17, the Agency (now CIS) entered into an agreement with the Department of Labor (DOL) that CIS will make determinations regarding successor in interest on I-140s when a labor certification has already been issued. A successor in interest occurs when the prospective employer of an alien (and the entity that filed the certified labor certification application form) has undergone a change in ownership, such as an acquisition or merger, or some other form of change such as corporate restructuring or merger with another business entity, and the new or merged, or restructured entity assumes substantially all the rights, duties, obligations, and assets of the original entity. The petitioner must submit evidence of the change in ownership, the restructuring of the organization, or merger, evidence that the predecessor company had the ability to pay the wage at the time the application for labor certification was filed, and evidence that the successor company continues to have that ability. The record contains no evidence that the [REDACTED] qualifies as a successor-in-interest to the petitioner. The fact that [REDACTED] is the court appointed Receiver of the petitioner does not establish that he is a successor-in-interest to the petitioner. In fact, the court Order for the Appointment of a Receiver specifically states that one of the duties of the Receiver is to terminate the Respondent's law practice. There is no evidence that [REDACTED] bought the petitioner or that he assumed all the rights, duties, obligations, and assets of the petitioner with the exception of the rights and duties assigned to him by the court. Moreover, as a successor in interest [REDACTED] would be required to establish that he had the continuing financial ability to have paid the certified wage from the purchase date. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). That evidence was not provided. The AAO does not find that [REDACTED] is a successor in interest to the petitioner for immigration purposes.

The second issue in this case is whether or not the petitioner's Forms ETA 750 and I-140 were fraudulently prepared and submitted to CIS by the petitioner.

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 two of the petitioner's partners, [REDACTED] and [REDACTED], pled guilty to conspiracy to commit immigration fraud.<sup>7</sup>

<sup>6</sup> According to *Black's Law Dictionary* (8th ed. 2004) accessed on April 19, 2007 at website <http://web2.westlaw.com>, a "receiver" is a disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims (for example, because it belongs to a bankrupt or is otherwise being litigated). Cf. LIQUIDATOR. [Cases: Corporations Sec. 552, 621 (.5); Receivers Sec. 1, 81. C.J.S. *Corporations* § 756; *Receivers* §§ 1-3, 139-146.] A "judgment receiver" is a receiver who collects or diverts funds from a judgment debtor to the creditor. A "judgment receiver" is usually appointed when it is difficult to enforce a judgment in any other manner. – Also termed "*receiver in aid of execution.*"

<sup>7</sup> It is noted that the beneficiary claims that she had her prior employer sign the Form ETA 750, Part B because of her "misunderstanding that he was required to do so in order to confirm my prior employment as a Secretary with his company as stated at Item 15(d) just above the signature line on Part B of the April 10, 2001 Form ETA 750." However, the beneficiary's statement is not acceptable or believable as there is no place on Part A or Part B of the ETA 750 that states that the prior employer must sign the Form. In addition,

An “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 for under this Act is inadmissible.” See section 212(a)(6)(C) of the Act. The beneficiary concedes that her signature is not on Form ETA 750 Part B and states that her former employer signed that form instead. Thus, we are asked to believe that the petitioner, two immigration lawyers who pled guilty to conspiracy to commit immigration fraud, together with the beneficiary, the secretary they were hiring to work at their immigration law practice, mistakenly had someone else sign an immigration form that they routinely prepared instead of facilitating a forged signature on the alien labor certification application submitted for immigration benefits to both DOL and CIS.

statement does not address the signature on the Form 750 Part B. Even if he had, because of his guilty plea for conspiracy to commit immigration fraud, his statement lacks credibility. The beneficiary’s statement that she thought her former employer should sign Form ETA 750 Part B also lacks credibility. Item 16 of Form ETA 750B clearly states “Declaration of Alien,” and “Signature of Alien” along with “I declare under penalty of perjury the foregoing is true and correct.”<sup>8</sup> The form clearly elicits a signature from the alien beneficiary not an employer. The beneficiary obtained a visitor visa to the United States in 1994 and was in student status the last time she arrived in 1998, during which, according to her representations on the forged Form ETA 750 Part B, she studied English until 2000 when she began studying Theology until at least 2002.<sup>9</sup> Thus, she has experience with immigration forms and procedures in the United States and should have proficiency with the English language. According to her represented employment experience on the Form ETA 750 Part B with a signature other than her signature and an updated Form 750 Part B with her real signature, she worked as a secretary, routing phone calls to lawyers, for Four Season Consulting Real Estate Brokerage Co., Ltd. in Korea from 1995 to 1998 and commenced employment as a legal secretary in the United States in 2003. Working as a secretary in the United States, particularly in immigration, requires English language skills abilities and some level of sophistication with immigration forms. The record also reflects that she was able to obtain a driver’s license in 2002, which also requires English language skills abilities.

The signing of the Form 750 Part B by someone other than the beneficiary occurred in April 2001. The beneficiary claims in her sworn affidavit dated September 20, 2004, that her former employer in Korea, [REDACTED] of Four Season Consulting Real Estate Brokerage Co., Ltd., signed the Form ETA 750B because she misunderstood he was supposed to confirm her prior employment on that form. However, there is no evidence substantiating that claim.<sup>10</sup> There is no additional sworn statement or documentation from [REDACTED] to verify he signed the form or was requested to sign the Form ETA 750B by the beneficiary to confirm her employment.<sup>11</sup> A separate letter to verify the beneficiary’s employment was provided by [REDACTED] not [REDACTED] of Four Season Consulting Real Estate Brokerage Co., Ltd. in 2001.

---

the partner who signed the Form I-140 and Form ETA 750, [REDACTED], has filed numerous petitions with CIS and would have been aware that the prior employer was not required to sign the Form ETA 750. Furthermore, the fact that the petitioner actually employed the beneficiary starting in the second half of 2003 is not proof that the Forms I-140 and ETA 750 were not fraudulently filed.

<sup>8</sup> The regulation at 20 C.F.R. § 656.21(a)(1) requires the alien’s signature on Form ETA 750 Part B.

<sup>9</sup> The record of proceeding does not contain evidence of the beneficiary’s lawful change of status to F-1 student status or the continuation of lawful status to attend school and study in the United States.

<sup>10</sup> 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)).

<sup>11</sup> An internal CIS translation of the signature interprets it to read “[REDACTED] a,” a typical female name.

The totality of circumstances does not support the beneficiary's assertion about the signature on the Form ETA 750B.<sup>12</sup> To consider that experienced immigration practitioners assisting the beneficiary with completion of immigration forms would not know who the proper party was to sign the Form ETA 750 Part B lacks credibility. The beneficiary herself had experience with immigration in the United States and English language studies that it seems more likely than not that she would at least realize what "Declaration of Alien" and "Signature of Alien" means. The beneficiary is to have very limited involvement in the preparation and processing of the alien labor certification application.<sup>13</sup> The fact that the petitioning immigration practitioners preparing the labor certification application pled guilty to conspiracy to commit immigration fraud contributes to the willfulness of the act of having someone other than the beneficiary sign the Form ETA 750B. The alien's signature on the Form ETA 750B declaring the truthfulness of her representations about her background relating to her qualifications for the proffered position is a material fact to seeking immigration benefits. Therefore, considering the totality of circumstances, the petitioner's submission of the alien labor certification with an improper signature on the Form ETA 750B appears to be a willful misrepresentation of material fact by the petitioner and the beneficiary. Therefore, the director correctly invalidated the Form ETA 750 for fraud.

The remaining issue in this case is whether the position offered to the beneficiary is presently valid. The Code of Virginia states under §13.1-1113.

*Registration certificate required for limited liability company engaged in practice of law.* Before any professional limited liability company may engage in the practice of law in this Commonwealth, it shall first obtain and maintain a registration certificate required for that professional limited liability company by Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1.

The Code of Virginia states under § 54.1-3937.

*Procedure for revocation of certificate of registration of professional law corporations or professional limited liability companies.* A. If the Supreme Court, the Court of Appeals or any circuit court of this Commonwealth observes, or if a complaint, verified by affidavit, is made by any person to a circuit court having jurisdiction where the alleged violation occurred, that any law corporation or professional limited liability company has willfully failed to comply with the applicable statutes governing professional corporations or professional limited liability companies, such court may issue a rule against such law corporation or law professional limited liability company to show cause why its certificate of registration should not be revoked. If the complaint, verified by affidavit, is made by the Bar Counsel or a district committee of the Virginia State Bar, the court shall issue a rule against the law corporation or law professional limited liability company to show cause why its certificate of registration should not be revoked. . . . D. If, after notice and opportunity to be heard, the law corporation or law professional limited liability company is found guilty by the court of a willful failure to comply with applicable ethical standards in the Virginia Code of Professional Responsibility or the applicable

---

<sup>12</sup> 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).

<sup>13</sup> *See* 20 C.F.R. § 656.20(a)(3).

statutes governing professional corporations or professional limited liability companies, the court may . . . (iii) suspend or revoke the certificate of registration.

A review of the Virginia State Corporation Commission website <http://s0302.vita.virginia.gov>, accessed on April 11, 2007, shows that the LLC status of [REDACTED] was cancelled as of December 31, 2004. Therefore, as the petitioner is no longer in existence and since [REDACTED] does not qualify as a successor in interest for immigration purposes, the position is determined to be invalid.

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