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**U.S. Citizenship  
and Immigration  
Services**

**B6**

**AUG 09 2007**

**Notice of Derogatory Information**

File:

LIN-03-254-50301

Beneficiary:

Dear

On August 22, 2003, you filed an Immigrant Petition for Alien (Form I-140), seeking the beneficiary's services as a Mechanical Engineer ("CAD Application Engineer") pursuant to section 203(b)(3) of the Immigration and Nationality Act (Act), 8 U.S.C. §1153(b)(3). You signed Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are true and correct." The Nebraska Service Center director denied the petition and you have appealed this decision to the Administrative Appeals Office (AAO).

On June 5, 2007, the AAO issued a Notice of Derogatory Information related to the beneficiary's educational background to which the petitioner responded. Following the petitioner's response, the AAO had an independent educational evaluation completed. This Notice is to advise the petitioner of said results, and allow the petitioner an opportunity to address the specific findings of the evaluation.

The evaluation was completed and prepared by the American Association of Collegiate Registrars and Admissions Officers ("AACRAO") on July 31, 2007, a copy of which is enclosed. Specifically, the evaluation provides:

The applicant completed the Secondary School Certificate (SSC) which represents 10 years of primary/secondary schooling and would not permit holders of the SSC to be admitted to university level study in India.

Then in 1990 the applicant was awarded the Diploma in Mechanical Engineering from the State Board of Technical Education and Training, AP Hyderabad (India). Admission to the diploma programs requires only 10<sup>th</sup> grade education. The diploma represents one year of undergraduate study in engineering technology course work completed during the third and final year of study in the diploma program. (Holders of the Diploma in Mechanical Engineering would generally be placed in the second year of the four year Bachelor of Engineering – Mechanical Engineering program in recognized Indian universities.)

The applicant also passed Section A examinations through the Institution of Engineers (India); however, Section B was not passed. The Institution of Engineers (India) offers professional training and examinations in the various branches of engineering technology. Successful passing of both sections of the examinations and achievement of Associateship status can give access in India to master's degrees studies in engineering technology, according to the placement recommendations in *India – Special Report*. Further in the U.S. context, holders of this credential “may be considered for graduate admission in a closely related field if the specialized nature of the program followed is appropriate preparation.”

Had the applicant passed both sections of the examinations and also elevated to “Associateship” member status, the IEI Associateship would be regarded as comparable with a bachelor's degree in engineering in India for employment purposes. As the applicant did not pass Section B of the examinations, no academic credit could be recommended for passing only Section A of the examinations.

Additionally, the applicant completed a one-year Post-Diploma course in Tool Design through the Central Institute of Tool Design (Ministry of Industry, India). Such work represents a professional qualification bearing no academic credit.

In summary, the applicant's educational qualifications compare to one year of engineering technology studies at the undergraduate level in the U.S.

Willful misrepresentation of a material fact in these proceedings may render the beneficiary inadmissible to the United States, unless the petitioner is able to overcome the findings of the AACRAO educational evaluation. See INA Section 212(a)(6)(c), [8 U.S.C. 1182], regarding misrepresentation, “(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible.”

A material issue in this case is whether the beneficiary is qualified to perform the duties of the proffered position through meeting the education requirements of the position offered. The job offered requires a four-year bachelor's degree. As the beneficiary had only a three-year technical degree (“diploma”) obtained following completion of only ten years of primary and secondary school, which is equivalent to one year of U.S. undergraduate studies, the beneficiary in listing on Form ETA 750B that he had a four-year Bachelor's degree,<sup>1</sup> and signing that form under penalty of perjury, constitutes an act of willful misrepresentation. The listing of a four-year Bachelor's degree misrepresented the beneficiary's actual qualifications in a willful effort to procure a benefit ultimately leading to permanent residence under the Act. See *Kungys v. U.S.*, 485 U.S. 759 (1988), (“materiality is a legal question of whether “misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a natural tendency to affect the official decision.”) Here, the concealment of the beneficiary's true equivalence in education is a willful misrepresentation of the U.S. educational equivalency of the beneficiary's qualifications that adversely impacted DOL's adjudication of the ETA 750 and CIS's immigrant petition analysis.

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<sup>1</sup> The evaluation provides that the beneficiary studied from 1986 to 1989, and that the diploma was awarded on February 28, 1990. The beneficiary provided a statement that he took his third year exams in January and February 1990.

Furthermore, a finding of misrepresentation may lead to invalidation of the Form ETA 750. *See* 20 C.F.R. § 656.31(d) regarding labor certification applications involving fraud or willful misrepresentation:

Finding of fraud or willful misrepresentation. If as referenced in Sec. 656.30(d), a court, the DHS or the Department of State determines there was fraud or willful misrepresentation involving a labor certification application, the application will be considered to be invalidated, processing is terminated, a notice of the termination and the reason therefore is sent by the Certifying Officer to the employer, attorney/agent as appropriate.

Further, doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Based in part upon this information, the AAO intends to dismiss your appeal, invalidate the labor certification, and enter a determination of willful misrepresentation. Pursuant to 8 C.F.R. § 103.2(b)(16)(i), we hereby notify you of this derogatory information and provide you with an opportunity to respond before we render our final decision.

The regulation at 8 C.F.R. § 103.2(b)(16)(i) does not specify the amount of time afforded to an applicant or petitioner to respond to derogatory evidence. We consider thirty (30) days to be ample time for this purpose. Therefore, you are hereby afforded 30 days from the date of this letter in which to respond to this notice. If you choose to respond, please submit your response to the address shown on the first page of this letter.



Robert P. Wiemann, Chief  
Administrative Appeals Office

cc:

