

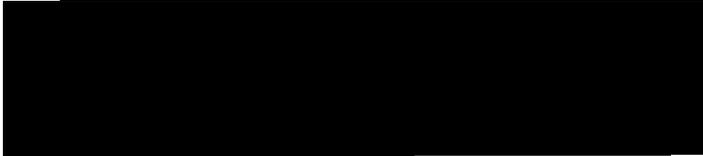
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 25 2007
LIN 02 022 54835

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

PETITION: Immigrant 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 preference visa petition was initially approved by the Director, Nebraska Service Center. Upon further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. The director served the petitioner with notice of intent to revoke the approval of the preference visa petition. The director subsequently revoked approval of the petition. The Administrative Appeals Office (AAO) rejected the petitioner's appeal as untimely. The director subsequently reopened the case on his own motion. Upon receipt of information from an overseas investigation and the petitioner's response, the director issued an intent to deny the petition. The director determined that the petitioner's response failed to establish that the beneficiary was eligible for the benefit sought and denied the petition. The matter is now before the AAO on appeal. The case will be remanded to the director for further investigation and entry of a new decision.

The petitioner is an automotive mechanics firm. It seeks to employ the beneficiary permanently in the United States as an automotive mechanic assistant. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

The record indicates that the Immigrant Petition for Alien Worker (I-140) was filed on October 22, 2001. It was initially approved on December 14, 2001. Upon subsequent review, the director concluded that the I-140 was approved in error and issued a notice of intent to revoke the petition's approval on August 26, 2003. The director questioned that the beneficiary's educational credentials were genuine and that the petitioner had the continuing ability to pay the proffered wage as set forth on the ETA 750. The petitioner was afforded 45 days to offer such evidence or argument in opposition to the proposed revocation. The petition's approval was subsequently revoked on October 28, 2003, pursuant to section 205 of the Act, 8 U.S.C. § 1155.

The petitioner filed an untimely appeal from the revocation. On January 19, 2005, the AAO rejected the appeal.¹

On his own motion to reopen, the director reopened the case on September 15, 2005 and requested additional information from the petitioner relevant to its ability to pay the proffered wage and information relating to the existence of the educational institution that the beneficiary claimed to have attended.

Following the petitioner's response and the result of an investigation conducted abroad, the director determined that the existence of the educational institution was verified, but based on the findings of the overseas investigation, the beneficiary's documents could not be found to be authentic. The director issued a notice of intent to deny on May 16, 2006. The petitioner was afforded thirty days to provide a written rebuttal to the adverse information. Following receipt of the petitioner's response, the director denied the petition on September 7, 2006, concluding that the documents submitted in support of the beneficiary's attendance at an educational institution in Libya appeared to be fraudulent. The denial was based on the petitioner's failure to demonstrate that the beneficiary had obtained two years of training as required by the ETA 750A.

Section 203(b)(3)(A)(i) of 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

¹ The regulation at 8 C.F.R. § 205.2(d) provides that an affected party must file the complete appeal within 15 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 18 days. See 8 C.F.R. § 103.5a(b).

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.

The regulation at 8 C.F.R. § 204.5(l)(3) further provides:

(ii) *Other documentation*—

(A) **General.** Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) **Skilled workers.** If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The regulation at 8 C.F.R. § 204.5(g)(2) also 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 that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The petitioner must also establish that it has had a continuing financial ability to pay the proffered wage beginning at the priority date and continuing until the present. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 16, 2001.² The proffered wage is stated as \$12.00 per hour or \$24,960 per year.

² If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State (DOS) to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

The ETA 750B, signed by the beneficiary on April 10, 2001, does not indicate that he has worked for the petitioner.

Part 5 of the petition, filed on October 27, 2001, indicates that the petitioner was established October 7, 1998, has a gross annual income of \$144,912, a net annual income of \$10,451, and currently employs two workers.

In reviewing the requirements of a labor certification, Citizenship and Immigration Services (CIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). In this matter, item 14 of the ETA 750A describes the education, training and experience that an applicant for the certified position must have. It states that two years of training in auto mechanics and two years of experience as an automotive mechanic assistant is required for the certified job.

In support of the beneficiary's qualifying two years of training, the petitioner provided a copy of a "Certificate of Graduation" with a corresponding translation, issued by "The Higher Industrial Technology Institute" of Tripoli, Libya. The certificate's date is March 27, 1994. It states that the beneficiary, [REDACTED] has "completed his study in the field of his specialty in Cars Mechanics Engineering and he has obtained the Higher Diploma of the Higher Industrial Technology Institute during Fall Semester of the academic year -1992." It is noted that the last sentence beginning with the word "Technology" appears in a smaller font that is more difficult to read. The petitioner has also provided copies of English translations of grade transcripts for [REDACTED], student no. [REDACTED] but the originals were not submitted with the petition. **These grade transcripts indicate that the beneficiary attended this school in 1991, 1992 and the spring of 1993. Along with these documents, the petitioner has submitted a credential evaluation report, dated April 5, 2001, from World Education Services (WES). The author of the report is not shown. The credential evaluation indicates that the beneficiary obtained a "Higher Diploma" in 1993 in Automotive Mechanics at the Higher Industrial Technology Institute in Libya that is the U.S. equivalent to an associate's degree.**

In support of its continuing ability to pay the proffered wage of \$24,960 per year, the petitioner initially provided copies of the first two of its Employer's Quarterly Federal Tax Return(s) (Form 941) for 2001 and copies of its bank statements for March 1 through June 29, 2001, and for August 2001.

As noted above, on August 26, 2003, the director issued a notice of intent to revoke the petition. In this notice, the director states that the U.S. Department of State (DOS) has determined "that the Higher Industrial Technology Institute does not appear on the official list of schools in Libya, and indicates that the school does not exist." The director instructed the petitioner to provide evidence that this school is or was an operational facility during the pertinent period, official confirmation that the beneficiary completed the course of study and a description of the beneficiary's course of study, as well as an "original copy of the beneficiary's transcripts and Certificate of Graduation from the Higher Industrial Technology Institute." The director advised the petitioner that the documents must be accompanied by a certified English translation.

The director additionally requested evidence of the petitioner's ability to pay the proffered wage of \$24,960 per year. The director observed that the petitioner's initial evidence of two quarterly tax returns and five bank

statements were insufficient to demonstrate the ability to pay the certified salary. He further stated that the petitioner had another immigrant petition pending (LIN 03 171 51755) and that the petitioner should establish that it has the ability to pay both the certified wages of the two beneficiaries that have been sponsored as of their respective priority dates. He specifically requested additional documentation including copies of the petitioner's 2001 and 2002 income tax returns, copies of the beneficiary's Wage and Tax Statement (W-2) if the petitioner had employed him during 2001 and/or 2002, and copies of bank statements from April 2001 to the present. The petitioner was afforded 45 days to provide this documentation.

The petitioner, through counsel, requested additional time to respond, but relevant to the beneficiary's training at the Higher Industrial Technology Institute in Libya, the petitioner provided an undated letter addressed to counsel from [REDACTED] the assistant director of WES. [REDACTED] refers to the two beneficiaries sponsored by the petitioner and affirms that both completed a Higher Diploma at the Higher Industrial Technology Institute in Libya, reiterating the U.S. equivalency to an associate degree and stating that the Higher Industrial Technology Institutions are colleges of technology located in several Libyan cities. The petitioner further provided a copy of an undated letter in Arabic written by the beneficiary's brother [REDACTED], [REDACTED] states that "he tried to obtain the required documents" consisting of a transcript, graduation identification, proof of existence of the institute, and a letter of "cars mechanical studies" but that the institute required the personal appearance of the concerned individual to obtain these documents.

Pertinent to the petitioner's ability to pay the proffered wage, the petitioner submitted a copy of the beneficiary's 2002 W-2 showing that the petitioner paid \$20,937 in wages to him, copies of two payroll records showing that the petitioner had paid the beneficiary \$17,640 year-to-date as of June 27, 2003, copies of the petitioner's bank statements from March 2001 to August 2003, copies of the first two quarterly tax returns for 2003 (Form 941s), and copies of the petitioner's 2001 and 2002 Form 1120S, U.S. Income Tax Return for an S Corporation. The income tax returns reflect that the petitioner uses a standard calendar year to file its taxes. It reported \$3,594 in ordinary income³ in 2001. Schedule L shows that the petitioner had \$6,366 in current assets and \$924 in current liabilities, resulting in \$5,442 in net current assets.⁴ The 2002 return reflects that the petitioner declared ordinary income of \$6,030. Current assets of \$11,107 and no current liabilities are shown on Schedule L, yielding \$11,107 in net current assets.

³ For ability to pay purposes, CIS treats ordinary income as net income.

⁴ Besides net income, and as an alternative method of reviewing a petitioner's ability to pay a certified wage, CIS will examine a petitioner's net current assets in determining the ability to pay a proffered wage. Net current assets are the difference between the petitioner's current assets and current liabilities and represent a measure of a petitioner's liquidity during a given period. A corporation's year-end current assets and current liabilities are shown on line(s) 1(d) through 6(d) and line(s) 16(d) through 18(d) of Schedule L of its federal tax return. If a corporation's year-end net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets. According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

On October 28, 2003, the director revoked the petition's approval. He determined that the petitioner had not provided the evidence requested consisting of official documentation that the beneficiary had graduated from the Higher Industrial Technology Institute along with official transcripts showing that the beneficiary had completed the claimed course of study. The director observed that the petitioner had provided several English translations of grade transcripts but had not provided official copies of the original documents. Reviewing the letter from the beneficiary's brother, together with the undated correspondence from [REDACTED] of WES credential service, the director concluded that the evidence provided failed to corroborate that the beneficiary had acquired the required training as set forth on the labor certification at the time the priority date was established. The director further concluded that the petitioner had failed to demonstrate that it had the continuing ability to pay the proffered wage as of the priority date and continuing until the present. He observed that the petitioner's 2002 tax return as well as the W-2 showing wages paid to the beneficiary revealed sufficient funds to pay the beneficiary's wage, but left \$2007 to be applied toward an additional beneficiary. The director also determined that neither the bank statements nor the petitioner's 2001 income tax return reflected sufficient net income or payment of wages to the beneficiary to establish the continuing ability to pay the proffered wage.

The petitioner filed an appeal that was deemed to be untimely by the AAO and was rejected. The appeal was submitted with additional evidence consisting of what appeared to be a certificate of graduation with original signatures accompanied by an English translation. The English translation reflects that the certificate was dated November 17, 2003. The signatures appearing on the certificate are not translated. This translation states that the beneficiary "finalized his studies in the field of Mechanical Engineering/Car mechanics, and has obtained the Higher Diploma from the Higher Industrial Technology Institute, during Fall semester for the studios year 1993." The petitioner also provided what appeared to be original grade transcripts that show dates of "11/12/2003" with original signatures as indicated by the English translation, but the signatures are not translated. An additional letter, dated November 17, 2003, is submitted in which the English translation indicates that a general manger [sic] has signed the letter with the official seal of The Higher Industrial Technology Institute. The letter explains the history and kind of training that the Institute offers, however, again, the author's name is not identified by the translation.

Following the AAO's rejection of the petitioner's untimely appeal, the director reopened the case on his own motion. On September 15, 2005, the director advised the petitioner that he had asked the Department of State to review the documents filed with the appeal brief and to review whether The Higher Industrial Technology Institute was operational. The director further requested that the petitioner provide the actual address of the Institute in Tripoli and identify an authorized school official who could verify the beneficiary's education. The director additionally requested that the petitioner provide additional evidence of its continuing ability to pay the proffered wage including complete copies of its 2001-2004 federal income tax returns, copies of all W-2s issued to the beneficiary, as well as any additional evidence such as personnel statements, bank account statements, or audited profit/loss statements that the petitioner may wish to include. The petitioner was afforded thirty days to provide this information, but was subsequently granted additional extensions of time.

In response, the petitioner submitted additional financial information in support of the petitioner's ability to pay the proffered wage of \$29,960, as well as indicating in the (unsigned) transmittal letter from counsel's office, dated December 12, 2005, that "The Higher Industrial Technology Institute is located at Engeela, Janzour in

Tripoli, Libya. There is no street address. The Director, [REDACTED], can be contacted at [REDACTED] from 8:00AM to 2:00PM on Saturday through Thursday to verify [REDACTED] education at the Institute.”

The additional financial data consisted of copies of the federal income tax returns for 2003 and 2004, as well as the first three quarters of the petitioner’s Form 941s for 2005, copies of the beneficiary’s W-2s for 2003 and 2004, copies of the petitioner’s payroll summary for the first nine months of 2005, and copies of additional bank statements ending with the November 30, 2005 statement.

It is noted that the corporate tax returns show that the petitioner reported -\$4,823 in ordinary income in 2003. Schedule L reflects that the petitioner had \$11,433 in current assets and \$7,607 in current liabilities, resulting in \$3,826 in net current assets. The 2004 return reveals that the petitioner reported -\$8,197 in ordinary income in 2004. Current assets of \$6,692 and current liabilities of \$5,729, yielding \$963 in net current assets are reflected on Schedule L.

The beneficiary’s W-2s reflect that he received \$42,820 in wages in 2003 and \$48,450 in 2004. The petitioner’s internal payroll summary for 2005, reflects that the beneficiary’s gross pay for July, August and September 2005 was \$12,350.

On May 16, 2006, the director issued a notice of intent to deny the petition based on his conclusion regarding the veracity of the beneficiary’s claimed training at The Higher Industrial Technology Institute. He stated that an investigation was conducted abroad which verified the existence of the entity but cast doubt on the authenticity of the beneficiary’s documents. The investigation, in which it was concluded that the “documents were likely counterfeit,” was summarized in an electronic mail message enclosed to the petitioner. The e-mail was from the Tripoli consular officer, [REDACTED] who stated that the local investigator from their Regional Security Office made inquiries concerning the certificate presented. “According to his report, the correct name of the institute is the ‘Libyan Higher Industrial Technology Center.’” She continues by stating that the records indicate that the student number of [REDACTED] is registered to another student and relates to a different year of graduation. “Also, in 2003 the official stamp of the Higher Industrial Technology Center bore the name ‘Center’ and not ‘Institute.’ The director concluded that the petitioner’s claimed attendance at the Institute was placed in doubt and advised the petitioner that it had thirty days to provide any rebuttal to this conclusion. Additional time was subsequently granted to the petitioner.

In response to the director’s notice of intent to deny, counsel explains that the beneficiary had been unable to obtain a letter from the Higher Industrial Technology Institute/Center because the school administrator had failed to cooperate despite repeated attempts. Counsel attributes this to possibly tainted connections that the beneficiary may have to an individual who fled the Gaddafi regime. Counsel attaches the beneficiary’s affidavit to her assertions, as well as copies of country condition reports issued yearly by the U.S. State Department. The beneficiary’s affidavit explains at length the repeated personal attempts that his brother [REDACTED] made in driving to the school and meeting with the school administrator, whose name the beneficiary cannot recall, except that it was a common name and not the same individual that ran the school when he claims that he attended. He adds, that according to his brother, this administrator agreed to look into the problem with the student ID number and the seal, but that the school was not conscientious about using or making new seals. The administrator failed to provide any help. The beneficiary then relates his belief that this lack of cooperation may be connected to his

2004 marriage to the niece of an individual who fled Libya and sought protection in the U.S. The beneficiary has filed for asylum in the United States.

The petitioner also provided an affidavit from the beneficiary and from “ [REDACTED] ” a Turkish-American living in Minneapolis. [REDACTED] affirms that he has received excellent car repair service from [REDACTED] and his Uncle [REDACTED] and brother [REDACTED] at West Lake Auto,” and that he completely trusts the beneficiary with all matters.

Relying upon the consular officer’s report by e-mail, in which the documents submitted were determined to be “likely counterfeit,” the director additionally found that the petitioner’s submissions to the notice of intent to deny did not provide any persuasive support that the beneficiary’s documents were bona fide or that the beneficiary actually attended the institute as claimed. The director concluded that the petitioner had failed to establish that the beneficiary had met the minimum requirements for two years of training as set forth in the ETA 750, and denied the petition.

On appeal, counsel asserts that the director incorrectly used a “beyond a reasonable doubt” or “clear and convincing” standard of proof. Counsel contends that several original certified educational documents were presented that outweighed any doubt created by an overseas email from an understaffed government consulate.

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 1977); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) (finding that the petitioner had not established eligibility by a preponderance of the evidence because the submitted evidence was not credible). Nothing in the record of proceeding on the motion to reopen indicates that the director required a “beyond a reasonable doubt” or “clear and convincing” standard. Generally when something is to be established by a preponderance of evidence, it is sufficient that the proof establish that it is probably true. The evidence in each case is judged by its probative value and credibility. Truth is to be determined not by the quantity of evidence alone, but by its quality. *See Matter of E-M-* 20 I&N Dec. 77 (Comm. 1989).

In this matter, as noted above, it is observed that the petitioner’s “certified” translations of the beneficiary’s educational documents, failed to translate any of the identities of the individuals connected with the school who authorized the respective document(s). It is further noted, that, except with the “graduation certificate,” where there is a statement indicating that the document is certified to be a true translation of the original, the English translations accompanying the originals submitted did not comply with 8 C.F.R. § 103.2(b)(3) which provides:

Translations. Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

In this case, when the director initiated an inquiry into the quality of the beneficiary’s evidence, relating to his attendance at The Higher Industrial Technology Institute, given the discrepancies of years of graduation between

the initial information provided with the petition and the later certificate, as well as the lack of identity as to the actual individuals authorizing the information, the director had reason to question the quality and probative value of the documentation presented. That said, although there is no documentation that supports the beneficiary's theory presented in his affidavit as to the possible reason why his brother's alleged efforts to obtain proof of the beneficiary's attendance were not fruitful, we also note that, as counsel points out, the DOS investigation did not establish what method of inquiry was used, who was contacted, title of person contacted, or what records were examined to determine that the beneficiary's documents were likely counterfeit. Given the initial error of determining the existence of the institution, it is concluded that the case will be remanded in order to solicit a DOS reassessment of the authenticity of the beneficiary's educational documents and provide a more complete description of the investigation conducted.⁵

Additionally, the case is remanded to allow the director to articulate whether the petitioner established its continuing ability to pay the proffered wage. We note that the director's initial decision to revoke the petition's approval, was based in part on the petitioner's failure to demonstrate its ability to pay the beneficiary's wage offer. Subsequently, following the appeal's rejection, and the director's own reopening of the petition's adjudication, the director requested additional financial documentation relating to the ability to pay, but ultimately determined that the petition should be denied based on the beneficiary's failure to meet the two-year training requirement set forth on the ETA 750A. It is unclear whether the director revised his opinion of the petitioner's ability to pay the proffered wage based on the additional documentation provided.

Finally, it is observed that the record indicates that the petitioner's sole shareholder is the uncle of the beneficiary (as well as the brother, [REDACTED]). Because this raises a question as to the underlying validity of the labor certification, the case will be remanded for the purpose of soliciting an advisory opinion from the Department of Labor. Under 20 C.F.R. §§ 626.20(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 Sunmart 374*, 2000-INA-93 (BALCA May 15, 2000). See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986).⁶

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the

⁵ The petitioner's information as the address and official to be contacted should also be provided to the DOS.

⁶ In *Matter of Silver Dragon Chinese Restaurant*, the commissioner noted that while it is not an automatic disqualification for an alien beneficiary to have an interest in a petitioning business, if the alien beneficiary's true relationship to the petitioning business is not apparent in the labor certification proceedings, it causes the certifying officer to fail to examine more carefully whether the position was clearly open to qualified U.S. workers and whether U.S. workers were rejected solely for lawful, job-related reasons. That case relied upon a Department of Labor advisory opinion in invalidating the labor certification. 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.

director to conduct further investigation consistent with this opinion and request any additional evidence from the petitioner pursuant to the requirements of section 203(b)(3) of the Act. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.