U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 0 5 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a concrete-stone finisher under section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the marriage fraud bar under section 204(c) of the Act applies to the case 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 the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's denial, an issue in this case is whether or not the marriage bar under section 204(c) of the Act applies to this case.

The AAO conducts appellate review on a *de novo* basis. The AAO's de novo authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 204 of the Act governs the procedures for granting immigrant status. Section 204(c) provides for the following:

> Notwithstanding the provisions of subsection (b)[1] no petition shall be approved if:
>
> (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [director] to have been entered into for the purpose of evading the immigration laws; or
> (2) the [director] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

As a basis for denial, it is not necessary that the beneficiary have been convicted of, or even prosecuted for, the attempt or conspiracy to enter into a marriage for the purpose of evading the immigration laws. However, the evidence of such attempt or conspiracy must be documented in the alien's file and must be substantial and probative so that the director could reasonably infer the attempt or conspiracy. *See Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). *See also Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972).

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[1] Subsection (b) of section 204 of the Act refers to preference visa petitions that are verified as true and forwarded to the State Department for issuance of a visa.

Tawfik at 167 states the following, in pertinent part:

> Section 204(c) of the Act . . . prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Accordingly, the district director must deny any subsequent visa petition for immigrant classification filed on behalf of such alien, regardless of whether the alien received a benefit through the attempt or conspiracy. As a basis for the denial it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy. However, the evidence of such attempt or conspiracy must be documented in the alien's file and must be substantial and probative.

(citing *Matter of Kahy*, Interim Decision 3086 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972); and 8 C.F.R. § 204.1(a)(2)(iv) (1989)).

A review of the beneficiary's record shows that on March 30, 1995, an I-130 Petition for Alien Relative was filed by [redacted] seeking immediate relative classification for the beneficiary as her husband. An I-485 Application to Register Permanent Residence or Adjust Status was also filed on March 30, 1995 along with the following supporting documents: a copy of the beneficiary's passport; a copy of the beneficiary's birth certificate with English translation; a copy of an I-94 card showing the beneficiary entered the United States as a B-2 visitor on May 21, 1990; a marriage certificate issued by the State of New York; and the petitioner's birth certificate, also issued by the State of New York. The I-485 and G-325A biographic information were signed by the beneficiary. The required photos, fingerprint cards, and I-693 medical exam for the beneficiary were also submitted.

On August 1, 1996, the I-130 and I-485 were denied with a finding of fraud because the petitioner's birth certificate and the marriage certificate of the petitioner and the beneficiary were found to be fraudulent.

On July 31, 2001, the petitioner filed an I-140 Petition for Alien Worker on behalf of the beneficiary. The petition was initially denied, then later approved, and then finally revoked on October 21, 2005 due to the fraud finding under section 204(c) of the Act.

The petitioner filed a second I-140 Petition for Alien Worker on October 12, 2007. On September 23, 2009, the director issued a Notice of Intent to Deny (NOID) based on the finding of fraud. The petitioner's response to the NOID was received on October 23, 2009, and the petition was subsequently denied on November 10, 2009 as a result of the fraud finding.

In response to the NOID, the beneficiary submitted a sworn statement, dated October 21, 2009, regarding the I-130/I-485 filed in 1995. In his statement, the beneficiary contends that he consulted an [redacted] in [redacted] to file a labor certification. He states that they told him they

could help him with the paperwork and obtain a work permit for him, which they did. He states that he did not speak any English, could not read the applications, and signed "where I was told to sign." He contends that later, when he went to the after receiving his work permit to inquire about the status of his applications, he discovered that they had closed and had left no forwarding information. The beneficiary claims that he had no knowledge of the contents of the applications, that he has never met anyone named , that he married his actual wife in 1976 and has been married to her ever since, and that he was not aware of the fraud. Additionally, the response to the NOID contains an application filed by the beneficiary in 1993 that lists his actual wife, and his children.

On appeal, counsel asserts that the evidence contained in the record conclusively establishes that the beneficiary was the unwitting victim of a scam and did not knowingly evade the immigration laws. He further argues that the director's denial did not address the evidence submitted to overcome the finding of fraud. Furthermore, counsel asserts that the procedures used by USCIS under INA Section 204(c) were "constitutionally defective" because the beneficiary was not afforded a hearing on the record before a "neutral adjudicator," and as a result, the beneficiary, the beneficiary's family, and the petitioner were subject to a "constitutionally disproportionate penalty." Finally, counsel argues that the rule of lenity should apply and that the underlying purpose of the "1986 legislation as limited to spousal petitions" should not be applied to employers. On the I-290B, counsel indicated that he would submit a brief and additional evidence within thirty days. As of this date, more than three years later, the AAO has still not received counsel's brief and evidence.

In support of the I-140 petition filed on August 17, 2007, the following documents were submitted: I-140 petition for alien relative; a copy of the certified Form ETA 750; letter of support from the petitioner's owner, dated May 15, 2007; an affidavit from president of dated Spetember 9, 2002; a Spanish-language affidavit from the beneficiary regarding the marriage fraud issue dated March 1, 2007, with English translation; the petitioner's tax returns for the years 2000, 2001, 2002, 2003, 2004, and 2005; and Forms I-485, Supplement A to Form I-485, G-325A, I-765, and supporting documents including passports, marriage certificate, and individual tax returns for the beneficiary and his spouse for 2006.

In support of the response to the director's NOID dated October 22, 2009, the petitioner submitted the following documents: an updated affidavit from the beneficiary in Spanish, with English translation; a copy of the I-140 approval notice dated October 25, 2002; a copy of the ETA 750; a copy of the beneficiary's I-485 dated December 26, 2002; a copy of I-485 receipt notice dated December 27, 2002; a copy of the I-140 notice of intent to revoke (NOIR) dated July 21, 2004 with copy of the I-140 approval notice dated October 25, 2002; a copy of the I-140 revocation and I-485 denial notices dated October 21, 2005; a copy of the denial of the I-130 petition and the I-485 application based on the submission of false marriage and cirth certificates dated August 1, 1996; and a copy of the beneficiary's jointly-filed individual federal tax returns for 1995 and 1996.

Counsel's argument that the beneficiary was an unwitting victim of a scam and that the evidence in the record consclusively establishes that the beneficiary did not knowingly evade the immigration laws is not persuasive. The petitioner relies on the beneficiary's affidavit; the beneficiary's individual tax returns filed jointly with his spouse for 1995 and 1996; the denial notice dated August 1, 2006; a copy of the I-485 and G-325A filed on March 30, 1995; and the beneficiary's previously filed applications as proof that the beneficiary did not commit fraud under Section 204(c) of the Act.

In this case, the beneficiary does not submit any evidence to corroborate the statements contained in his affidavit dated October 21, 2009. The individual tax returns filed jointly with his wife in 1995 and 1996, and the fact that the beneficiary listed his immediate family in prior applications, but not on the I-485 and G-325A, do not prove that he could not have known about the contents of the I-485 and G-325A forms which he signed. Rather, the inconsistencies contained in the record raise even more questions regarding the truth of the beneficiary's statements which have all been made under oath and penalty of perjury. The beneficiary's statements in his affidavit are not probative without corroborating, independent evidence to support his contention. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Additionally, any inconsistencies in the record must be resolved 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).

The beneficiary does not provide any corroborating evidence to explain or reconcile the inconsistencies contained in the applications. The beneficiary states, in his affidavit, that his G-325A from 1995 has his personal information hand-written in the top portion. However, there is other identifying information about the beneficiary which is typed, such as his last address outside of the United States. The hand-written information on the Form G-325A does not prove that he did not know that the application was being filed, especially since the beneficiary signed the form.

Furthermore, in his affidavit, the beneficiary lists all of the names and addresses of his attorneys beginning in 1996, after the I-130 was denied, but he does not provide any identifying information about the [redacted] in [redacted] which he claims committed fraud without his knowledge. The beneficiary asserts a passive role in the application process, stating that he only signed what he was told to sign. However, he also submitted his passport, birth certificate, medical exam, photos, and fingerprint cards to the "[redacted]" for submission.

Additionally, the AAO notes that there is not a preparer's signature on the petition or application filed in 1995. Coupled with the fact that the beneficiary does not provide any identifiying information about the [redacted] there is no way to know who else, if anyone, was involved in the filing of the petition and application other than the beneficiary himself. The AAO also notes that the beneficiary stated on the I-485 that he entered the United States on a B-2 non-immigrant visa on May 21, 1990, and that a fraudulent I-94 card bearing the beneficiary's name was submitted in support of the application. The application is signed under penalty of perjury. Moreover, along with

the biographic page of the beneficiary's Ecuadoran passport is a page listing the names of the beneficiary's spouse and children. The page does not contain any names of any spouse or children, even though the beneficiary was married to his wife, [redacted] in 1976, and has four children with her, all of whom were born between 1977 and 1983, well before the passport was issued in the 1990s.

Finally, the beneficiary received a work permit based on the falsified I-485 application. The beneficiary claims to have no knowledge of what was submitted or of its contents, yet he received his work permit. Thus, the beneficiary's argument that he was not aware of what was being filed and had no knowledge of the filing's contents is not persuasive.

The beneficiary's disavowal of participation in fraud cannot be sustained in light of his admission of willingly signing a document whose contents he claims to have not understood. Specifically, his failure to apprise himself of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. *See Hanna v. Gonzales,* 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises,* 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente,* 982 F.2d 156, 159 (5th Cir. 1993). To allow the beneficiary to absolve himself of responsibility by simply claiming that he had no knowledge or participation in a matter where he provided all the supporting documents and signed a blank document would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

Counsel further argues in the I-290B that the rule of lenity should apply and that the underlying purpose of the "1986 legislation" is limited to spousal petitions and should not apply to employers. We disagree. The rule of lenity applies to ambiguity in criminal statutes. *See*, e.g., *United States v. Santos*, 553 U.S. 507 (2008); *United States v. Granderson*, 511 U.S. 39 (1994); *United States v. Thompson~Center Arms Co.*, 504 U.S. 505 (1992); *Crandon v. United States*, 494 U.S. 152 (1990); *Williams v. United States*, 458 U.S. 279 (1982); *Bifulco v. United States*, 447 U.S. 381 (1980). Futhermore, the rule of lenity applies only when a statute contains "grievous ambiguity or uncertainty," such that a court "can make no more than a guess as to what Congress intended." *Muscarello v. United States*, 524 U.S. 125, 138-139 (1998) (citations, internal quotation marks, and alterations omitted).

In this case, no such ambiguity exists. Section 204(c) of the Act:

> "[p]rohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Accordingly, the district director must deny any subsequent visa petition for immigrant classification filed on behalf of such alien, regardless of whether the alien received a benefit through the attempt or conspiracy."

The plain meaning of the statute is clear as is its application. There is no ambiguity in the plain language of the statute, nor has the statute's application been applied only to spousal petitions. Moreover, Congress' intent in amending Section 204(c) of the Act as amended by section 4(a) of the Immigration Marriage Fraud Amendments of 1986 (IMFA), Pub. L. No. 99-639, 100 Stat. 3537, 3543 (1986) is clear. Prior to IMFA, Congress held hearings on fraudulent marriages and discussed concealment of prior undissolved marriages, issuance of counterfeit [redacted] marriage certificates in support of petitions for permanent residence, and use of "stolen identification documents and stand-in grooms and brides to 'marry' U.S. citizens." *See Hearing before the Subcommittee on Immigration and Refugee Policy of the Committee of the Judiciary United States Senate, Ninety-Ninth Congress, July 26, 1985 at 12, 16, and 68*. After the hearing, Congress enacted IMFA and added section 204(c)(2) of the Act, 1000 Stat. at 3543. "Paper" marriages are now covered by the "...attempted...to enter into a marriage" language of the statute. Congress clearly intended that section 204(c) of the Act be applied to aliens who seek an immigration benefit through a fraudulent marriage, and Congress clearly intended that it apply to all subsequent visa petitions and not just spousal petitions as counsel contends.

Counsel further argues that section 204(c) of the Act is "constitutionally defective" in not providing an opportunity for a hearing on the record before a neutral adjudicator. Alien beneficiaries do not normally have standing in administrative proceedings. *See Matter of Sano*, 19 I&N Dec. 299, 300 (BIA 1985). Alien beneficiaries ordinarily do not have a right to participate in proceedings involving the adjudication of a visa petition, as the petition vests no rights. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Moreover, there are no due process rights implicated in the adjudication of a benefits application. *See Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9th Cir. 2008); *see also Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."). However, since a fraud finding affects an alien's admissibility, the AAO permitted the limited participation of the beneficiary to respond to the derogatory information that directly impacts his ability to procure benefits in any future proceedings. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 536 (BIA 1988). Therefore, the beneficiary's evidence and counsel's arguments regarding the beneficiary's evidence are considered on appeal.

Beyond the decision of the director,[2] the petitioner has also not established that the beneficiary is

[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D.

qualified for the offered position, and the record is inconsistent with respect to the beneficiary's emplolyment history. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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'r 1986). *See also, Madany* 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 the instant case, the labor certification states that the offered position requires four years of experience in the proffered position of concrete-stone finisher. No related experience is accepted. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a concrete-stone finisher with [redacted] from October 1991 to October 1995. However, with the I-140 filed on October 12, 2007, the ETA 750B is changed and the dates show that the beneficiary was a concrete-stone finisher at [redacted] from October 1987 to January 1, 1997. These "changes" are signed and dated by the beneficiary on June 3, 1999. However, the changes are not authorized by the DOL and there is no proof submitted with the changed ETA 750B that reflects the DOL approved these changes or was even aware of them.

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The record contains an experience letter from [redacted] of [redacted] dated October 24, 1996 which states that the beneficiary worked for the company from October 1991 to October 1995. It does not state the benefiicary's position with the company. The record contains another experience letter from [redacted] of [redacted] dated December 22, 2001 which states that the beneficiary was employed by the company from 1993 to 1996. It also does not state the beneficiary's position with the company or provide the exact dates of the beneficiary's employment. Finally, an affidavit from [redacted] of [redacted] dated September 9, 2002 states that the beneficiary was hired in 1987 as a material handler and seasonal worker. Then, on October 7, 1991, the beneficiary was hired as a concrete-stone finisher helper. On January 4, 1993, the beneficiary was promoted to concrete-stone finisher. Any inconsistencies in the record must be resolved 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). Doubt cast on any aspect of the petitioner's proof may lead to a

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Cal. 2001), *aff'd,* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ,* 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

In this case, no independent, objective evidence exists to corroborate the statements. Moreover, the experience required for the position is four years as a concrete-stone finisher. Even if we were to accept the statements of [redacted], the beneficiary has not established that he has the required experience. The beneficiary only possessed about two years of experience as a concrete-stone finisher from January 4, 1993 to December 1995 as of the priority date. The beneficiary's experience as a concrete-stone finisher helper is not experience in the offered position of concrete-stone finisher. Thus, the beneficiary did not possess the required four years of experience as of the priority date.

The beneficiary submits an affidavit dated September 10, 2002 in which the beneficiary states that he worked as a concrete-stone finisher at [redacted] from October 7, 1991 to December 1995. The beneficiary's affidavit is inconsistent with the record. Moreover, it is self-serving and does not provide independent, objective evidence of his prior work experience. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988)(states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence). 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Additionally, the record contains an employment letter from the petitioner dated November 14, 2001 which states that the beneficiary was employed with the company beginning in February 1997. This contradicts both versions of the ETA 750B which state that the beneficiary began working for the petitioner in either October 1995 or in January 1997.

The only independent, objective evidence in the record contradicts all of the experience letters, the beneficiary's affidavit, and both versions of the ETA 750B. The record contains a Form 1099 issued to the beneficiary in 1996, and the beneficiary's individual tax returns from 1996. The 1099 was issued by the petitioner to the beneficiary in the amount of $30,100. The amount claimed on the beneficiary's Schedule C to the Form 1040 in 1996 is $30,100. Therefore, it appears from the record that the beneficiary worked for the petitioner for most, if not all, of the year in 1996. Nothing has been submitted to explain this discrepancy.

Furthermore, the beneficiary misrepresented his experience on the ETA 750B. The beneficiary claims he worked as a concrete-stone finisher for [redacted] from either 1991 or 1987. On the ETA 750B, the beneficiary claimed he held the position of concrete-stone finisher beginning in 1991, and on the version that the beneficiary self-corrected and submitted with the I-140 filed on October 12, 2007, the beneficiary claimed to have held this position beginning in 1987. However, the beneficiary states in his sworn affidavit that he was a concrete-stone finisher helper from 1991 to 1993, and did not become a concrete-stone finisher until 1993. The experience letter from [redacted] dated September 9, 2002, also states that the beneficiary worked as a concrete-stone finisher helper from 1991 to 1993, and a material handler and seasonal worker from 1987 to

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1991. He states that the beneficiary was not promoted to concrete-stone finisher until January 4, 1993. Thus, the beneficiary only had about two years of experience as a concrete-stone finisher as of the priority date. The beneficiary misrepresented his experience on the ETA 750B by stating that he was a concrete-stone finisher beginning in either 1991 or 1987, and not in 1993.

The beneficiary's experience is material because the ETA 750 requires four years of experience as a concrete-stone finisher. A willful misrepresentation of a material fact occurs is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961). In this case, the DOL would have denied the labor certification had it been aware that the beneficiary did not possess four years of experience as a concrete-stone finisher. By misprepresenting his experience, the beneficiary cut off a relevant line of inquiry as to his eligibility.

The regulation at 20 C.F.R. § 656.30(d) provides:

> (d) After issuance labor certifications are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies, procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a RA or to the Director, the RA or Director, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notification shall be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

Thus, the AAO is invalidating the labor certification pursuant to the regulation at 20 C.F.R. § 656.30(d) based on willful misrepresentation of a material fact.

Therefore, an independent review of the documentation in the record of proceeding presents substantial and probative evidence to support a reasonable inference that false documents were submitted in connection with the beneficiary's application for permanent residence for the purpose of evading immigration laws. Thus, the director's determination that the beneficiary sought to be accorded an immediate relative or preference status as the spouse of a citizen of the United States by submitting false documents in violation of Section 204(c) of the Act is affirmed.

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

ORDER: The appeal is dismissed with a finding of willful misrepresentation.

FURTHER ORDER: The labor certification application is invalidated pursuant to 20 C.F.R. § 656.30(d) based on willful misrepresentation.