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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 16 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. It then came before the Administrative Appeals Office (AAO) on appeal. On July 12, 2012, this office provided the petitioner and the beneficiary with notice of derogatory information[1] and notice of intent to deny (NDI/NOID) and afforded the petitioner an opportunity to provide evidence that might overcome this information. The petitioner has not provided a response. The beneficiary, through his separate counsel, has submitted a response. The AAO will dismiss the appeal with an administrative finding of willful misrepresentation against the petitioner and the beneficiary.

The petitioner operates as a supermarket/bakery/meat department. It seeks to employ the beneficiary permanently in the United States as a baker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3). As required by statute, a labor certification (Form ETA 750) approved by the Department of Labor accompanied the petition. The director determined that the petitioner had not provided sufficient evidence that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and had failed to provide sufficient evidence that the beneficiary possessed the qualifying two years of employment experience as a baker as required by the Form ETA 750.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).[2] 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).

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[1] 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 has permited 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).

[2] The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary. The regulation at 8 C.F.R. § 103.2(b)(16)(i) provides that if a decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and which the applicant or petitioner is unaware, they shall be advised and offered an opportunity to rebut the information and present information on his/her own behalf except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section.

At the outset, the AAO notes that [3] signed the Form ETA 750 as the agent. The petitioner's president, "[redacted]," signed the Form ETA 750 under penalty of perjury on February 27, 2001. He also signed the Form I-140 on January 31, 2007 under penalty of perjury. Further, the petitioner's counsel, [redacted], signed the Form I-140 and submitted a letter with the appeal.

The beneficiary signed Part B of the Form ETA 750 under penalty of perjury on March 15, 2001. It claims that the beneficiary worked from March 1996 to May 1998 as a baker for a Turkish firm identified as [redacted], located in [redacted] Turkey.

In the AAO's NDI/NOID issued on July 12, 2012, the AAO stated:

> The director of the Texas Service Center issued a Notice of Intent to Deny (NOID) on January 10, 2008, questioning the *bona fide* nature of the position. The director indicated a number of deficiencies and omissions with the filing including the lack of the original labor certification, lack of evidence of the ability to pay the proffered wage of $19.55 per hour ($40,664 per year) and lack of corroboration of the beneficiary's relevant work experience required by the terms of the Form ETA 750. The director requested that the petitioner furnish evidence of the petitioner's continuing ability to pay the proffered wage that included documentation of annual reports, audited financial statements or federal tax returns covering the period of 2001 until the present (date of NOID). If federal tax returns were provided, the director requested that they were to be Internal Revenue Service (IRS)-certified. Additionally, the director required submission of any W-2s or Form 1099s indicating whether the petitioner employed the beneficiary from 2001 through 2006, submission of copies of federal or state quarterly withholding forms for 2007 and for the period from 2001 through 2006.
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> The director requested the original of the labor certification[4] and additionally requested the original of the employment verification letter that the petitioner had

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[3] It is noted that [redacted] an attorney formerly affiliated with the petitioner's counsel, [redacted], was arrested in Toronto in October 2011 on charges of immigration fraud, mail and wire fraud, and money laundering. He was subsequently extradited and pleaded guilty to two counts of conspiracy. *See* [redacted] *see also* [redacted] (accessed July19, 2012).

[4] The labor certification is evidence of an individual alien's admissibility under section 212(a)(5)(A)(i) of the Act, which provides:

provided, to be accompanied by evidence of actual employment such as payroll records, pay receipts or similar documentation that confirms the beneficiary's qualifying employment. It is noted that the Form ETA 750 required two years of experience in the job offered of a baker.

In response to these requests, the petitioner, submitted a letter, dated January 29, 2008. It was allegedly signed by who is identified on relevant online state documents as the Chairman or Chief Executive Officer.[5] He is also identified as the President of on the copy of the Form ETA 750 submitted to the record. Mr. claims in the letter that "the original labor certification is in case number," but he does not give case number and does not include the original labor certification. He additionally states that the original experience letter is enclosed and also states that quarterly tax returns are

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In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
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> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The regulation at 8 C.F.R. § 204.5(l)(3)(i) requires that the initial evidence accompanying every petition under the classification of skilled workers, professionals or other workers must be either an individual labor certification from DOL, an application for Schedule A designation, or by documentation establishing that the alien qualifies for one of the shortage occupations in DOL's Labor market Information Pilot Program. The regulations at 8 C.F.R. §§ 103.2(b)(1) and (b)(4) provide that eligibility for a beneficiary must be established at the time of filing, with all required forms properly completed and filed with any initial evidence required by the regulations and/or the form's instructions. Original labor certifications must be submitted unless previously filed with USCIS. In this case, no original labor certification has ever been submitted, nor has sufficient evidence ever been provided that it was previously filed with USCIS. For this reason, even if eligibility were otherwise established, the petition could not be approved.

[5]The website maintained by the NYS Department of State, Division of Corporations is at http://aapext9.dos.state.ny.us/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_n... (accessed on June 2, 2011).

enclosed. The original experience letter was not enclosed and has never been submitted to the record. No payroll corroboration of the required experience gained was submitted. Only copies of the first two federal quarterly (Form 941) tax returns for 2006 were provided. Copies of Form 1120, U.S. Corporation Income Tax Return filed by for 2001, 2003, 2004, 2005, and 2006 were submitted. The 2001 tax return states that it covered a fiscal year beginning November 1, 2001 and ended on October 31, 2002. The other tax returns did not define the period of time covered. Only the 2003 and 2004 tax returns indicated that they were filed with the IRS. No 2002 tax return was submitted, no documentation for 2007 was submitted, and no tax return or other documentation consistent with 8 C.F.R. § 204.5(g)(2) was submitted.[6] Further, no tax return indicated that it covered the period of time prior to November 1, 2001, which would have included the priority date. The petitioner offered no explanation for these discrepancies.

The AAO's NDI/NOID additionally observed:

On appeal, the petitioner, through Mr. asserts that the requested documentation was submitted and that the company is a legitimate company located in the heart of With the notice of appeal, which was signed by Mr. the following is submitted:

1) A second letter signed by President, dated January 29, 2008. This letter also states that "the original labor certification is in case number," and does not give the case number. It states that the 2005 and 2006 tax returns are enclosed and that the original experience letter of the beneficiary is enclosed. It also states that the supermarket employs "10 employees and the gross annual income is and the net annual income is," but the letter fails to state either the petitioner's gross annual income or its net annual income.
2) A copy of the Form ETA 750.

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[6] The regulation at 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.

3) A copy (not original) of a letter in Turkish dated March 29, 2001. The letter is from " " A copy of a translation[7] accompanies the letter which states that the beneficiary worked full-time as a baker from "3/96 to "5/98." The translation states that the letter is signed by the employer but does not identify the author of the letter. No corroborating payroll records were submitted.
4) Copies of the petitioner's previously submitted 2005 and 2006 federal income tax returns. They are not certified by the IRS. Additionally, a copy of a 2002 corporate federal tax return was submitted, indicating that it was filed by the petitioner with a remittance on May 15, 2003.

In the AAO's NDI/NOID,[8] it additionally stated:

> A. During the adjudication of the appeal, evidence has come to light that the petitioning business in this matter: has been dissolved. *See* attached print-outs from New York official website which indicate that it was dissolved on January 27, 2010. If the petitioning business is no longer an active business, the petition and its appeal to this office have become moot.[9] In which case, the appeal shall be dismissed as moot.

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[7]The translation does not comply with the regulation at 8 C.F.R. § 103.2(b)(3). *See* footnote 11 herein [of the AAO's NOID].

[8] The regulation at 8 C.F.R. § 103.2(b)(16) provides in relevant part:

> (i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [U.S. Citizenship and Immigration Services (USCIS)] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

[9] Where there is no active business, no *bona fide* job offer exists, and the request that a foreign worker be allowed to fill the position listed in the petition has become moot. Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.

Moreover, any such concealment of the true status of the organization by the petitioner seriously compromises the credibility of the remaining evidence in the record. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(stating that doubt cast on any aspect of the petitioner's proof 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. *See Id.*

B. **Further, please be advised that the AAO intends to consider a finding of material misrepresentation and/or fraud against , the petitioner, and beneficiary, [. . .] in this proceeding.** (Emphasis added). Specifically, during the adjudication of another proceeding concerning a different beneficiary (initials) sponsored by Mr. admitted to having sold on December 17, 2005 to a Mr. claiming that he filed only seven applications with the Labor Department between 1999 and 2005, including one for the beneficiary in that case. That case 's case) contains several letters signed by as follows:

> 1. A notarized letter, dated February 26, 2007, signed by where he states that he sold the business on December 17, 2005. Mr. states that it has come to his attention that eighteen immigrant petitions for alien workers have been filed, but he recollects only seven petitions filed with DOL between 1999 and 2005, including the beneficiary in that case, Mr. does not specifically mention the instant beneficiary. This letter bears a similar signature to the signature of Mr. 's passport contained in that case. It bears no resemblance to the owner's signature on the labor certification and on each of the 2001, 2002, 2003, 2004, and 2005 Form 1120 corporate income tax returns, prepared by New York, submitted in that case, in which the officer signatures all appear to be in a language other than English.
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> The signature on this and all other letters signed by contained in 's case also appears to be dissimilar from the signature appearing on the Form I-140, copies of federal income tax returns, and the appeal filed in the instant case filed by the petitioner. However, it is noted that the copies of the 2002 (IRS received date May 15, 2003), 2003 (IRS received date May 7, 2004), and 2004 (IRS received date May 11, 2005) tax returns submitted in the current case

all contain what appear to be IRS stamps that indicate that they were received by an IRS office. However, none of the tax returns submitted in this case, including for 2001 and 2005 with no IRS stamp, bear any preparer's signature and all contain completely different figures than the tax returns submitted in 's case, as well as what appear to be dissimilar officer signatures from those which appear on the tax returns and letters from in the case. For example, some of the differences between the petitioner's corporate tax returns in the instant case and in the case, appear as:

Year	Category	Amount/ Instant Case	Amount/ case
2001	line 28, taxable net income before net operating loss	$133,902	$89,482
2002	line 28, taxable income before net operating loss	$159,756	$92,711
2003	line 28, taxable income before net operating loss	$178,637	$98,046
2004	line 28, taxable income before net operating loss	$184,552	$84,234
2005	line 28, taxable income before net operating loss	$241,776	$95,319

The tax returns submitted in this case for the years 2001, 2002, 2003, 2004, and 2005 are dated April 1, 2002, March 20, 2003, April 1, 2004, May 8, 2005, and (no date given for 2005 return) respectively and are not signed by a preparer or with an officer signature that is similar to either the signatures on the tax returns submitted in the case or to the signature of in the case. The tax returns in the case for 2001, 2002, 2003, 2004 and 2005 are dated March 30, 2002, March 21, 2003, March 30, 2004, April 4, 2005, and April 9, 2006, respectively. As stated above, they all bear a preparer signature of and an officer signature that appears to be in a language other than English.

The petitioner is requested to submit a complete credible explanation for these discrepancies, particularly relating to the petitioner's tax returns, corroborated by competent, independent evidence.

2. A notarized letter, dated October 22, 2007, signed by advising that it has been several years since he had petitioned DOL on behalf of seven beneficiaries, including He states that he cannot identify the beneficiaries other than who has kept in touch with him, and is not aware where the records may be stored except for government records. This letter appears to contain the same signature as the February 26, 2007, letter submitted in 's case and is dissimilar in the ways set forth in (1) above.

3. A notarized letter, dated March 9, 2008, signed by stating that any recent filings by **other than one for , are not authorized.** (Emphasis added). Mr. states that he has not been involved in with any other of the six cases filed since selling the business to Mr. in December 2005.[10] This letter appears to contain the same signature as the February 26, 2007, letter submitted in 's case and is dissimilar in the ways set forth in (1) above.

4. A letter, dated August 17, 2009, signed by stating that he did not remember the names of the other six beneficiaries that he had sponsored through the petitioning business because he lost touch with them after receiving their resumes in early 2001 and did not maintain the labor certification records after selling the business to in December 2005. This letter appears to contain the same signature as the February 26, 2007, letter submitted in 's case and is dissimilar in the ways set forth in (1) above.

5. A letter, dated October 27, 2010,[11] signed by reiterating that he could not remember any of the names of the six beneficiaries that he had sponsored for a labor certification in early 2001 or possibly as early as 1999 or 2000. **Mr. is "shocked to learn that there were several Immigrant Worker petitions allegedly filed" by the former company, " during 2003 through 2008" when he "had never**

[10] As the instant petition in this case was filed on February 14, 2007, Mr. 's statement casts significant doubt on the filing for the present beneficiary.

[11] Neither this letter nor the letter dated August 17, 2009 was notarized.

> **signed or authorized the filing of any I-140 Immigrant Worker Petitions."** (Emphasis added). This letter appears to contain the same signature as the February 26, 2007, letter submitted in 's case and is dissimilar in the ways set forth in (1) above. It is noted that in 's case , the AAO found that the petitioner had filed 20 other immigrant visa petitions since 2003, with twelve of the petitions filed *after* Mr. sold the business to Mr. The AAO stated that with respect "to the immigrant petitions filed on behalf of the 20 other beneficiaries, the petitioner admits that many of the filings are fraudulent."

Based on the foregoing, we do not find that the existent Form I-140 (SRC 07 103 50727) allegedly filed by on February 8, 2007 and signed by Mr. or the two letters dated January 29, 2008, also signed by Mr. to be credible support that a *bona fide* job opportunity ever existed for this beneficiary or continues to exist.

The AAO advised the petitioner and beneficiary of the doubts raised by the record of proceeding as to the *bona fide* nature of job opportunity and that the AAO intended to consider a finding of fraud or willful misrepresentation of a material fact unless the inconsistencies and concerns expressed in the NDI/NOID were overcome by the petitioner and/or beneficiary. Further, the underlying labor certification supporting the petition would be invalidated pursuant to 20 C.F.R. § 656.30.

This office allowed the petitioner or the beneficiary 30 days in which to address the discrepancies raised in the NDI/NOID. More than 30 days have passed and the petitioner has failed to respond with evidence sufficient to overcome this petition's discrepancies and conflicts as set forth in the NDI/NOID.

It is noted that the AAO has received a letter, dated July 31, 2012, from the beneficiary through the beneficiary's current counsel.[12] It relates that the beneficiary contracted the services of and was just another "innocent" victim of s fraud. He claims to be ignorant of everything, including any false information as listed or as represented in employment

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[12] As noted hereinabove, alien beneficiaries do not normally have standing in administrative proceedings. *See Matter of Sano,* 19 I&N Dec. 299, 300 (BIA 1985). Alien beneficiaries 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.").

verification letters. The beneficiary recalls that the had him sign either blank documents or would not explain what the documents were in light of the beneficiary's limited English. The letter fails to mention the attorney that has submitted the instant Form I-140 and accompanying documents.

The beneficiary signed Part B of the Form ETA 750 under penalty of perjury on March 15, 2001. It claims that the beneficiary worked from March 1996 to May 1998 as a baker for a Turkish firm identified as located in Turkey. The petitioner's president, ' ' signed the Form ETA 750 under penalty of perjury on February 27, 2001. He also signed the Form I-140 on January 31, 2007 under penalty of perjury. As indicated in the foregoing and in the record, the petitioner has failed to explain the discrepancies as noted and cannot confirm that he sought to sponsor this beneficiary on any employment-based petition.

With respect to the assertion that the beneficiary merely signed the forms but did not submit a fraudulent experience letter, it is noted that section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182 provides that any "alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Although the immigrant visa petition may present an opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O,* 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. *See* sections 212(a) and 245((a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).

It is further noted that the law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises,* 396 F.3d 1289, 1301 (1st Cir. 2005); *United States v. Puente,* 982 F.2d 156, 159 (5th Cir. 1993); *see also, 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).

Further, the regulation at 20 C.F.R. § 656.30 provides in pertinent part:

> (d) After issuance, a labor certification is subject to invalidation by the DHS 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. . "

A material issue in this case is whether the beneficiary has the required employment experience for the position offered. Submitting a false employment verification letter and falsely representing the beneficiary's qualifying experience on the Form ETA 750 amounts to a willful effort to procure a benefit ultimately leading to permanent residence under the Act. The Attorney General has held that a misrepresentation made in connection with an application for a visa or other document, or with entry into the United States, is material if either:

> (1) the alien is excludable on the true facts, or (2) the misrepresentation 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.[13]

Pursuant to section 204(b) of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In view of the foregoing, in the present matter, the AAO finds that the petitioner's documentation and representation that the beneficiary acquired two years of employment experience as a baker was false and that the job offer was not *bona fide*.

We therefore make a finding of willful misrepresentation against the petitioner and the beneficiary.[14] This finding shall be considered in any future proceeding where admissibility is an issue. The AAO will invalidate the Form ETA 750 pursuant to 20 C.F.R. § 656.31(d) based on the petitioner's and the beneficiary's willful misrepresentation regarding the beneficiary's qualifying experience for the proffered position and the *bona fides* of the job offer.

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[13] *See Matter of S & B-C-*, 9 I&N Dec. 436, 447 (A.G. 1961). Accordingly, the materiality test has three parts. First, if the record shows that the alien is inadmissible on the true facts, then the misrepresentation is material. *Id.* at 448. If the foreign national would not be inadmissible on the true facts, then the second and third questions must be addressed. The second question is whether the misrepresentation shut off a line of inquiry relevant to the alien's admissibility. *Id.* Third, if the relevant line of inquiry has been cut off, then it must be determined whether the inquiry might have resulted in a proper determination that the foreign national should have been excluded. *Id.* at 449.

[14] *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.

Thus, the appeal will be dismissed.[15] The petition will be denied for the reasons as noted in the NDI/NOID with each considered as an independent and alternative basis for denial.[16] 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.

FURTHER ORDER: The AAO finds that the petitioner and beneficiary willfully misrepresented to DOL and USCIS elements material to his eligibility for a benefit sought under the immigration laws of the United States. The labor certification application is invalidated pursuant to 20 C.F.R. § 656.31(d) based on the misrepresentation.

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[15] Additionally, even if the appeal could be otherwise sustained, the petition's approval would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(iii)(D) which sets forth that an approval is subject to automatic revocation without notice upon termination of the employer's business in an employment-based preference case.

[16] When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.