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

[redacted]

DATE: AUG 0 6 2014 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(ii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the director) denied the immigrant visa petition and dismissed a subsequent motion to reopen and motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an IT solutions provider. It seeks to permanently employ the beneficiary in the United States as an Oracle programmer analyst. The petitioner requests classification of the beneficiary as a professional worker pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).[1] The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concludes that the beneficiary does not possess the minimum requirements for the proffered position. The director dismissed a subsequent motion to reopen and motion to reconsider.

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. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

On October 31, 2013, we sent the petitioner a notice of intent to dismiss the appeal (NOID). We advised the petitioner that, based on the conclusions of the Electronic Database for Global Education (EDGE), the evidence in the record was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in the required field of study and noted inconsistencies between the beneficiary's claimed work experience and full-time studies. We noted that the petitioner relied on the beneficiary's three-year bachelor's degree combined with either work experience, a bachelor of law, or a post-graduate diploma as being the foreign equivalent of a U.S. bachelor's degree in database management systems, information technology.[3] The petitioner responded to our NOID on November 27, 2013. However, the petitioner did not address the insufficiency of the evidence to establish that the beneficiary possesses the minimum requirements

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[1] Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[3] A three-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees and/or work experience, the result is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional.

as stated on the labor certification or the petitioner's reliance on an impermissible combination of degrees and/or experience to meet classification as a professional.

On June 12, 2014, we sent the petitioner a notice of derogatory information and notice of intent to dismiss the appeal (NDI/NOID). We informed the petitioner that an investigation of the beneficiary's experience letter with [redacted] the experience on which the beneficiary relies to meet the labor certification requirements, to be fraudulent. We further advised that the record established the beneficiary misrepresented his work experience on the labor certification and that if the petitioner was unable to overcome the findings of fraud through independent, objective evidence, we would invalidate the labor certification.

The petitioner responded to our NDI/NOID on July 3, 2014. However, the petitioner failed to provide any evidence to rebut our findings of fraud with respect to the beneficiary's experience letter. The petitioner merely stated that it was unable to secure assistance from [redacted] as it was no longer in business. The petitioner further stated that it had no intention of making a misrepresentation in the instant case, and that it believed in good faith the the information was true.

The evidence in the record is not sufficient to establish that the beneficiary possesses the minimum requirements for the proffered position. Therefore, the director's decision is affirmed and the petition remains denied.

Misrepresentation and Invalidation

A material issue in this case is whether the beneficiary has the required 24 months of experience for the position offered. 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.

The record contains a service certificate and verification of employment letter indicating that the beneficiary obtained the required qualifying experience with [redacted] As discussed in detail in our NDI/NOID, the certificate and verification letter displayed indicators of fraud and a USCIS officer confirmed upon investigation that the experience letter is fraudulent. It is proper for us to make a finding of fraud pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).[4] We specifically issued notice of this derogatory information to the petitioner to allow the petitioner an opportunity to respond or submit evidence to overcome the alleged misrepresentation. As noted

[4] *See* section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), regarding misrepresentation, "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible."

above, the response was insufficient to overcome the deficiencies and inconsistencies. However, we accept the petitioner's assertion that it was unaware of the misrepresentation.

By misrepresenting his work experience and making misrepresentations to the DOL, the beneficiary sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Any finding of fraud as a result shall be considered in any future proceeding where admissibility is an issue. *See also Matter of Ho*, 19 I&N Dec. at 591-592. Further, the regulation at 20 C.F.R. § 656.30(d) provides:

> (d) Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, 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. If evidence of such fraud or willful misrepresentation becomes known to the CO or to the Chief, Division of Foreign Labor Certification, the CO, or the Chief of the Division of Foreign Labor Certification, as appropriate, shall notify in writing the DHS or Department of State, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

As the evidence reflects fraud involving the labor certification, we will invalidate the ETA Form 9089 labor certification in this case.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

FURTHER ORDER: The appeal is dismissed with a finding that the beneficiary willfully misrepresented a material fact.

FURTHER ORDER: The alien employment certification, ETA Form 9089, ETA case number [redacted] is invalidated pursuant to 20 C.F.R. § 656.30(d).