



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF P-H-USA, LLC

DATE: JULY 19, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a hotel operator, seeks to permanently employ the Beneficiary as its president under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not established that it has a qualifying relationship with the Beneficiary's claimed foreign employer. The Director also entered a finding of fraud after determining that the record contained falsified records related to the Beneficiary's foreign employment. We dismissed the Petitioner's subsequent appeal, and further found that the Petitioner had willfully misrepresented material facts regarding the Beneficiary's foreign employment.

The matter is now before us on a motion to reopen and reconsider. On motion, the Petitioner submitted a legal brief and supporting letters. The Petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) has not produced affirmative evidence to support the finding of willful misrepresentation, and that discrepancies alone cannot suffice to support such a finding. The Petitioner also requested reopening so that the report of a post-adjudication overseas investigation by the USCIS Fraud Detection and National Security Directorate ("FDNS"), could be incorporated into the record. The Petitioner has not moved for reconsideration of the underlying decision to dismiss the appeal or claimed that the instant petition should have been approved.

We notified the Petitioner that we were reopening matter, advised the Petitioner of the relevant findings from the FDNS investigation, and allowed the Petitioner an opportunity to respond to those findings and submit additional evidence. In response, the Petitioner has submitted additional affidavits, tax documents, and a supplemental brief.

Upon review, we will withdraw the finding of willful misrepresentation of a material fact as it pertained to the Beneficiary's foreign employment. The petition will remain denied as the Petitioner has not established that the Beneficiary is eligible for the benefit sought. Further, as a result of the post-adjudication site visit, we find that the Petitioner has willfully misrepresented material facts regarding its qualifying relationship with the Beneficiary's claimed foreign employer.

## I. MOTION REQUIREMENTS

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a USCIS officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action: "[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision."

### A. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "Requirements for motion to reopen," states:

A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence.

This provision is supplemented by the related instruction at Part 4 of the Form I-290B, which states:

**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition . . . was filed.<sup>1</sup>

### B. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "Requirements for motion to reconsider," states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

We granted the Petitioner's motion to reopen in order to consider new facts that became available after the adjudication of the appeal and to request additional evidence due to additional questions that arose as a result of a post-adjudication FDNS overseas site visit.

## II. ISSUE ON MOTION

On motion, the Petitioner does not contest the dismissal of the appeal. Rather, "the Petitioner requests only that the AAO withdraw the finding of material misrepresentation against both the

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<sup>1</sup> The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part: "Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission."

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petitioner and beneficiary.” Therefore, we will not discuss core issues of eligibility here and the petition will remain denied.

The finding of willful misrepresentation of a material fact made in our previous decision focused on the Beneficiary’s claimed foreign employment. Further, in our notice of reopening, we advised the Petitioner that, as a result of information received in the FDNS overseas investigation report, we may also make a finding that the Petitioner willfully misrepresented material facts regarding its qualifying relationship with the Beneficiary’s claimed foreign employer. We will address these issues separately below.

A. Foreign Employment

1. Procedural History

At the time the petition was filed, the Petitioner indicated that the Beneficiary worked for [REDACTED] from November 2005 until February 2007. The Beneficiary claimed that same employment on Form G-325A, Biographic Information, prepared in conjunction with his Form I-485, Application to Register Permanent Residence or Adjust Status. Neither the Petitioner nor the Beneficiary claimed that he had worked anywhere else during that time.

During the initial adjudication of the petition, the Director determined that the Beneficiary had previously claimed during the course of H-1B nonimmigrant visa proceedings that he was employed with a different Indian company, [REDACTED] during approximately the same period, beginning in February 2005. The Beneficiary has asserted that he worked for both entities concurrently and that the earlier nonimmigrant petition mentioned [REDACTED] because his managerial work with [REDACTED] was irrelevant to that petition for employment in an IT-related position, and that he omitted [REDACTED] from Form G-325A because that job was part-time rather than his principal employment.

In dismissing the Petitioner’s appeal, we affirmed the Director’s finding that the Petitioner willfully misrepresented material facts relating to the Beneficiary’s prior foreign employment. We noted several unresolved discrepancies in the record pertaining to the Beneficiary’s foreign employment. We found that correspondence from [REDACTED] never referred to the Beneficiary’s employment there as part-time, and that the Beneficiary’s pay receipts showed that [REDACTED] paid him a higher salary than [REDACTED] which tended to undermine the claim that the Beneficiary worked full time for [REDACTED] but only a few hours per week for [REDACTED]. With respect to the Beneficiary’s claimed employment with [REDACTED] we noted that the Petitioner had submitted letters from claimed co-workers who attested to the Beneficiary’s employment during times when those individuals were not employed by the company, and therefore were not in a position to attest to that employment.

On motion, the Petitioner asserts that, while the submitted evidence may be insufficient to establish eligibility, the deficiencies noted in our decision do not establish misrepresentation. The petitioner asserts that, because a finding of misrepresentation may lead to “a permanent inadmissibility bar,”

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such a finding must rest on demonstrable evidence rather than on ambiguities or discrepancies. The Petitioner asserts:

The fact that the documentation provided did not meet the burden of proof . . . does not prove that a false representation was made. . . . The discrepancies noted by the AAO supports [*sic*] only the conclusion that the petitioner . . . did not meet its burden of proof related to demonstrating a qualifying corporate relationship and qualifying work experience.

The FDNS officer who visited the headquarters of [REDACTED] found that the company had no relevant records to resolve the matter. The FDNS officer reported that [REDACTED] managing director, [REDACTED] confirmed the Beneficiary's employment as general manager between November 2005 and February 2007; however, [REDACTED] stated that the company had only four employees working in its office during the Beneficiary's claimed period of employment.<sup>2</sup>

In response to our notice of reopening and request for evidence, the Petitioner submits an affidavit, dated March 20, 2015, in which the Beneficiary attests that he "had two jobs from 2005 to 2007," and that he omitted one or the other employer from various immigration-related forms simply as a matter of convenience and/or relevance. The Petitioner also submits new letters from both of the Beneficiary's claimed foreign employers, attesting to his employment with both companies.

In response to our request for an explanation for the discrepancies in the record regarding the foreign entity's staffing levels, the Petitioner provides a letter dated March 23, 2015, from [REDACTED] in which he states: "[REDACTED] has provided the organization charts that were available from the period 2005 to 2007. In addition, [REDACTED] employed workers who worked under payroll and/or contract basis. We did not routinely record the employment of contract workers."

For the reasons discussed below, we will affirm our prior dismissal of the appeal but we will withdraw our prior finding of willful misrepresentation of a material fact with respect to the Beneficiary's employment abroad.

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<sup>2</sup> The Petitioner had previously provided [REDACTED] payroll records which coincided with the Beneficiary's claimed period of employment and included up to 23 staff. It also submitted an organizational chart that included 19 positions, and at least 23 employees. Therefore, [REDACTED] explanation that there were four people in the office, when the Petitioner previously claimed and documented 23 or more foreign entity staff, undermines the credibility of the submitted organizational chart and payroll records. If the foreign employer did not record the employment of contract workers, then we would not expect such workers to appear on payroll records. Further, while it is reasonable that a construction company would employ staff outside of its main office, the submitted organizational chart identified at least ten office-based staff.

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## 2. Analysis

After reviewing the totality of the evidence in the record, including the post-adjudication FDNS report and the Petitioner's response, we will withdraw our finding that the Petitioner willfully misrepresented material facts regarding the Beneficiary's foreign employment.

Various unresolved inconsistencies in the record, coupled with the findings in the FDNS report, nevertheless indicate a possibility that both the Petitioner and the Beneficiary have misrepresented details regarding the Beneficiary's past employment history. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In this case, although we will withdraw our finding of willful misrepresentation of a material fact, the discrepancies catalogued above and in our previous decision lead us to conclude that the evidence and statements submitted to document and describe the Beneficiary's employment with the foreign entity are not credible. The Petitioner itself, while making a case for why our finding of willful misrepresentation of a material fact should be withdrawn, has nevertheless acknowledged that the submitted evidence contained various discrepancies that limit its probative value, and does not request that we overturn our decision to affirm the denial of the petition. Accordingly, our decision to dismiss the Petitioner's appeal will not be disturbed.

### B. Qualifying Relationship

We denied the petition, in part, based on a finding that the Petitioner did not establish a qualifying relationship with the Beneficiary's claimed foreign employer, [REDACTED]

To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

The regulation at 8 C.F.R. § 204.5(j)(2) provides in pertinent part:

*Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or

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indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

1. Procedural History

As noted, the Petitioner identified the Beneficiary's last foreign employer as [REDACTED] and stated that he worked for this company from November 2005 until February 2007. The Petitioner stated that the U.S. and foreign entities had a parent-subsidiary relationship based upon the Petitioner's acquisition of a majority interest in the Indian company on July 1, 2009.

At the time of filing in September 2009, the Petitioner provided a copy of a signed "Reconstitution of Partnership Deed" for [REDACTED] which showed that the Petitioner had been admitted as a new partner, joining a group of four partners who owned the existing partnership firm established under the Indian Partnership Act of 1932. According to the deed, the partnership intended to continue carrying on the same business of property management, construction and services. This document, which was dated July 1, 2009, showed that the Petitioner owned 52 percent of the reconstituted partnership while four individuals each owned 12 percent of the company. The Petitioner did not provide copies of any previous partnership deed for [REDACTED] showing its original ownership,<sup>3</sup> or provide evidence that this "reconstitution" of the partnership deed to incorporate a foreign majority partner had been registered with or recognized by any Indian government authority. The document did not bear any stamps or seals and appeared to be internally prepared.

In response to the Director's initial request for further evidence (RFE) regarding the qualifying relationship between the entities, the Petitioner indicated that [REDACTED] had changed its name to [REDACTED] subsequent to the filing of the petition. The Petitioner provided a list of the owners of [REDACTED] as of October 2009, which showed that it owned a 52 percent interest in the foreign company and seven other individuals owned the remaining interest in varying amounts. The Petitioner provided an ownership list for [REDACTED] which provided the same ownership structure outlined in the reconstitution of partnership deed. Neither of these lists was submitted in conjunction with evidence of the company name change, documentation of the company's conversion from a partnership firm to a private limited company, memorandum or articles of organization for the private limited company, stock certificates for the new entity, or other independent evidence of ownership.

In response to the Director's subsequent notice of intent to deny (NOID) issued on March 13, 2012, the Petitioner claimed that it continued to own "52% of [REDACTED] (formerly [REDACTED])." The Petitioner also submitted the "Reconstitution of Partnership Deed" for

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<sup>3</sup> While the Petitioner's evidence did not include [REDACTED] previous partnership deed, it did provide copies of "Annual Audited Accounts" for the fiscal year ended March 31, 2008. This document showed the following ownership: [REDACTED] - 35%; [REDACTED] - 25%; [REDACTED] - 25%; and [REDACTED] - 15%.

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but this version of the document has the first two pages printed on Indian Non-Judicial stamp paper and is not signed by the Petitioner's representative; the content of the document is the same as that previously submitted.

The Petitioner also included financial and tax documents for the 2009-10 tax year for which were filed in 2009. These documents listed only four individual Indian partners and did not include the petitioning company as an owner of the company.

Finally, in the NOID, the Director had requested that the Petitioner file an IRS Form 4506, Request for Copy of Tax Return, to obtain official and complete copies of its IRS Forms 1065, Return of Partnership Income, for 2009 and 2010 with all supporting schedules, exhibits and statements. Instead of submitting complete copies of its tax returns for the requested years, the Petitioner submitted Tax Return Transcripts for the years 2009 to 2011 and attached a Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, to each transcript. The Forms 5471 indicate that the petitioner owns 520 shares out of 1,000 shares of common stock issued by . However, there was no evidence that the Petitioner actually filed the Forms 5471 with its Forms 1065. The tax return transcripts do not list this document as part of the Petitioner's filing, and the Petitioner did not comply with the Director's request to submit complete official copies of its tax returns, even after the Director acknowledged that such copies might not be available prior to the NOID deadline and would be accepted after the due date for the Petitioner's response.

Moreover, the submitted Form 5471 for 2009 states that the Petitioner owned a 52% interest in for the entire annual accounting period, but the Petitioner claimed no ownership interest in or prior to July 1, 2009.

In determining that the Petitioner did not establish a qualifying relationship with the Beneficiary's foreign employer, we concluded:

Upon review, the petitioner has not provided sufficient evidence to establish that the petitioner ever owned a majority interest in the foreign entity that employed the beneficiary from November 2005 until February 2007, nor has the petitioner established that [it] meets the definition of "multinational" at 8 C.F.R. § 204.5(j)(2).

... [T]here is no independent or objective evidence establishing the petitioner has any ownership interest in and therefore the petitioner has not established by a preponderance of the evidence that it is a multinational company with a foreign affiliate, parent or subsidiary.

In sum, there is no evidence that the beneficiary was employed by , as this company was formed more than two years after his admission to the United States. Nor is there sufficient evidence to support a finding that this is the same employer as or . As observed above, the record does not establish that is a successor

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company to [REDACTED] that the beneficiary was ever employed by [REDACTED] that the petitioner ever owned a majority interest in [REDACTED] or that the petitioner presently owns a majority interest in [REDACTED]

In its brief on motion, the Petitioner did not contest or even specifically address our adverse finding regarding its qualifying relationship with [REDACTED] or [REDACTED]. However, its supporting evidence included a letter from [REDACTED] managing director of [REDACTED] dated June 25, 2014, which he had also provided to the FDNS officer in India. He stated:

[I]n the month of July, 2009 our Company had entered into partnership with [the petitioning entity] to carry out the business activities, but any kind of work had not been executed & also there had been no any [sic] type of financial transactions carried out without any profit or loss account & thus the company was dissolved.

The Petitioner submitted a second letter from [REDACTED] dated July 21, 2014, in which he stated “in 2009, we entered into a partnership with [the Petitioner] to explore opportunity to expand in USA, since no opportunities were found, [REDACTED] was later dissolved.”

In our notice of reopening on motion, we emphasized the lack of objective documentary evidence of the Petitioner’s majority ownership of [REDACTED] and [REDACTED] noted the unresolved inconsistencies that remained in the record, and, based on [REDACTED] statements regarding the dissolution of the partnership, questioned whether the relationship between the companies was created on paper only in order to assist the Beneficiary in qualifying for this immigrant visa classification.

We requested: (1) documentary evidence of the Petitioner’s purchase of an interest in [REDACTED] including evidence of financial transactions and recognition by the Indian government; (2) evidence of the purpose of the claimed partnership such as business plans; (3) additional evidence showing that the Petition actually filed Forms 5471 with its tax returns from 2009 through 2013; (4) evidence of when the Petitioner’s purported partnership with [REDACTED] and/or [REDACTED] was dissolved; and (5) evidence of the ownership of [REDACTED] since its incorporation, along with evidence that the ownership was recognized by the Indian government through the filing of the appropriate corporate documentation.

In response, the Petitioner re-submits copies of the previously submitted IRS transcripts, and a letter from its accountant, [REDACTED] stated that he spoke to an IRS revenue agent, who “said that a Form 5471 is not listed on a tax return transcript because the transcript only reports the main tax return information . . . and primary Schedules.” The Petitioner has not submitted IRS-certified copies of the returns or any other evidence from the IRS to confirm its filing of Forms 5471. We note that the IRS Form 1065, at Schedule B, would contain information regarding any foreign holdings owned by the limited liability company and include the number of

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Forms 5471 attached, but the Petitioner has not provided any copies of its IRS Form 1065 for any tax year after 2008.

Further, the Petitioner submits another letter from [REDACTED] which, the Petitioner states, explains “its rationale for its belief that it maintained a qualifying relationship.”

In this letter, dated March 23, 2015, [REDACTED] states:

In July 2009, [REDACTED] entered into a partnership with [the Petitioner]. [The Petitioner] acquired 52% ownership of [REDACTED] in exchange for [the Petitioner] providing future capital and support for construction projects in the United States. It was anticipated that [REDACTED] would enter the US market and provide constructions services. Due to the economic downturn in the USA, particularly within the US construction industry, our expansion to the US did not fully occur. As such, we mutually agreed to terminate the partnership in 2011.

In the accompanying brief, the Petitioner states that “the facts presented by [REDACTED] in their letter remain consistent with all prior documents submitted by the petitioner and the overseas investigation by USCIS.” The Petitioner asserts that “the lack of certain documents requested by the AAO only confirms that that petitioner and/or [REDACTED] did not meet its burden of proof in establishing the required qualifying [relationship] under 203(b)(1)(C).” Further, the Petitioner states that “the US tax records . . . of the petitioner and [REDACTED] statement herein and its statement to the USCIS investigator consistently indicate the termination of their relationship in 2011.”

## 2. Analysis

Upon review, we affirm our determination that the Petitioner did not establish that it had a qualifying relationship with [REDACTED] nor has the Petitioner established that it meets the definition of “multinational” at 8 C.F.R. § 204.5(j)(2).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *See Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm’r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm’r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm’r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Here, while the Petitioner previously consistently claimed, from the date of filing, that it owned and controlled a majority interest in [REDACTED] (later [REDACTED]), it did not provide any primary documentary evidence to support this claim. Instead, the Petitioner relied on an

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informal, unregistered “reconstitution of partnership deed”<sup>4</sup> and internally-prepared lists of owners rather than documentation showing that its ownership was formally recognized by Indian governmental authorities through registration of the partnership firm and incorporation documents filed by the private limited company it claimed to own. Further, the Petitioner did not provide secondary evidence corroborating its claims, such as copies of its actual IRS Forms 1065 filed with the IRS, or copies of the foreign entities’ Indian tax returns or audited financial accounts naming the Petitioner as the majority partner or shareholder. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

However, the Petitioner and foreign entity now claim that the Petitioner terminated its relationship with the foreign entity in 2011, prior to the initial denial of the petition, and even prior to the Petitioner’s submission of a response to the Director’s NOID, at which time it continued to claim that it was the parent company of the Beneficiary’s claimed foreign employer. If the Petitioner terminated any relationship it had with the foreign entity in 2011, and continued to claim such a relationship in 2012, then, as discussed further below, we must conclude that the Petitioner willfully misrepresented a material fact as to its qualifying relationship with the foreign entity and its status as a multinational company as defined at 8 C.F.R. § 204.5(j)(2).

The Petitioner’s claim that the foreign entity’s statement submitted in response to our latest notice and its statement to the USCIS investigator “consistently indicate the termination of their relationship in 2011” is not supported by the record. The FDNS officer reported, after speaking with [REDACTED] that any partnership between the entities did not involve any financial transactions and that it was dissolved within a few months.

[REDACTED] has submitted a total of three letters addressing the nature of the relationship between the Petitioner and [REDACTED]. Initially, in his June 25, 2014, letter, he stated that [REDACTED] had “entered into partnership . . . to carry out the business activities” with the Petitioner but “any kind of work had been not executed & also there had been no any type of financial transactions carried out without any profit or loss account & thus the company was dissolved.” Notably, he did not mention that the partnership involved the Petitioner’s acquisition of a majority interest in the existing partnership firm, [REDACTED]. Further, it is unclear what he meant by “the company was dissolved” as the Petitioner has previously claimed that [REDACTED] is now known as [REDACTED] a company that still existed as of the date of the site visit. Finally, his statement that there were no financial transactions, no work executed and no profit or loss accounts suggests that the partnership arrangement outlined in the “Reconstitution of Partnership Deed” never came to light.

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<sup>4</sup> While the Petitioner eventually provided a “reconstitution of partnership” deed partially printed on India Non-Judicial stamp paper, it did not explain why it previously submitted the same document on plain paper, the significance of the stamp paper, or the date on which the latter version, which was not fully executed, was created. Moreover, if the latter version of the partnership deed was created in response to the Director’s NOID, in which he requested evidence that the partnership had been recognized by the Indian government, it was done so at a time when the Petitioner had already claimed that the partnership “changed its name” to [REDACTED] and no longer existed as a partnership firm.

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second letter, dated July 21, 2014, was more vague, noting only that entered a partnership with the Petitioner “to explore opportunity to expand in USA” and “since no opportunities were found, was later dissolved.” Again, he did not mention that the Petitioner acquired a majority interest in or that it held a majority interest in We can find no evidence in the record of existence after October 2009 or any evidence that it ever concurrently existed with As the Petitioner has not provided any evidence related to the dissolution of the partnership firm or the formation of the private limited company, we cannot determine whether there was a dissolution or a restructuring, whether had the same ownership as or that the Petitioner was an owner of that company.

In our notice of reopening, we requested specific, objective evidence that would shed light on the documented, recognized ownership structure of both and Instead of that evidence, we received a third letter from this time claiming that the Petitioner acquired a 52% interest in and that the partnership was terminated in 2011. Once again, he did not mention or the Petitioner’s claimed ownership interest in that company.

Overall, the absence of independent evidence of the Petitioner’s ownership of prevents us from determining that the Petitioner ever had a qualifying parent-subsiary relationship with that was based on common ownership and control.

Even if the Petitioner did have a relationship with the Petitioner’s new admission that such relationship was terminated in 2011 leads us to find that the Petitioner has willfully misrepresented material facts.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term “willfully” means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be 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 Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

For an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

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First, a misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). In this matter, the Petitioner now claims that any relationship it had with the Beneficiary's claimed foreign employer was terminated or dissolved in 2011, while the Form I-140 was pending initial adjudication at the Texas Service Center. However, the record reflects that the Petitioner did not disclose this material information and instead continued to claim in its submissions to the Texas Service Center and to the AAO that it was the parent company of the foreign entity well after 2011.

Second, we must conclude that the Petitioner willfully made this misrepresentation. The Petitioner was asked in the Director's NOID to submit evidence of a continuing qualifying relationship with the Beneficiary's foreign employer, as the Petitioner claimed no other related foreign companies and needed to establish its continuing eligibility as a multinational company as defined at 8 C.F.R. § 204.5(j)(2). If the Petitioner had terminated its relationship with the Beneficiary's foreign employer as of that date, it is reasonable to believe that the Petitioner was aware of this material change and that its false claim of a continuing parent-subsidiary relationship with [REDACTED] as of 2012 was willfully made.

The signature portion of the Form I-140, at part 8, requires the Petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct." On the basis of this affirmation, made under penalty of perjury, we find that the Petitioner willfully and knowingly made the misrepresentation.

Third, the evidence is material to the Petitioner's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537. The Petitioner's misrepresentation that it continued to maintain an ownership interest in the foreign entity after it terminated any relationship with that company, cut off a potential line of inquiry regarding the Petitioner's qualifying relationship with the Beneficiary's foreign employer and its qualification as a multinational company. As the Petitioner submitted false statements regarding its relationship with the foreign entity, the immigration officer would have likely denied the petition based on the true facts. We conclude that the Petitioner's misrepresentations were material to its eligibility.

By pursuing the instant petition and falsely claiming that it continued to be a multinational company with a foreign subsidiary throughout the proceeding, the Petitioner has sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact.

### III. CONCLUSION

For the above stated reasons, we affirm the dismissal of the appeal and denial of the petition. We withdraw the finding of willful misrepresentation as it relates to the Beneficiary's foreign employment history; however, we find that the Petitioner willfully misrepresented material facts regarding its qualifying relationship with its claimed foreign subsidiary and its qualification as a multinational company. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 13611361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reopen is granted in part and denied in part.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of P-H-USA, LLC*, ID# 11249 (AAO July 19, 2016)