



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

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

MATTER OF Y-USB-, INC.

DATE: JULY 29, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a biotechnology company, seeks to permanently employ the Beneficiary as its vice 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 did not provide an adequate job description to establish that the job duties assigned to the Beneficiary during her employment abroad were primarily within a managerial or executive capacity. The Director also issued a finding of fraud or willful misrepresentation of a material fact based on the Petitioner's inability to resolve inconsistencies between the employment claims made by the Beneficiary in three previously filed nonimmigrant visa applications and claims made in support of the instant petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director "wrongfully applied the high screwy [*sic*] or predetermined not to approve the I-140 petition . . . because the Petitioner operates a research and development business in a sensitive biopharmaceutical industry."

Upon *de novo* review, we will dismiss the appeal and affirm the Director's finding that the Petitioner willfully misrepresented information pertaining to the Beneficiary's employment abroad and therefore does not meet the statutory provision requiring the Petitioner to establish that the Beneficiary was employed abroad by an entity that has a qualifying relationship with its foreign affiliate. Given that a finding of willful misrepresentation of a material fact is dispositive of the issue of the Beneficiary's employment abroad, the analysis below will be limited to the factors that contributed to our ultimate finding and will not include a discussion of whether the Beneficiary's claimed employment abroad was in a managerial or executive capacity.

## I. LEGAL FRAMEWORK

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

....

- (C) *Certain multinational executives and managers.* An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. A labor certification is not required for this classification.

The regulation at 8 C.F.R. § 204.5(j)(3) states:

(3) Initial evidence—

- (i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:
- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(b)(6)

*Matter of Y-USB-, Inc.*

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

## II. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

The Director denied the petition, in part, based on the finding the Petitioner offered evidence that misrepresented a fact that is material to the issue of the Beneficiary's employment abroad.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – 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.

Under Board of Immigration Appeals precedent, a material misrepresentation 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). A willful misrepresentation requires that the alien knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2<sup>nd</sup> Cir. 2009) (citing *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (B.I.A. 1975)). Material misrepresentation requires only a false statement that is material and willfully made. See 9 FAM 40.63 N2; see also *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998) (en banc) (Rosenberg, concurring). 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).

### A. Evidence of Record

The Petitioner filed the Form I-140 on February 2, 2012. In a supporting statement submitted with the Form I-140, the Petitioner claimed that the Beneficiary was employed by its foreign parent entity, [REDACTED] as “executive manager.”<sup>1</sup>

In support of the claim that the Beneficiary was employed by its foreign parent entity for at least one year during the statutorily requisite three-year time period, the Petitioner submitted a second

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<sup>1</sup> In the Petitioner’s November 2, 2015, supporting statement, the Petitioner explained that the foreign entity, [REDACTED] “is a group biopharmaceutical company” that is comprised of branches in [REDACTED] and China.

*Matter of Y-USB-, Inc.*

supporting statement, a job offer letter from the foreign entity, the foreign entity's letter describing the Beneficiary's claimed employment abroad, copies of the Beneficiary's payroll records and uncertified translations reflecting her employment with the foreign entity from March through December 2010 and January through March 2011, the Beneficiary's résumé, and the foreign entity's organizational chart in which the Beneficiary was depicted as overseeing a quality management employee.

The Director issued a request for evidence (RFE) on August 16, 2012, instructing the Petitioner to submit, in part, evidence that the Beneficiary was employed abroad in a managerial or executive capacity. The Director specifically noted that any foreign language documents the Petitioner submits must be accompanied by a certified English translation, the translator's statement certifying that he/she is competent to perform the translation and that the translation is accurate, and the related foreign document.

In response to the RFE, the Petitioner submitted a statement from the foreign entity, claiming that the Beneficiary was first employed abroad as a research director from 2005 to 2006 and was promoted to the "executive managerial position" of science director at the end of 2006. The Petitioner provided another organizational chart for the foreign entity depicting the Beneficiary as overseeing a quality management employee and a production management department, which is shown as having been comprised of "workshop" employees. Lastly, the Petitioner provided foreign documents claimed to comprise the foreign entity's monthly payroll from 2009-2011. In lieu of a certified translation of the foreign document, the first page of each month's payroll was altered to include a handwritten note indicating that it represents the foreign entity's managerial member monthly payroll. The Beneficiary's name is handwritten over top of an 18-digit number to indicate that the Beneficiary was listed first in the list of other managerial employees. Other than the Beneficiary's handwritten name in the top-most slot (of which there were 18 total), the claimed payroll document contains no other employee names.

On October 1, 2015, the Director issued a notice of intent to deny (NOID) informing the Petitioner that a number of the previously submitted Chinese-language documents were not accompanied by certified translations into English. The Director also informed the Petitioner that the evidence it provided with regard to the Beneficiary's employment history with the foreign parent organization is inconsistent with records obtained by United States Citizenship and Immigration Services (USCIS). Specifically, the Director discussed the information that the Beneficiary provided in two B1/B2 visa applications, filed on December 17, 2009, and November 9, 2010, respectively, and a 2011 L-2 nonimmigrant visa application, all of which contained the Beneficiary's claim that she was employed as a physician at [REDACTED] in China. The Director determined that in light of the Beneficiary's attestations before the U.S. Department of State in her previously filed nonimmigrant applications, the Beneficiary could not have been employed by the Petitioner's foreign parent entity as the Petitioner claims. The Director further determined that various supporting documents, including statements offered by the foreign entity, the Beneficiary's résumé, and the foreign entity's payroll records, appear to misrepresent the Beneficiary's employment history for the purpose of making the Beneficiary appear qualified for the requested immigrant visa

*Matter of Y-USB-, Inc.*

classification. Accordingly, the Director concluded that the available evidence does not support the finding that the Beneficiary has the requisite period of qualifying employment abroad in a managerial or executive capacity.

In response to the NOID, the Petitioner provided a statement addressing the inconsistency between the Beneficiary's nonimmigrant applications and the Petitioner's current claim with regard to the Beneficiary's employment abroad. Namely, the Petitioner noted that the Beneficiary was not asked to list all of her jobs at the time of the interview and claimed that it is a Chinese cultural norm for the Beneficiary to prefer being addressed as a doctor, regardless of any other employment she may have held at the time she filed the nonimmigrant applications. The Petitioner also claimed that the Beneficiary was employed at [REDACTED] in a part-time capacity as an "expert doctor" while simultaneously maintaining full-time employment in various managerial positions with the Petitioner's foreign parent organization. The Petitioner contended that the Beneficiary's claimed salary in her position with [REDACTED] was not consistent with that of a full-time physician, thus indicating that the low salary was sufficient evidence to establish that the Beneficiary was employed at the hospital in a part-time, rather than full-time, capacity.

In support of the explanation offered in the NOID response and in an effort to overcome the Director's adverse findings regarding the lack of credibility of the previously submitted supporting documents, the Petitioner provided, in part, the following: (1) a Chinese language document accompanied by an uncertified translation titled, "2012-2013 Annual Salary Survey Report of Chinese doctors"; (2) a certified translation of the Beneficiary's professional license certification; (3) a certified translation of employment verification letter, dated October 27, 2015, in which the president of [REDACTED] claimed that the Beneficiary was employed by the foreign entity while simultaneously maintaining her job at the hospital "in the diagnosis and treatment for [sic] difficult cases on the basic salary" from 2005 to May 2011; (4) the Beneficiary's personal attestation asserting that she worked in a part-time capacity as "the expert on call" at [REDACTED] from 2005 to May 2011, that her salary during such time was indicative of her part-time status, and that she did not disclose her claimed employment with the Petitioner's parent organization in China in her previously filed nonimmigrant visa applications because she was not instructed to disclose all employment; and (5) a letter from the foreign entity discussing the Beneficiary's employment history, job duties, and the subordinates she purportedly managed. The letter referenced the monthly income that the Beneficiary claimed in her nonimmigrant visa applications, stating that such figures were not commensurate with those of a full-time doctor and that the Beneficiary only worked for the hospital a "few times a month while she worked for [REDACTED] full time."

On December 17, 2015, the Director denied the petition, concluding that the conflicting information in the Beneficiary's nonimmigrant visa applications raised serious doubt as to the veracity of the evidence submitted in support of the instant Form I-140 with regard to the Beneficiary's employment abroad and that it could not be concluded that the Beneficiary attained the requisite one year of employment abroad in a managerial or executive capacity with the Petitioner's foreign parent organization.

*Matter of Y-USB-, Inc.*

On appeal, the Petitioner again disputes the Director's findings and offers the following documents in support of its arguments: (1) a document titled "Part-Time Job Agreement," which was purportedly executed on October 25, 2004, by three interested parties – the Beneficiary, the Petitioner's foreign parent entity, and [REDACTED] – purporting to have agreed to allow the Beneficiary to continue her employment with the hospital as a consultant on a part-time basis, while she simultaneously held a full-time position with the foreign parent entity; (2) a document titled "Work Certification" from the Petitioner's foreign parent entity stating that the Beneficiary worked for the organization from December 2006 to June 2011 as a science director and a vice president, respectively; (3) a second "Work Certification" stating that the Beneficiary worked for [REDACTED] as a research director from January 2005 to December 2006; and (4) a third "Work Certification" from [REDACTED] stating that it employed the Beneficiary from August 1, 1981 to May 2011. Each of the above documents was accompanied by a "Notarial Certificate" stating that "[t]he English translation attached hereto is in conformity with its original Chinese copy."

## B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not overcome the Director's finding that the petition must be denied based on the Petitioner's willful misrepresentation of a material fact pertaining to the Beneficiary's prior employment abroad.

As noted above, we will address whether the evidence submitted with respect to the Beneficiary's claimed employment with the Petitioner's foreign parent entity rises to the level of willful misrepresentation. A misrepresentation is an assertion or manifestation that is not in accord with the true facts.<sup>2</sup>

In order 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. In order to determine whether the Director met the above three-part criteria, we will evaluate the evidence that is relevant to the issue of the Beneficiary's employment abroad, starting with the first criterion –

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<sup>2</sup> The terms "fraud" and "misrepresentation" are not interchangeable. Unlike a finding of fraud, a finding of material misrepresentation does not require an intent to deceive or that the officer believes and acts upon the false representation. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

(b)(6)

*Matter of Y-USB-, Inc.*

whether the Petitioner or Beneficiary made a false representation to an authorized official of the United States government.<sup>3</sup>

The record shows that despite the submission of documents corroborating the claim that the Beneficiary was employed abroad by the Petitioner's foreign parent organization, the evidence contained numerous deficiencies that diminished its probative value.

First, while the Petitioner provided employment verification statements from the foreign entity, the Beneficiary's résumé, and the foreign entity's organizational charts indicating that the Beneficiary was employed by the Petitioner's foreign parent entity, none of the documents is contemporaneous with the time the claimed employment would have taken place. Documents that the Petitioner, its foreign affiliate, or the Beneficiary created specifically for the purpose of corroborating the claims made in the instant Form I-140 petition or in an effort to overcome adverse findings regarding the Petitioner's credibility are not sufficient to overcome the considerable discrepancy that resulted from the Beneficiary's statements in three unrelated nonimmigrant visa applications. See *Kirong v. Mukasey*, 529 F.3d at 804; *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *Blanco v. Mukasey*, 518 F.3d at 720; *Kechkar v. Gonzales*, 500 F.3d at 1085.

We also note that the Beneficiary's résumé does not indicate that the Beneficiary's employment with the Petitioner's foreign parent entity took place simultaneously with her employment at [REDACTED] thus indicating that the résumé is not consistent with the statements that the Beneficiary made on each of her three previously filed nonimmigrant applications or with the Petitioner's latest claim pertaining to the Beneficiary's simultaneous employment.

Next we will address the payroll documents the Petitioner provided initially in support of the Petition and later in response to the RFE. The originally submitted documents appear to correspond to two translated payroll records for the Beneficiary, accounting for pay periods from March through December 2010 and from January through March 2011, while the subsequent set of documents contain handwritten notes to indicate that they represent the foreign entity's monthly payroll. We find that both sets of documents contain serious deficiencies that diminish their evidentiary weight and contribute to our doubts as to the reliability of their content. First, we note that neither set of payroll records was submitted with a corresponding *certified* English language translation; the handwritten notes identifying the second set of documents as monthly payroll statements and naming the Beneficiary as one of the foreign entity's 18 managerial employees are not an adequate substitute for a certified English language translation which a translator has certified as complete and accurate. 8 C.F.R. § 103.2(b)(3). The originally submitted payroll documents are similarly deficient as the translation that accompanies the foreign language document was not certified, thus precluding us from being able to identify the translator or verify that individual's credentials to provide an accurate translation. *Id.* Moreover, even though both sets of payroll documents were submitted for the purpose of

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<sup>3</sup> 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).

*Matter of Y-USB-, Inc.*

verifying the Beneficiary's salary and employment with the Petitioner's foreign entity in 2010 and 2011, a comparison of the payroll spreadsheets shows that they differ in appearance and content, as they seemingly indicate different salaries for the Beneficiary for the same time period. It is also unclear why the second set of payroll documents shows the Beneficiary continuing to receive a salary after June 2011 when her employment with the foreign entity was supposed to have ended.

We now turn to the document titled "Part-Time Job Agreement," which the Petitioner provided for the first time on appeal. The employment agreement was accompanied by an English language translation and a "Notarial Certificate" from the translator stating that the "English translation attached hereto is in conformity with its original Chinese copy." We weigh the probative value of the employment agreement in light of the information that the Beneficiary previously offered in three nonimmigrant visa applications, where she identified what is now claimed to have been her part-time employer as her only employer and made no indication that she was a full-time employee of one of [REDACTED] three branches. Given that the Beneficiary did not disclose her allegedly part-time employment with [REDACTED] on her résumé nor offered any information about her allegedly full-time employment with [REDACTED] at the time she filed her three prior nonimmigrant applications, we question the validity of the part-time employment agreement and the accuracy of the information offered therein.

Lastly, we turn the employment verifications titled "Working Certificate." Namely, we find that the certificate from [REDACTED] which the Petitioner provided in response to the Director's NOID and which states that the Beneficiary worked at the medical facility from 1981 to May 2011, does not provide any information with respect to the name and title of the person who wrote the letter, as well as the source of the author's knowledge of the Beneficiary's employment. It is therefore unclear where the information originated or whether the source of the information was reliable. Given that the Petitioner provided no reliable payroll records to support the assertions that were made in the employment letter, the lack of sufficient information as to the basis for the employment verification claim is deemed as a significant deficiency that greatly diminishes the probative value of the document. Further, as previously stated with regard to the part-time employment agreement, the fact that the employment verifications were accompanied by English language translations that meet regulatory criteria does not establish that the content of the original documents represents an accurate depiction of the actual facts. We cannot overlook the fact that all three documents are not consistent with statements that the Beneficiary offered on her three nonimmigrant visa applications and in the résumé she provided in support of the instant petition.

In light of the deficiencies catalogued above, the payroll documents, part-time employment contract, and letters of employment are minimally probative. Further, as the above-described documents contradict the employment information that the Beneficiary provided in her B1/B2 and her L2 nonimmigrant visa applications, the Petitioner's submission of such deficient and contradictory documents constitutes false representation to a government official, thereby establishing that the Director met the first of three prerequisites necessary to establish willful material misrepresentation.

*Matter of Y-USB-, Inc.*

Next, we find that the Petitioner willfully made the misrepresentation. The Petitioner has not asserted that it accidentally or inadvertently claimed that the Beneficiary was employed abroad by its parent entity. Rather, the Petitioner claims that the Beneficiary purposely omitted making any references to her alleged employment with the Petitioner's foreign parent entity due to cultural norms, which are purportedly more accepting of certain professions. As indicated earlier, the Petitioner claims that the Beneficiary simultaneously worked part-time for [REDACTED] which the Beneficiary disclosed as her employer in the nonimmigrant applications she previously filed, while working full-time for the Petitioner's foreign parent entity, which the Beneficiary did not disclose as an employer in the same applications.

The Petitioner provided no evidence, other than the Beneficiary's self-serving statements, to corroborate the claim that the Beneficiary's omission of the Petitioner's foreign parent entity as her employer when filing the nonimmigrant applications was the result of cultural biases. In fact, as discussed above, the Petitioner provided deficient and unreliable evidence to support the claim that the Beneficiary was employed abroad by its foreign parent entity; and while the Petitioner offered the Beneficiary's résumé to corroborate the claim that her employment abroad meets the statutory requirements, it offered no reliable evidence to explain why the Beneficiary provided a résumé in which she stated that her employment with [REDACTED] commenced in December 1992 and ended in December 2004. It was not until the Petitioner was notified of the inconsistency between the Beneficiary's statements in her previously filed nonimmigrant applications, where she identified only [REDACTED] as her employer in 2009, 2010, and 2011, and the Form I-140 supporting evidence, which indicates that the Beneficiary's employment at [REDACTED] ended in December 2004, that the Petitioner altered its original claim by stating that the Beneficiary's employment with [REDACTED] took place simultaneously with her alleged employment with the Petitioner's parent entity abroad. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

When given the opportunity to address the Director's adverse findings, pursuant to 8 C.F.R. § 103.2(b)(16)(i), the Petitioner denied that the Beneficiary "consciously concealed her concurrent employments from the USCIS" and provided additional evidence to substantiate the altered claim. However the supporting documents offered to support the new employment claim – including a foreign employment contract and three letters of employment, all without the required properly certified translation – are similarly unreliable and have minimal probative value as the evidence that the Petitioner previously submitted. Furthermore, 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.

Finally, given that the issue of the Beneficiary's employment abroad is germane to the overall determination of eligibility and given that the Petitioner's claims in support of the instant Form I-140 regarding the issue of the Beneficiary's employment abroad are entirely contrary to the Beneficiary's

own statements, which she consistently made in her previously filed nonimmigrant applications, we find that the Petitioner misrepresented a fact that is material to the instant visa petition.

We find that the statements made by the Petitioner, its foreign parent entity, and the Beneficiary in support of this petition, as well as the deficient supporting evidence, which included inconsistent documents as well as foreign documents without properly certified English translations, does not overcome the adverse findings issued in the NOID.

We find that the Petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS on an element material to the Beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. Therefore, we will affirm the Director's finding of willful misrepresentation of a material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue. As noted, the finding of willful misrepresentation with regard to the Beneficiary's foreign employment is dispositive and we need not discuss the claimed managerial or executive nature of the claimed employment.

### III. CONCLUSION

The petition will be denied and the appeal dismissed for the above reason. The finding of willful misrepresentation will be affirmed. 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. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of Y-USB-, Inc.*, ID# 17641 (AAO July 29, 2016)