



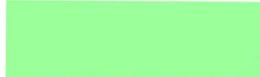
U.S. Citizenship
and Immigration
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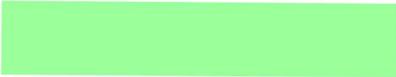
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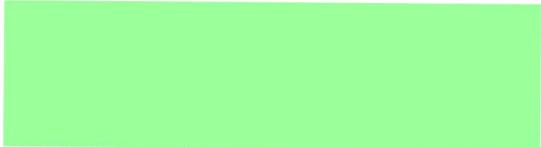
OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
 Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



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, Texas Service Center (Director), denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on the petitioner's appeal. The Director's decision will be affirmed in part and withdrawn in part, and the appeal will be dismissed.

The petitioner operates global, online commerce systems. It seeks to permanently employ the beneficiary in the United States as an "MTS 1, Software Engineer (Global Billing & Payments)." The petition requests classification of the beneficiary as a member of the professions holding an advanced degree under section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A).

An ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL), accompanies the petition. The petition's priority date is February 14, 2013, which is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

The Director concluded that the record did not establish the beneficiary's qualifying experience for the offered position by the petition's priority date. The Director also found that the petitioner submitted fraudulent letters in support of the beneficiary's qualifying experience. Accordingly, the Director denied the petition on January 9, 2014.

On appeal, the petitioner does not challenge the denial. However, it seeks reversal of the Director's finding that it knowingly submitted false experience letters in support of the petition.

The record shows that the appeal is properly filed and alleges specific errors in law and fact. The record documents the case's procedural history, which is incorporated into the decision. We will elaborate on the procedural history only as necessary.

We conduct appellate review on a *de novo* basis. See, e.g., *Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence of record, including new evidence properly submitted on appeal.¹

The Beneficiary's Qualifying Experience

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); see also *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating a beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must examine the job offer portion of the labor certification to determine the minimum job requirements for the offered position. USCIS may not ignore a term of the labor certification, nor may it impose additional

¹ The instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1), allow the submission of additional evidence on appeal. The record provides no reason to preclude consideration of any documentation submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

requirements. *See K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

In the instant case, the accompanying labor certification states that the offered position of MTS 1, Software Engineer requires a U.S. Master's degree (or a foreign equivalent degree) in computer science, engineering, or a closely related field, plus 72 months of experience in the job offered or in software engineering. The petitioner stated on the labor certification that it would accept an alternate combination of education and experience in the form of a U.S. bachelor's degree (or a foreign equivalent degree) and eight years of experience. The labor certification also states that experience must include the performance of "billing and payment analytics (SQL query building, report creation and maintenance); advanced [REDACTED] skills; Oracle and PL/SQL; advanced SQL and data analytic skills; UNIX operating systems and UNIX shell scripting."

The beneficiary stated on the labor certification that he obtained a Master's degree in computer applications from the [REDACTED] India, in 1996. The record contains evidence establishing that the beneficiary earned a Master of Computer Applications degree from that university in 1996. His educational qualifications for the offered position are not in dispute.

The beneficiary also stated on the labor certification that he obtained about 82 months of full-time, qualifying experience before joining the petitioner in the offered position on June 6, 2011. The beneficiary claimed the following qualifying experience:

- About nine months as a systems engineer for [REDACTED] in the United States from August 30, 2010 to May 31, 2011.
- About 17 months as a programmer analyst for [REDACTED] in the United States from March 16, 2009 to August 25, 2010.
- About 11 months as a technical consultant for [REDACTED] in the United States from April 16, 2008 to March 15, 2009.
- About six months as a senior consultant for [REDACTED] in Singapore from September 1, 2007 to March 5, 2008.
- About 18 months as a team lead for [REDACTED] in India from February 20, 2006 to August 27, 2007.
- About 21 months as an assistant manager for [REDACTED] in India from May 26, 2004 to February 17, 2006.

A petitioner must support a beneficiary's claimed qualifying experience with letters from employers giving the names, addresses, and titles of the employers, and descriptions of the beneficiary's experience. *See* 8 C.F.R. § 204.5(g)(1).

The record contains copies of signed letters on the stationery of all six of the beneficiary's claimed prior employers. All of the letters are dated in July 2012 and state that the beneficiary worked for the respective employers for the time periods stated on the labor certification.

However, the letters contain identical inconsistencies. They refer to the beneficiary's purported former positions with the employers by the job titles of the respective signatories. The second paragraphs of the letters also contain virtually identical descriptions of the beneficiary's purported job duties. In addition, four of the letters identically misspell the job title of manager. The identical inconsistencies and misspellings in the letters suggest that the same person prepared all of the documents and cast doubts on their authenticity. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of a petition).

In attempts to verify the letters' authenticity, USCIS contacted the purported signatories of three of the documents. The signatories of letters from [REDACTED] told a USCIS officer that they did not sign, write, or authorize anyone in their firms to sign or write the letters submitted on behalf of the beneficiary. Both officials confirmed their firm's employment of the beneficiary and their issuance of experience letters to him. However, both stated that the letters submitted to USCIS were not copies of the documents they issued to the beneficiary.

The purported signatory of the [REDACTED] letter also provided USCIS with a copy of a July 16, 2012 letter, which he stated he provided to the beneficiary. The authentic [REDACTED] letter is largely similar to the [REDACTED] letter submitted with the petition, containing the same dates of employment, job title, and job duties stated on the labor certification. The record does not contain an authentic letter from the purported signatory of the [REDACTED] letter. The record does not contain any response from the signatory of the letter on the stationery of [REDACTED]

The responses from the beneficiary's claimed prior employers indicate that at least two letters submitted in support of his qualifying experience - accounting for about 20 of his claimed 82 months of qualifying experience - are false documents. The record does not indicate that the contents of the false letters are untrue. However, the "truth" of their contents does not change the fact that they were not written and signed by their purported signatories. Thus, the falsity of the two letters casts doubts on the authenticity of the remaining four letters in support of the beneficiary's qualifying experience. *See Matter of Ho, supra*, at 591 (stating that doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence in support of a petition).

The authentic [REDACTED] letter appears to confirm the beneficiary's claimed qualifying experience at that company. The record also contains a December 23, 2013 letter from the signatory of the [REDACTED] letters that confirms the beneficiary's job title and dates of employment with the company. However, the signatory of the [REDACTED] letter did not confirm the beneficiary's claimed dates of employment or job duties there. Therefore, the record does not establish the veracity of the letters from five of the six former claimed former employers.

The Director's decision did not discuss the response of the signatory of the [REDACTED] letter, presumably because USCIS received the signatory's response on December 6, 2013, after the issuance of the Director's Notice of Intent to Deny on November 22, 2013. *See* 8 C.F.R. §

103.2(b)(16)(i) (requiring USCIS to advise a petitioner of derogatory information and to offer it an opportunity to rebut the information or to submit evidence in its own behalf if the information will form the basis of an adverse decision). Therefore, on October 16, 2014, we notified the petitioner of the additional response and our intention to dismiss the appeal. We also afforded it an opportunity to submit rebuttal evidence on behalf of it or the beneficiary. As of the date of this decision, the petitioner has not responded to our notice.² A petitioner must submit independent, objective evidence to overcome doubts in the record and to authenticate suspect evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92. The instant petitioner's failure to respond does not provide competent evidence to overcome the doubts regarding the beneficiary's qualifying experience.

The submission of false documents casts doubt on the authenticity of the letters from the beneficiary's claimed former employers, which has not been overcome on appeal. The record does not establish his possession of the qualifying experience specified on the accompanying labor certification by the petition's priority date. Therefore, he does not qualify for the requested preference classification.

False Documentation of Experience Claimed on the Labor Certification

USCIS may invalidate a labor certification after its issuance "upon a determination . . . of fraud or willful misrepresentation of a material fact involving the labor certification application." 20 C.F.R. § 656.30(d).

Willful misrepresentation of a material fact consists of a false representation of a material fact made with knowledge of its falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). Fraud consists of the same elements as willful misrepresentation of a material fact. *Id.* However, a fraud finding also requires an intention to deceive another party, and "the misrepresentation must be believed and acted upon by the party deceived to his [or her] disadvantage." *Id.* A misrepresentation is material if it had "a natural tendency to influence" the decision. *Forbes*, 48 F.3d at 442 (quoting *Kungys v. United States*, 485 U.S. 759, 772 (1988)).

The Director's decision states that the petitioner "submitted falsified documents in order to obtain a benefit under [the Act] through fraud and misrepresentation of a material fact." The decision states that the petitioner "clearly submitted false evidence regarding the beneficiary's employment letters."

However, the record does not support a finding that the petitioner – or the beneficiary – committed fraud by submitting letters in support of his qualifying experience. The Director denied the petition, indicating that he did not believe or act upon the representations in the letters. Because the record does not support all of the required elements of fraud, the record does not establish the petitioner's or the beneficiary's fraud by submitting the false experience letters.

² Because the petitioner did not respond to our notice, we could summarily deny this appeal as abandoned. *See* 8 C.F.R. § 103.2(b)(13)(i). However, we decline to do so because the Director's decision erred in finding fraud by the petitioner.

The record also does not support a finding that the petitioner knowingly submitted false documents. The purported signatories of the [REDACTED] letters stated that they gave authentic letters to the beneficiary, suggesting that he - rather than the petitioner - obtained the letters submitted with the petition. The record does not contain evidence that the petitioner knew that the experience letters provided by the beneficiary were not authentic.

The record suggests that the beneficiary obtained and provided the false experience letters, which misrepresent their signatories. However, the record does establish the misrepresentation of any material facts involving the accompanying labor certification. As previously indicated, the authentic [REDACTED] letter is largely similar to the [REDACTED] letter submitted with the petition, containing the same dates of employment, job title, and job duties stated on the labor certification. Therefore, the record does not indicate that the beneficiary misrepresented his employment history on face of the labor certification. While the submission of false documentation of the beneficiary's experience may warrant a finding of willfull misrepresentation of a material fact, the record in this matter lacks insufficient evidence to determine whether the misrepresentation was material.

For the foregoing reasons, the record lacks substantial evidence that the petitioner or the beneficiary misrepresented a material fact on the accompanying labor certification. Therefore, the Director's finding of fraud against the petitioner will be withdrawn.

Conclusion

The record does not establish the beneficiary's possession of the qualifying experience specified on the labor certification by the petition's priority date. We will therefore affirm the petition's denial. The record suggests that the beneficiary provided false documents to the petitioner and willfully misrepresented their authenticity to the petitioner and USCIS. However, the record does not support the Director's finding that the petitioner submitted fraudulent letters in support of the beneficiary's qualifying experience. We will therefore withdraw that portion of the Director's decision.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the 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 Director's decision of January 9, 2014 is affirmed in part and withdrawn in part, and the appeal is dismissed.