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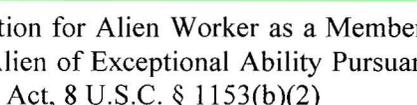
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

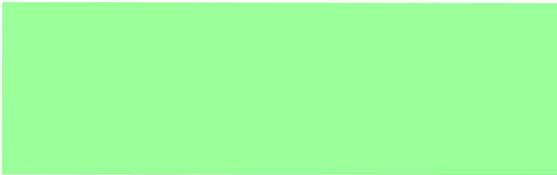


DATE: **JUN 17 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

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, Nebraska Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to permanently employ the beneficiary in the United States as a “Program Manager – Corporate or Other.” The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).<sup>1</sup>

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is August 24, 2012. *See* 8 C.F.R. § 204.5(d).

The director’s decision denying the petition concludes that the beneficiary did not possess the minimum educational requirements of the labor certification to qualify as an advanced degree professional.

The record shows that the appeal is properly filed 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.<sup>2</sup>

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Master’s degree in “Business, Computer Science, Engineering, Math, Information Systems, Physics, or related field.”

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<sup>1</sup> Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees, whose services are sought by an employer in the United States.

<sup>2</sup> 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).

- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 24 months of “any computer-related job title.”
- H.14. Specific skills or other requirements: Requires Master’s or foreign equivalent degree in Business, Computer Science, Engineering, Mathematics, Information Systems, Physics or a related field and two years of experience in coordinating program development of computer software applications, systems, or service from design through product release. Position also requires education or experience in: Demand Planning; Managing software or business processes for operations, systems, projects, tools or policies; Business Requirement Gathering; Process Improvement; Risk Management; Cross Team Collaboration; Tending Analysis and Planning; and Business Group Interaction.

Any suitable combination of education, training or experience is acceptable.

The labor certification states that the beneficiary’s highest level of education relevant to the position offered is a Master’s degree in Business Administration from the [REDACTED] Russia, completed in 2000. The record contains a Certificate of Appreciation from the [REDACTED], stating that the beneficiary successfully completed the three-year course of “Master in Business Administration.” The record also contains a blurred copy of the Statement of Marks of the beneficiary’s master’s degree.

Counsel for the petitioner initially asserts that the evaluations in the record establish that the beneficiary meets the requirements of the labor certification.<sup>3</sup> The first academic equivalency evaluation of the beneficiary’s education is by [REDACTED] for [REDACTED] dated February 28, 2013. Ms. [REDACTED] concludes that the beneficiary’s master’s degree is “the equivalent of a Master of Business Administration Degree from an accredited US college or university.” The second evaluation of the beneficiary’s education is by [REDACTED], Ph.D., for [REDACTED], dated June 6, 2013. Dr. [REDACTED] concludes that the beneficiary’s master’s degree is “the foreign equivalent degree of a U.S. Master of Business Administration Degree, with a concentration in International Business, from an accredited university in the United States.”

The record contains a letter on [REDACTED] letterhead, dated June 3, 2013, that appears to be from [REDACTED] Professor in the International Management Program at [REDACTED] stating that the beneficiary attended [REDACTED] from September 1997 to June 2000. The record contains a similar letter allegedly from the Office of Dean at [REDACTED] dated June 6, 2013.

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<sup>3</sup> Counsel for the petitioner ultimately states that the petitioner does not object to the dismissal of the instant appeal for the reasons discussed below.

On March 19, 2014, we contacted [REDACTED] International Program Manager for the Department of International Business and Business Administration with [REDACTED] to request verification that the beneficiary had attended this institution and that he was awarded a Master's degree in Business Administration. Ms. [REDACTED] responded to our request on March 21, 2014 and stated that the beneficiary had never studied at [REDACTED] that [REDACTED] never had a master's degree program in international business, and that the Certificate of Appreciation and Statement of [REDACTED] [REDACTED] were not issued by [REDACTED] Ms. [REDACTED] also stated that Mr. [REDACTED] the alleged signatory to the letter dated June 3, 2013, did not write the letter verifying the beneficiary's attendance at [REDACTED]

On April 1, 2014, we issued the petitioner a notice of intent to dismiss (NOID) the instant appeal, explaining the allegations that the beneficiary had never attended [REDACTED] and that the documents in the record regarding his degree from [REDACTED] had been fabricated. We provided the petitioner an opportunity to respond to these allegations. On April 30, 2014, we received a response to this NOID in which counsel states that the petitioner "had no knowledge that the documents' authenticity may be questionable," that the beneficiary provided these documents to the petitioner and "represented them as authentic." Counsel states that the petitioner "has not located and the beneficiary has not provided any new factual information to refute the derogatory information," and that the petitioner does not object to the dismissal of the instant appeal. The petitioner states that it did not have any knowledge or reason to believe that the documents presented by the beneficiary may not have been authentic. We accept the assertions of the petitioner.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), states the following 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."

A willful misrepresentation of a material fact occurs 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). The beneficiary's submission of false documents regarding his alleged master's degree shut off a line of inquiry that is relevant to whether he was qualified as an advanced degree professional for the position offered. In order for the beneficiary to qualify as an advanced degree professional, and to meet the terms of the labor certification, he must have a master's degree. The record reflects that the beneficiary submitted the following fraudulent documents to the petitioner in support of the instant petition: the Certificate of Appreciation and Statement of [REDACTED] under the guise that they were issued by [REDACTED] a letter, dated June 3, 2014, made to appear that it was from [REDACTED] Professor in the International Management Program at [REDACTED] attesting to the beneficiary's attendance at [REDACTED] from September 1997 to June 2000; and a letter made to appear as though it was from the Office of Dean at [REDACTED] dated June 6, 2013, regarding the beneficiary's alleged attendance at [REDACTED] No evidence of the beneficiary's actual master's degree or foreign equivalent degree has been submitted. The record fails to demonstrate that the beneficiary possesses an advanced degree and meets the terms of the labor certification.

The regulation at 20 C.F.R. § 656.30(d), states the following regarding labor certification applications involving fraud or willful misrepresentation:

(d) *Invalidation of labor certifications.* After issuance, a labor certification may be revoked by ETA using the procedures described in §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.

Based on the above information, we find that the beneficiary submitted falsified documents to the petitioner, and ultimately to the USCIS, and that this constituted fraud and willful misrepresentation on the part of the beneficiary. Therefore, we hereby invalidate the instant labor certification, ETA Case Number [REDACTED] with a finding of fraud against the beneficiary.

We affirm the director's decision that the petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act. As stated above, we also invalidate the instant labor certification with a finding of fraud and willful misrepresentation against the beneficiary.

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 with a finding of fraud and willful misrepresentation of a material fact against the beneficiary.

**FURTHER ORDER:** The labor certification application, ETA Case Number [REDACTED], is invalidated pursuant to 20 C.F.R. § 656.30(d).