



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

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

MATTER OF N-USA, INC.

DATE: OCT. 4, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a solar window film business, seeks to employ the Beneficiary as an operations research analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The petition was initially approved. Subsequently, the Director of the Nebraska Service Center revoked the approval of the petition, concluding that the Beneficiary did not have five years of experience in the job offered as required by the labor certification. The Director also invalidated the labor certification based on a finding that the Petitioner and the Beneficiary had misrepresented the Beneficiary's employment experience.

On appeal, the Petitioner states that the Beneficiary possesses the required experience for the offered position and that there was no misrepresentation of the Beneficiary's prior employment experience. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL).<sup>1</sup> *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

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<sup>1</sup> The date the labor certification is filed, in cases such as this one, is called the "priority date."

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Attorney General (now Secretary, Department of Homeland Security) “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

## II. ANALYSIS

### A. Beneficiary’s Qualifications

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. See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

In this case, the labor certification requires a bachelor’s degree in chemistry or chemical engineering and 60 months of experience in the offered position of operations research analyst. Section H.10 of the labor certification states that experience in an alternate occupation is not acceptable.

Section H.11 of the labor certification describes the duties of the operations research analyst position as follows:

Support business goals by developing and deploying operational improvement solutions to deliver increased profit and performance relating to manufacturing and distribution of chemical automotive film (dyed stamina, moderate type), commercial film (silver and sputtered type), and industrial safety film. Understand the business processes relating to technical, quality issues, material purchasing, and installation support. Study and analyze information about alternative courses of action in order to achieve best operational outcomes. Develop business methods and procedures, including logistics systems and production schedules.

The labor certification describes the Beneficiary’s employment experience as follows:

- Operations research analyst for [REDACTED] in [REDACTED] California, from August 1, 2008 to January 4, 2013 (four years and five months);
- Operations research manager for [REDACTED] in South Korea from September 1, 2001 to July 31, 2008 (six years and 11 months); and
- Polymer research and chemical analysis manager for [REDACTED] in South Korea from January 2, 1995 to October 31, 2000 (five years and nine months).

1. Employment Experience with [REDACTED]

The labor certification states that the Beneficiary was employed as an operations research analyst for [REDACTED] from August 1, 2008, to January 4, 2013. The labor certification describes the duties that the Beneficiary performed in this position as being identical to those of the offered position of operations research analyst.

However, the immigration filings for the Beneficiary's nonimmigrant visas with the company state that he served as the company's President/CEO and performed senior executive duties.

For example, the Beneficiary's E-2 visa application states that the Beneficiary, as president, will perform the following duties:

He will be primarily responsible for overall management, directing business strategies, personnel control and day to day control of the operation of the business, also including policy and goals, along with the exercise of wide latitude in discretionary decision-making . . . . [He will] primarily manage the petitioner [and] his duties entail supervising overall business strategies and operations.

In addition, an L-1A petition filed on behalf of the Beneficiary contained similar language.<sup>2</sup> A March 19, 2009, statement, signed by the Beneficiary as the president of the company, states that he is responsible for budgeting, planning, implementing business goals and objectives, executing company policies and strategies, and handling corporate affairs.

In the decision revoking the approval of the petition, the Director noted the significant inconsistencies between these descriptions of the Beneficiary's duties as well as the Petitioner's inability to resolve them. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *See Matter of Ho*, 19 I&N Dec. at 591-92.

On appeal, the Petitioner submits a letter from [REDACTED] the director of [REDACTED]. The letter confirms that the Beneficiary was the president/CEO of the company but also states that he "fulfilled the operations research analyst role" with the company at the same time.

To summarize, the labor certification incorrectly states that the Beneficiary's title was operations research analyst. The Beneficiary was the company's president/CEO. In describing the Beneficiary's duties, the labor certification also makes no mention of any executive role performed by the Beneficiary. The labor certification states that the Beneficiary only performed the same duties as those of the offered position. This is also incorrect. While the Beneficiary may have

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<sup>2</sup> A petition for L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity. *See* section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L).

performed some of the same duties, the evidence in the record does not establish that he was employed as an operations research analyst with [REDACTED]. Therefore, the Beneficiary's experience with [REDACTED] as its president/CEO cannot be counted towards the required 60 months of experience as an operations research analyst.

## 2. Employment Experience with [REDACTED]

The labor certification states that the Beneficiary was employed by [REDACTED] in South Korea as an operations research manager from September 1, 2001, to July 31, 2008. Both the labor certification and the employment letter from [REDACTED] submitted with the petition state that the Beneficiary performed the following duties:

- Analyzed information obtained from management in order to define operational problems relating to manufacturing and distribution of chemical films used for industrial, automotive, and commercial purposes;
- Collaborated with senior managers and decision-makers to identify and solve operational problems and clarified management objectives;
- Observed system in operation and recommended suggestions for improvement;
- Addressed operational inefficiency relating to manufacturing and logistics involved in production and distribution;
- Managed development of new prototypes and performed analysis of new materials;
- Organized and conducted complex experiments in support of the project goals;
- Provided technical oversight of all projects including planning and directing research, communicating with industrial partners; and
- Developed strategic plans to keep [REDACTED] operational.

The Director's decision noted that these duties conflicted with the duties described in the previously mentioned L-1A petition on behalf of the Beneficiary, which stated that the Beneficiary performed the following duties at [REDACTED]

Trained and supervised sales fleet with technical background. Procured business opportunities and managed personnel responsible for orders and shipments. Negotiated with customers, suppliers and vendors as to general terms and conditions of business. Attended international trade shows and exhibitions to introduce company products to potential buyers and attract new business opportunities. Planned mid to long term goals for international and technical marketing department and implemented and executed measures to attain goals. Budgeted for appropriated funds to different functions to company's operations. Made ultimate decisions with respect to managing the company.

The Director held that the inconsistencies in the stated job duties cast doubt on the Beneficiary's employment experience.

On appeal, the Petitioner submits a letter from [REDACTED] former director of [REDACTED]. The letter states that the Beneficiary served as an “Executive-Level Operations Research Manager” and broke down his duties as follows:

- 25%: Oversaw research projects and the development of new sample materials and mid to long term goals for international and technical marketing development for strategic campaigns;
- 25%: Defined operational problems related to the manufacturing and distribution of chemical films used for industrial, automotive and commercial purposes and communicated impressions and recommendations for strengthening procedures with upper-level management, retaining ultimate decision-making power;
- 15%: Collaborated with upper-level management to identify operational problems and clarified management objectives. Analyzed budget considerations in conjunction with Chief Financial Officer and finance department;
- 15%: Developed business plans and sought business alliances to maximize [REDACTED] operational strengths, including attendance at international trade shows and exhibitions three (3) – four (4) times per year. Technical training and supervision of sales fleet for the effective dissemination of information at these events;
- 10%: Observed overall operations and made recommendations for addressing operational inefficiencies, streamlining protocols and procedures on materials/production and logistics/distribution levels; and
- 10%: Used technical scientific knowledge and background to negotiate with customers, suppliers and vendors as to the general terms and conditions of the business to reduce overhead costs and increase revenues.

The labor certification incorrectly states that the Beneficiary was merely an operations research manager for [REDACTED]. Instead, the Beneficiary was an executive with the company who appears to have performed some duties related to the offered position of operations management analyst. In describing the Beneficiary’s duties, the labor certification makes no mention of any executive role performed by the Beneficiary with the company. The letters describing the Beneficiary’s duties are not consistent with the labor certification or each other. The Petitioner did not resolve these inconsistencies with independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* In this case, the inconsistencies remain unresolved and the summaries of the Beneficiary’s experience do not establish that the Beneficiary was employed as an operations research analyst at [REDACTED]. Therefore, on appeal, we find that the Petitioner has not provided sufficient evidence to resolve the

discrepancies between the differing descriptions of the Beneficiary's employment experience with [REDACTED] and that the evidence does not establish that the Beneficiary was employed as an operations research analyst with the company.

### 3. Employment Experience with [REDACTED]

The labor certification states that the Beneficiary was employed as a polymer research and chemical analysis manager for [REDACTED] in South Korea from January 2, 1995 to October 31, 2000. The labor certification describes the Beneficiary's duties as:

Conducted experiments for polymer research and chemical analysis. Data interpretation and presentation. Worked with multi-disciplinary team including electronics engineers and chemists. Managed documentation in laboratories according to company policy. Coordinated research staff. Reported to Director. Job requirement was [a] BS in chemistry and passing [the] entrance interview.

The petition contains a letter from [REDACTED] president of [REDACTED] dated May 22, 2013, indicating that the Beneficiary worked there as a polymer research and chemical analysis manager from January 1995 to October 2000. The stated duties of the position are:

- Conducted experiments for polymer research and chemical analysis.
- Date interpretation and presentation.
- Worked with multi-disciplinary team including electronics engineers and chemists.
- Managed documentation in laboratory according to company policy.
- Coordinated research staff.
- Reported to Director.

On appeal, the Petitioner also submits a more detailed employment letter, dated October 6, 2015, identifying the Beneficiary's job duties by approximate time spent on each task, as follows:

- Developed mathematical formulas and created three-dimensional models to improve polymer and chemicals used to manufacture wire and conducive materials (30%);
- Identified manufacturing concerns by interpreting data collected from staff scientists and collaborating with department heads (25%);
- Collaborated with Director and senior management to identify management's manufacturing improvement objectives (15%);
- Coordinated with [REDACTED] research staff to ensure the successful implementation of manufacturing improvement solutions (15%);
- Prepared management reports with defined manufacturing concerns and presented management reports with recommended solutions (10%); and
- Managed formula research, data collection, management reports and meeting notes according to [REDACTED] document maintenance policies (5%).

The more detailed employment letter states for the first time that the Beneficiary performed manufacturing improvement duties with [REDACTED]. The Petitioner does not explain why these relevant duties were not included in the labor certification or the experience letter originally submitted with the petition. Nonetheless, the Beneficiary's experience with [REDACTED] is not employment as an operations research analyst. The duties of the position do not involve supporting the company's business goals by "developing and deploying operational improvement solutions to deliver increased profit;" understanding the business processes, including "material purchasing and installation support;" or developing "business methods and procedures, including logistics systems and production schedules."

The Petitioner cites an evaluation of the Beneficiary's experience with [REDACTED] prepared by [REDACTED] Associate Dean – Academic Affairs at the [REDACTED]. The evaluator cites the information contained in the second letter from [REDACTED] and states that the Beneficiary meets the duties stated on O\*NET, the current occupational classification used by DOL.<sup>3</sup> The evaluator states that the Beneficiary gained experience with [REDACTED] that corresponds to the job categories of "Operations Research Analysts," which is assigned a Standard Occupational Classification (SOC) Code of 15-2031, and the duties of "Management Analysts," listed as SOC Code 13-1111, which is the SOC Code stated on the labor certification.<sup>4</sup>

However, the record also contains a Career Certificate from [REDACTED] which lists the Beneficiary's positions as a researcher from January 1995 to November 1998, and as an assistant manager from December 1998 to October 2000. Neither the second employment letter from [REDACTED] nor the evaluation of the Beneficiary's experience address the fact that the Beneficiary served in two separate positions with the company. The information stated on the Career Certificate regarding the Beneficiary's position initially as a researcher from 1995 to 1998 and as an assistant manager from 1998 to 2000 casts doubt on whether the Beneficiary gained five years of employment experience as an operations research analyst with [REDACTED].

Therefore, we conclude that the Petitioner has not established that the Beneficiary's employment as a polymer research and chemical analysis manager for [REDACTED] constitutes employment as an operations research analyst.

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<sup>3</sup> O\*NET Online, located at <http://online.onetcenter.org>, is described as "the nation's primary source of occupational information...containing information on hundreds of standardized and occupation-specific descriptors." See About O\*NET, <http://www.onetcenter.org/overview.html> (last accessed Oct. 2, 2017).

<sup>4</sup> O\*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. See Standard Occupational Classification, <http://www.bls.gov/soc/socguide.htm> (last accessed Oct. 2, 2017).



B. Invalidation of the Labor Certification

The Director invalidated the labor certification, concluding that the Petitioner and the Beneficiary's misstated the Beneficiary's employment experience with [REDACTED]. We agree.

Willful misrepresentation involves willfully making a false representation to a U.S. government official about a material fact while attempting to obtain an immigration benefit.<sup>5</sup>

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 Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *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).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, the officer must determine that the petitioner or beneficiary made a false representation to a United States government official; that the misrepresentation was willfully made; and that the misrepresented fact was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

We agree with the Director's decision that the Petitioner and the Beneficiary misrepresented the Beneficiary's employment experience on the labor certification. The labor certification, which was signed under penalty of perjury by both the Petitioner and the Beneficiary, states that the Beneficiary was an operations research analyst with [REDACTED]. This is false. The Beneficiary was the company's president/CEO. The description of the Beneficiary's duties on the labor certification makes no mention of any executive role performed by the Beneficiary. The labor certification instead states that the Beneficiary only performed the exact same duties as those of the offered position. As is explained earlier in this decision, this is also false. These false representations of the Beneficiary's title and duties with [REDACTED] were intended to help the Beneficiary satisfy the minimum requirements of the offered position set forth at section H of the labor certification. Therefore, we concur with the Director's finding of willful material misrepresentation and the invalidation of the labor certification.

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<sup>5</sup> *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998).



### III. CONCLUSION

The Director properly revoked the approval of the petition as the record does not establish that the Beneficiary meets the experience requirements of the labor certification. We also agree with the Director's finding that the Petitioner and the Beneficiary willfully misrepresented the Beneficiary's prior employment experience.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-USA, Inc.*, ID# 307199 (AAO Oct. 4, 2017)