

identifying data deleted to  
prevent disclosure in warrantless  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B6

[REDACTED]

FILE: [REDACTED]  
SRC-03-015-52192

Office: TEXAS SERVICE CENTER Date:

MAR 21 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Texas Service Center denied the third preference employment-based immigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition is denied.

The petitioner is an exporter. It seeks to employ the beneficiary permanently in the United States as a wholesaler. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director invalidated the labor certification based upon a finding that it had been procured by fraud or willful misrepresentation. The director then denied the petition because it was no longer by a valid labor certification. She subsequently certified her decision to the AAO.<sup>1</sup>

On certification, neither the petitioner nor its counsel submitted any additional evidence, brief, or correspondence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The issue in this case is whether or not the director properly invalidated the labor certification based upon a finding that it had been procured by fraud or willful misrepresentation.

The director issued a notice of intent to deny the petition on June 26, 2003. The director noted that the petitioner's counsel, Mr. [REDACTED] (Mr. [REDACTED]) was:

Charged with conspiracy to commit fraud by making false representation in multiple visa petitions filed with [CIS], by knowingly accepting visas procured by fraud, and by harboring illegal aliens for profit. Mr. [REDACTED] was additionally charged with 11 substantive counts of making materially false, fictitious statements to [CIS] and 7 substantive counts of harboring an illegal alien for profit. . . .

United States District Court Judge [REDACTED] immediately remanded Mr. [REDACTED] into custody. Sentencing is scheduled for August 4, 2003.

Documentation provided by the petitioning entity clearly indicates that Mr. [REDACTED] law firm represented the beneficiary and/or the petitioner in the Department of Labor ETA-750 process. Since Mr. [REDACTED] law firm was found guilty of committing immigration fraud, it

---

<sup>1</sup> The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv). Among the appellate authorities are appeals from denials of petitions for immigrant visa classification based on employment, "except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act." 8 C.F.R. § 103.1(f)(3)(iii)(B) (2003 ed.). Authority to invalidate labor certifications is delegated to CIS by DHS Delegation Number 0150.1(X), *supra*. Since the director invalidated the labor certification, the petition was no longer supported by a labor certification from the Department of Labor. Consequently, this office would typically lack jurisdiction to consider an appeal from the director's decision. Since this is a certification, however, the AAO will review the substantive issues of the director's decision. See 8 C.F.R. § 103.4.

may be concluded that this petition may contain fraudulent documents. As such, this petition cannot be considered approvable with the documents submitted. For this reason, this office will deny this instant petition for fraud.

The director detailed a list of documents and evidence required to overcome her notice of intent to revoke the petition.

In response, the petitioner hired new counsel, sought an extension of time to respond, and subsequently submitted invoices, quarterly federal tax returns, photographs, a lease, unaudited financial statements, documents relating to the petitioner's corporate establishment including an organizational chart in which the beneficiary is characterized as the vice president of [REDACTED] the petitioner's corporate tax returns for 2001 and 2002, and correspondence. Among the correspondence submitted was a letter, signed by [REDACTED] (Mr. [REDACTED]) and dated September 26, 2003, stating that the beneficiary worked full time at Techbraz Tecnica E Informatica Ltda. as a wholesaler. Other notarized statements assert the truthfulness of the petitioner and the ETA form's accuracy. A typed statement indicates that the petitioner's representative is the beneficiary's spouse. The petitioner's representative also submitted a "business necessity statement" asserting that a bilingual wholesaler is "of great importance in order to [sic] the success of" its business.

The director explained in her decision that the U.S. consulate in Sao Paulo, Brazil contacted [REDACTED] and spoke directly to Mr. [REDACTED] who informed the consulate representative that the beneficiary was "not officially registered as an employee of [REDACTED] but instead a free lance/subcontractor sales manager from 1998 to 2000. Mr. [REDACTED] also stated that the beneficiary did not agree to start up a business operation with him and Techbraz, but rather became a "partner of the US company in 2000," for which travel arrangements were made through the beneficiary's spouse, a business partner in the petitioner's business. The director noted inconsistencies among information provided by the beneficiary on various forms and documentation submitted to solicit immigration benefits from CIS. Thus, the director determined that the petitioner did not establish that the beneficiary was qualified to perform the duties of the proffered position, and that the beneficiary misstated his past work experience.

Additionally, the director cited to the holding in Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401, 406 (BIA 1986) that stated that ownership or interest in a petitioning entity is a material fact to be considered by the Department of Labor (DOL) in determining whether a proffered position is really open to other qualified workers. The director stated that concealment of interest in a petitioning business entity during the DOL process "constitutes willful misrepresentation of material fact and is a ground for invalidation of an approved labor certification under 20 [§] C.F.R. 656.30(d)." The director also noted that there is no evidence that DOL was aware of the beneficiary's marital relationship to the petitioner's representative and "calls into question the true availability of the position to other qualified applicants. Furthermore, the spouse of the beneficiary is the only employee of the petitioner. This also calls into question the true availability of the position to other applicants."

Thus, the director invalidated the labor certificate pursuant to 8 C.F.R. § 204.5(1)(3) and section 203(b)(3)(C) of the Act and also denied the petition for fraud.

The AAO concurs with the director's determination to invalidate the labor certificate and deny the immigrant petition based upon fraud and misrepresentation. The petitioner's hiring and retention of a lawyer convicted for immigrant fraud cast suspicion and doubt upon the instant petition<sup>2</sup>. Thus, the director was correct in requesting evidence of the validity and legitimacy of the employment-based preference petition. The director's factual analysis and application of legal authority is without error. The petitioner failed to submit any rebuttal evidence or response in these proceedings.

<sup>2</sup> It is also noted that the same petition was filed previously but withdrawn by Mr. Lopera.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The director's decision on September 22, 2004 is affirmed. The petition is denied.