

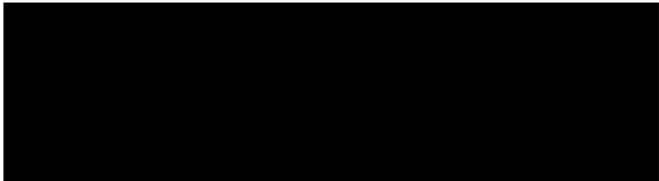


U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 18 2008

EAC-03-020-52897

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant 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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Vermont Service Center. The director subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner was a law firm. It sought to employ the beneficiary permanently in the United States as a paralegal. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that a bona fide job offer did not exist given that the president of petitioner, M [REDACTED], was convicted of immigration fraud and that the petitioner was convicted of conspiracy to commit immigration fraud. The director automatically revoked the approval of the petition on October 20, 2005 accordingly, pursuant to 8 C.F.R. § 205.1(a)(3)(iii)(D). Unlike the regulation at 8 C.F.R. § 205.2 regarding revocation on notice, the regulation at 8 C.F.R. § 204.5.1 does not provide for any appeal. Thus, the petitioner's appeal must be rejected.

During the review of the instant appeal, however, information came to light that seriously compromised the credibility of the petition's underlying labor certification. Pursuant to the Citizenship and Immigration Services (CIS) regulation at 8 C.F.R. § 103.2(b)(16)(i), this office sent a notice of derogatory information on June 27, 2008 (NDI) to the petitioner at the address in the record and provided an opportunity to respond before we rendered our final decision. The notice advised of our intent to invalidate the labor certification. However, the NDI was returned undeliverable. The record does not contain any new address for the petitioner. It is the petitioner's responsibility to update contact information timely.

As stated in our previous notice, the underlying ETA 750 requires two years of college study and two years of experience in the job offered. As evidence of the beneficiary's education qualifications, the petitioner submitted the beneficiary's Bachelor of Arts (Special) issued on March 31, 1978, certificate for passing the First Year Arts (Group A) Examination in April 1974, certificate for passing the Intermediate Arts Examination in April 1975, and certificate for passing the B.A. (special) Part I Examination in April 1976, from University of Bombay in India. However, the beneficiary claimed that she was born on February 13, 1960¹ and the educational documents submitted for the beneficiary show that the beneficiary passed her first year arts examination in April 1974 (at the age of fourteen years and two months), passed her intermediate arts examination in April 1975 (at the age of fifteen years and two months), passed the B.A. (special) Part I Examination in April 1976 (at the age of sixteen years and two months), and was awarded Bachelor of Arts (Special) degree on March 31, 1978 (at the age of eighteen years and one month) from University of Bombay.

Regarding the beneficiary's requisite two years of experience in the job offered, the petitioner submitted an experience letter dated September 1, 2002 from [REDACTED] of [REDACTED] located at E-67-Andheri, Mumbai 200061 with telephone number: 4365421. However, an investigation conducted by the Consular Fraud Officer in India pursuant to a request from this office revealed that the telephone number has belonged to a wood furniture company for more than ten years and that the local

¹ The beneficiary's passport and the Certificate of Age, Nationality, Domicile issued by the State of Maharashtra, India both list the beneficiary's date of birth as February 13, 1960.

telephone company could not find any records for [REDACTED] or [REDACTED]. Therefore, the AAO finds that the experience letter from [REDACTED] is fraudulent.

The above information not only casts doubt on the petitioner's claims regarding the beneficiary's qualifications for the proffered position, but also on the credibility of the information presented to DOL on the labor certification application. The regulation at 20 C.F.R. § 656.30(d) provides in pertinent part that: "After issuance labor certifications are subject to invalidation by [CIS] 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." Section 212(a)(6)(C)(i) of the Act provides that "[a]ny 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." The beneficiary signed the Form ETA 750B on an unspecified date under penalty of perjury attesting to her alleged employment for [REDACTED] s. By signing the form, the beneficiary appears to have sought to procure a benefit provided under the Act using fraudulent documents. Therefore, the AAO hereby invalidates the underlying labor certification due to the fraud or willful misrepresentation and makes a finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

During the adjudication of the appeal, evidence also came to light that the petitioner in this matter was forfeited before the instant appeal was filed on November 7, 2005. See attached print-out from the Maryland Department of Assessments and Taxation, Taxpayer Services Division official website which indicate that [REDACTED] was forfeited. This office also notes that [REDACTED] was the sole member of the petitioner as a Maryland limited liability company to practice law, and that he was convicted in multiple counts of immigration fraud on April 14, 2005, after a jury trial in the United States District Court for the District of Maryland, Northern Division; that he was convicted of various counts regarding the falsifying of labor certification applications and conspiracy to submit false labor certifications; and that consequently, the District of Columbia Bar Association suspended his membership and on September 15, 2005, U.S. Department of Justice Executive Office for Immigration Review granted a petition for immediate suspension and suspended him from the practice of law before the Board of Immigration Appeals, the Immigration Courts and the Department of Homeland Security (DHS). See <http://www.usdoj.gov/eoir/profcond/chart.htm>.

The AAO notes that if the appeal would not be rejected, it would otherwise not be approvable because the petitioner failed to establish its *bona fide* with multiple paralegal job offers for a small law firm; that petitioner failed to demonstrate that the beneficiary possessed the requisite two years of experience prior to the priority date with regulatory-prescribed evidence; and that the petitioner failed to establish its continuing ability to pay the proffered wages to each of the beneficiaries of its pending or approved petitions as of the priority date of each petitioner and continuing until the beneficiary of each petition obtains law full permanent residence.

ORDER: The appeal is rejected for lack of jurisdiction.

FURTHER ORDER: The AAO finds that the beneficiary knowingly misrepresented her past employment in an effort to mislead DOL and CIS on elements material to her eligibility for a benefit sought under the immigration laws of the United States. Thus the AAO makes a finding



of fraud and willful misrepresentation of a material fact and the alien employment certification is invalidated pursuant to 20 C.F.R. § 656.30(d).