

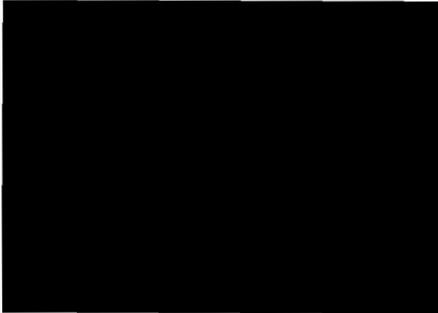
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE: [REDACTED]
LIN 07 145 52475

Office: NEBRASKA SERVICE CENTER

Date: JAN 28 2010

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

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.

Perry Rhew
Chief, Administrative Appeals Office

cc:



DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal on April 28, 2009 finding that the beneficiary did not meet the educational requirements set forth on the labor certification. On September 10, 2009, the AAO *sua sponte* reopened the matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision and issued a Notice of Intent to Deny (NOID). The AAO issued a second Notice of Derogatory Information (NDI) on November 20, 2009 to both the petitioner, and separately to the beneficiary. The petitioner sent a response which the AAO received on December 15, 2009, and stated a request to withdraw the petition and the appeal.¹ The appeal will be dismissed based on its withdrawal by petitioner. The withdrawal may not be retracted. *See* 8 C.F.R. § 103.2(b)(6). The AAO will also enter a separate administrative finding of fraud and material misrepresentation against the beneficiary.

On April 23, 2007, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, seeking the beneficiary's services as an accountant pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).² The Nebraska Service Center director denied it on April 30, 2007 finding that the beneficiary did not meet the educational requirements set forth

¹ The petitioner requested that both the petition and the appeal be withdrawn. The regulation at 8 C.F.R. § 103.2(b)(6), however, indicates that an application or petition may not be withdrawn once a decision is issued by U.S. Citizenship and Immigration Services (USCIS). Notwithstanding this provision, even if the grounds of ineligibility in this matter were to be overcome on appeal, this request to withdraw the petition now renders it subject to automatic revocation without prior notice. *See* 8 C.F.R. § 205.1(a)(3)(iii)(C). As the petitioner requested that both the petition and the appeal be withdrawn, we will accept the appeal as withdrawn.

² The regulation at 8 C.F.R. § 204.5(l)(2), and section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides that a third preference category professional is a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." Section 203(b)(3)(A)(i) of the Act also 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 regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

on the labor certification, a decision the AAO affirmed when it dismissed the appeal on April 28, 2009.

In its NOID, the AAO noted that the beneficiary listed discrepant educational studies on two separate labor certifications filed on his behalf and submitted fraudulent educational documents. The instant petition filed on the beneficiary's behalf requires a bachelor's degree in accounting. The beneficiary represented that he had a bachelor's degree in accounting from the University of the Punjab.³

In its NDI, the AAO specifically informed both the petitioner and the beneficiary that in searching government records, the AAO obtained a statement that the beneficiary gave to an officer of the Joint Terrorism Task Force (JTTF). The statement recited the beneficiary's interview with Immigration and Customs Enforcement (ICE) following his November 9, 2006 arrest on immigration violations pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act (the Act). During the interview, the beneficiary admitted that he submitted his brother's Master of Business Administration (MBA) diploma from the University of Punjab, which had been altered to reflect the beneficiary's name. The beneficiary further admitted that he had only attended the University of the Punjab for one or two weeks, and did not graduate from that school.

Therefore, based on the beneficiary's prior admission to ICE in November 2006 that he only attended the University of Punjab for one or two weeks, and did not graduate from that school, the AAO stated that it appeared that the beneficiary not only misrepresented obtaining a degree from that school, but also misrepresented that he had a bachelor's degree from the University of Punjab. The copies of the degrees contained in the record of proceeding are fraudulent. The beneficiary therefore has submitted fraudulent documents pertaining to his qualifications.

The petitioner in his response to the AAO's NDI states that the "beneficiary supplied me with some documents in support of my petition for immigrant worker." Further, he states that: "I exercised due diligence in inquiring about the veracity of the documents from the beneficiary. At no time was I ever given any indication that the beneficiary's documents were not true and correct. Among these documents was an ETA 750 of which [the] beneficiary signed part B, indicating that all of the statements made in that form were true." The petitioner further states that he was unaware of any prior statement made by the beneficiary to the JTTF that the beneficiary's educational documents were actually his brother's diplomas altered to reflect the beneficiary's name. The petitioner states that had the beneficiary's documents been "correct as he represented," that he would have been "a suitable candidate for the position." However, upon learning the derogatory information, the petitioner concluded that, "the [NDI] has raised serious questions about the beneficiary's eligibility and fitness for this position and I no longer wish to pursue this petition and this appeal."

³ In contrast and in a separate proceeding, and as noted by the AAO more fully in its NOID and NDI, the beneficiary represented that he had studied medical business at Noor Memorial Medical and studied nursing at the Mayo Hospital.

As immigration officers, United States Citizenship and Immigration Appeals Officers and Center Adjudications Officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the Secretary of Homeland Security's delegation of authority. *See* sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003).

With regard to immigration fraud, the Act provides immigration officers with the authority to administer oaths, consider evidence, and further provides that any person who knowingly or willfully gives false evidence or swears to any false statement shall be guilty of perjury. Section 287(b) of the Act, 8 U.S.C. § 1357(b). Additionally, the Secretary of Homeland Security has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, make recommendations for prosecution, and take other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I).

As an issue of fact that is material to an alien's eligibility for the requested immigration benefit or that alien's subsequent admissibility to the United States, the administrative findings in an immigration proceeding must include specific findings of fraud or material misrepresentation. Within the adjudication of the visa petition, a finding of fraud or material misrepresentation will undermine the probative value of the evidence and lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Outside of the basic adjudication of visa eligibility, there are many critical functions of the Department of Homeland Security that hinge on a finding of fraud or material misrepresentation. For example, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182. Additionally, the regulations state that the willful failure to provide full and truthful information requested by USCIS constitutes a failure to maintain nonimmigrant status. 8 C.F.R. § 214.1(f). For these provisions to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.⁴

If USCIS were to be barred from entering a finding of fraud after a petitioner withdraws the visa petition or appeal, the agency would be unable to subsequently enforce the law and find an alien

⁴ It is important to note that while it may present the opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a). Nevertheless, the AAO has the authority to enter a fraud finding, if during the course of adjudication, it discovers fraud or a material misrepresentation. In this case, the beneficiary has been given notice of the proposed findings and has been presented with an opportunity to respond to the same.

inadmissible for having "sought to procure" an immigrant visa by fraud or willful misrepresentation of a material fact. *See* section 212(a)(6)(C) of the Act.

With regard to the current proceeding, section 204(b) of the Act states, in pertinent part, that:

After an investigation of the facts in each case . . . the [Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien . . . in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition

Pursuant to section 204(b) of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In the present matter, we find that much of the petitioner's documentation has been falsified, a finding that the petitioner does not challenge in his response to the AAO's November 29, 2006 notice.

Willful misrepresentation of a material fact in these proceedings may render the beneficiary inadmissible to the United States. *See* section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182, 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 material issue in this case is whether the beneficiary has the required education for the position offered. Submitting false educational documents amounts to a willful effort to procure a benefit ultimately leading to permanent residence under the Act. The Attorney General has held that a misrepresentation made in connection with an application for a visa or other document, or with entry into the United States, is material if either:

- (1) the alien is excludable on the true facts, or (2) the misrepresentation 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 & B-C-, 9 I&N Dec. 436, 447 (A.G. 1961). Accordingly, the materiality test has three parts. First, if the record shows that the alien is inadmissible on the true facts, then the misrepresentation is material. *Id.* at 448. If the foreign national would not be inadmissible on the true facts, then the second and third questions must be addressed. The second question is whether the misrepresentation shut off a line of inquiry relevant to the alien's admissibility. *Id.* Third, if the relevant line of inquiry has been cut off, then it must be determined whether the inquiry might have resulted in a proper determination that the foreign national should have been excluded. *Id.* at 449.

The alien beneficiary does not deny that he used a false or forged educational document to establish that he was qualified for the petitioner's job opportunity that required the minimum of a bachelor's degree in accounting. The beneficiary continued to misrepresent this fact by representing falsely his educational credentials when he signed ETA Form 9089 for purposes of obtaining a permanent labor

certification application from the Department of Labor. In actual fact, the beneficiary had not obtained the required bachelor's degree to qualify for the petitioner's job opportunity.

On the true facts, the beneficiary is inadmissible. As a third preference employment-based immigrant, the beneficiary's proposed employer was required to obtain a permanent labor certification from the Department of Labor in order for the beneficiary to be admissible to the United States. *See* section 212(a)(5) of the Act. Although the petitioner in this case obtained a permanent labor certification, the Department of Labor issued this certification on the premise that the alien beneficiary was qualified for the job opportunity. The resulting certification was erroneous and is subject to invalidation by USCIS. *See* 20 C.F.R. § 656.30(d). Moreover, to qualify as a third preference employment-based immigrant professional, the beneficiary was required to establish that he met the petitioner's minimum education requirements. *Compare* 8 C.F.R. § 204.5(g) with § 204.5(1)(3)(ii)(C). The beneficiary could not establish the necessary qualifications in this case, as he did not possess an actual bachelor's degree. On the true facts, the beneficiary is not admissible as a third preference employment-based immigrant, and as such the misrepresentation of his educational credentials was material to the instant proceedings.

Even if the beneficiary were not inadmissible on the true facts, he fails the second and third parts of the materiality test. The beneficiary's use of a forged or falsified educational document shut off a line of relevant inquiry in these proceedings. Before the Department of Labor, this misrepresentation prevented the agency from determining whether the essential elements of the labor certification application, including the actual minimum requirements, should be investigated more substantially. *See* 20 C.F.R. § 656.17(i). A job opportunity's requirements may be found not to be the actual minimum requirements where the alien did not possess the necessary qualifications prior to being hired by the employer. *See Super Seal Manufacturing Co.*, 88-INA-417 (BALCA Apr. 12, 1989) (*en banc*). In addition, DOL may investigate the alien's qualifications to determine whether the labor certification should be approved. *See Matter of Saritejdiam*, 1989-INA-87 (BALCA Dec. 21, 1989). Where an alien fails to meet the employer's actual minimum requirements, the labor certification application must be denied. *See Charley Brown's*, 90-INA-345 (BALCA Sept. 17, 1991); *Pennsylvania Home Health Services*, 87-INA-696 (BALCA Apr. 7, 1988). Stated another way, an employer may not require more experience or education of U.S. workers than the alien actually possesses. *See Western Overseas Trade and Development Corp.*, 87-INA-640 (BALCA Jan. 27, 1988).

In this case, the Department of Labor was unable to make a proper investigation of the facts when determining certification, because the beneficiary shut off a line of relevant inquiry. If the Department of Labor had known the true facts, it would have denied the employer's labor certification, as the beneficiary was not qualified for the job opportunity at issue. In other words, the concealed facts, if known, would have resulted in the employer's labor certification being denied. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 403 (Comm'r 1986). Accordingly, the beneficiary's misrepresentation was material under the second and third inquiries of *Matter of S & B-C*.

By misrepresenting his educational background and submitting fraudulent documents to USCIS and making misrepresentations to the Department of Labor, the beneficiary sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Any finding of fraud as a result shall be considered in any future proceeding where admissibility is an issue. *See also Matter of Ho*, 19 I&N Dec. at 591-592.

Neither counsel nor the beneficiary dispute that the educational documents submitted in support of both labor certifications were fraudulent. The beneficiary does not disclaim his prior statement, offer any testimony, or provide any documentation to dispute that the statement given to the JTTF was false, and that he does have the required credentials.

The beneficiary knowingly submitted altered educational documents in support of the first immigrant petition filed on his behalf. He then gave a statement to the JTTF that the educational documents submitted were fraudulent. Subsequent to the first incident of misrepresentation, the beneficiary then produced the same altered educational documents under which new educational evaluations were obtained. These altered documents theoretically rendered the beneficiary qualified for the position offered and thereby excluded U.S. workers from an otherwise available position. Further, counsel only contests that the beneficiary was "not allowed to examine the statement" and that ICE questioned the beneficiary prior to exhibiting any warrant.

Beneficiary's counsel asserts that the beneficiary has no standing before USCIS pursuant to 8 C.F.R. § 103.2(a)(3) and therefore "the beneficiary is not in a position to protect himself against such a determination." Counsel further asserts that the petitioner's withdrawal should be accepted without entering a finding of fraud against the beneficiary since the beneficiary would be "denied any opportunity to challenge the allegation and finding of misrepresentation."

As noted above, it is proper for the AAO to make a finding of fraud pursuant to section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182. The AAO specifically issued the notice to both the petitioner and the beneficiary to allow the beneficiary an opportunity to respond or submit evidence to overcome the alleged misrepresentation. The beneficiary did not in any way disclaim his prior statement, or claim that the educational documents were not materially altered; he only challenged how the statement from him was obtained.

Counsel contests that pursuant to 8 C.F.R. § 103.2(b)(16) that an "applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision." Counsel asserts that the AAO never produced the statement or the officer that prepared the statement related to the beneficiary's admission of altered educational documents.

The regulation at 8 C.F.R. § 103.2(b)(16) states:

- (i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and

present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

The AAO summarized the pertinent information and advised both the petitioner and the applicant of the derogatory information. Both parties were allowed an opportunity to respond. The beneficiary's response does not include any effort to disclaim that he altered and submitted fraudulent educational documents in order to qualify for the terms of the labor certification.

Moreover, the AAO is not required to produce the ICE officer who interviewed the beneficiary or provide an opportunity for cross examination of witnesses. Under the Administrative Procedure Act (APA), an agency is not required to conduct a full-blown judicial style hearing unless the organic statute governing agency adjudication specifies a hearing "on the record." *See U.S. v. Florida East Coast Railway*, 410 U.S. 224, 241 (1973); *see also Chemical Waste Management, Inc. v. EPA*, 873 F.2d 1477, 1482 (D.C. Cir. 1989). An agency adjudication not requiring a hearing "on the record," is styled an "informal adjudication." *See City of West Chicago v. Nuclear Regulatory Commission*, 701 F.2d 632, 641 (7th Cir. 1983); *see also Chemical Waste Management*, 873 F.2d at 1479. Agencies are not required to provide any specific set of procedures when engaging in informal adjudication; they are only required to provide an explanation for an action taken through informal adjudication. *See PBGC v. LTV Corp.*, 396 U.S. 633, 653-54 (1990).

Immigrant visa petition proceedings are informal adjudications, governed only by the Act, which does not require USCIS or AAO to conduct a hearing on the record. *See* 204(b) of the Act. As a result, AAO proceedings are only governed by section 6 of the APA, which does not require the agency to provide for cross examination. *See* 5 U.S.C. § 555(a).

Counsel asserts that ICE violated the beneficiary's due process rights when he was arrested in November 2006, and, therefore, it would be unfair for the AAO to rely on the adverse statement obtained against the beneficiary's interest.⁵ He further asserts that the statement obtained is "hearsay" and therefore should not be relied on. In *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984), the Supreme Court held that the exclusionary rule is not generally applicable in removal proceedings. However, a plurality of the Court made plain that their conclusion did "not deal with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." *Id.* As the issues in the case addressed "the exclusion of credible evidence gathered in connection with peaceful arrests" by immigration officials at a workplace factory site, no such concerns were implicated. *Id.*

Following *Lopez-Mendoza*, courts have held that evidence ought to be suppressed only when the evidence establishes either "that an egregious violation that was fundamentally unfair had occurred,

⁵ Counsel's brief alternately references that the beneficiary's arrest was November 15, 2004, November 2006 and/or November 9, 2009. We believe these references all relate to the November 2006 arrest and statement.

or [] that the violation . . . undermined the reliability of the evidence in dispute." *Almeida-Amaral v. Gonzales*, 461 F. 3d 231,235 (2d. Cir. 2006). As to the "fundamental fairness" prong, the Second Circuit posited that since the egregiousness of a constitutional violation "cannot be gauged solely on the basis of the [invalidity] of the stop, but must also be based on the characteristics and severity of the offending conduct," not all Fourth Amendment violations authorized the suppression of evidence in removal proceedings. *Id.* Instead, the Court devised a sliding scale: A seizure suffered for no reason at all would constitute an egregious violation only if it was sufficiently severe, or if the stop was based on race or some other "grossly improper consideration." *Id.*

Counsel indicates that the beneficiary was "required to undergo an interrogation and submit himself for a sworn statement." Counsel further states that the beneficiary "did not feel free to leave, nor could he leave without risking arrest." Even assuming these statements are true, counsel has not established that ICE's questioning of the beneficiary was fundamentally unfair for purposes of a Fourth or Fifth Amendment violation. It should be noted that ICE officers have the power without a warrant to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States. *See* section 287(a)(1) of the Act. According to the beneficiary, the ICE officers initially questioned him outside his home, which is permissible under the statute. It also appears from the beneficiary's affidavit that he consented to the ICE officer's request to enter his home while the beneficiary obtained his immigration documents. It is well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). According to the beneficiary, the ICE officer identified himself, stated the nature of his business, and made requests for documents without the threat of force or the display of arms. Under these circumstances, it cannot be claimed that the beneficiary was coerced into talking with the ICE officer or allowing the ICE officer into his home. *See United States v. Valencia*, 645 F. 2d 1158, 1165 (2d Cir. 1980). The threat of arrest alone is not sufficient to establish coercion. *United States v. Watson*, 423 U.S. 411, 424 (1976).

As the beneficiary does not allege any egregious conduct by ICE during his interrogation and arrest, the beneficiary has not even established a prima facie case for a Fourth or Fifth Amendment violation. *See Matter of Tang*, 13 I&N Dec. 691 (BIA 1971). Accordingly, the AAO cannot credit counsel's contention that the AAO's use of the beneficiary's statements to the ICE officer is a violation of the Fifth Amendment.

Furthermore, an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004). As the AAO afforded the beneficiary an opportunity to rebut the adverse information prior to entering a decision on the beneficiary's misrepresentation, counsel cannot assert that the beneficiary has been substantially prejudiced. Despite the opportunity to rebut the adverse information, nowhere did the beneficiary disclaim that he materially altered documents in order to qualify for an immigration benefit.

With respect to counsel's hearsay argument, in *Waters v. Churchill*, 511 U.S. 661 (1994), the Court emphasized that an agency need not use the rules of evidence applicable to trials when making

findings of fact. More specifically, "hearsay is not per se inadmissible in immigration proceedings." *See Felzcerek v. INS*, 75 F.3d 112, 115 (2d. Cir. 1996). The beneficiary's counsel also admits that the rules of evidence are not applicable to immigration hearings.

The AAO did not render a determination solely based on the beneficiary's statement to the JTTF. Instead, the AAO properly issued a NDI to inform both the petitioner and the beneficiary of the adverse information in the record. Both parties were allowed an opportunity to respond and to challenge or rebut the information and potential finding of fraud and misrepresentation. Despite this opportunity, the beneficiary did not submit any evidence to overcome, challenge, question, or dispute the fact that he materially altered educational documents in order to qualify for the terms of the certified labor certification.

Counsel argues that the Fifth Amendment due process clause of the U.S. Constitution "makes illegally coerced statements suppressible in deportation proceedings."

The matter before us is not deportation, but instead a question of whether the beneficiary submitted fraudulent documents to qualify for an immigration benefit, to which counsel's response is silent.

Counsel claims that in order to exclude evidence, the alien must show that the regulation was not adhered to; that the regulation was intended to serve a purpose to benefit the alien; and that the violations prejudiced the alien's interest in that it affected the outcome of the proceedings. *Matter of Garcia-Flores*, 17 I&N Dec. 325 (BIA 1980). Here, counsel asserts that ICE failed to warn the beneficiary that he had the right to an attorney and that any statements made could be used against him in any subsequent proceedings. Further, he asserts that Supreme Court decisions safeguard against "unfair procedures," and that where an agency action is required by constitutional or statutory law, the violation of an "implementing regulatory requirement is subject to serious challenge." Additionally, counsel asserts that even where regulations are not founded on constitutional or statutory requirements, that an agency "still has a duty to obey them." *United States v. Caceres*, 400 U.S. 741 (1979). Absent warnings, counsel asserts that the beneficiary's constitutional and due process rights were violated and that it would be unfair to use the statement that he gave to JTTF.

While the beneficiary has every right to assert his Fifth Amendment privilege against self-incrimination, he also has a requirement based on his signed attestations to show that he is qualified for the benefit sought and to provide information relevant to his qualifications. The proper forum to challenge self-incrimination was when he was before JTTF. We also note that this is not a criminal proceeding.

The AAO's request was relevant to the applicant's claimed eligibility. In refusing to disclose the information, since the beneficiary failed to address the allegations of fraudulent documents, the beneficiary prevented the director from reaching a conclusion as to the applicant's eligibility. Under

these circumstances, the respondent has failed to sustain his burden of proof. *Matter of Marques*, 16 I&N Dec. 314 (BIA 1977).⁶

Subsequent to the beneficiary's 2006 arrest and statement, the petitioner in the instant matter filed an immigrant petition on April 23, 2007. The beneficiary signed Form ETA 750B on April 20, 2007, in which he asserted that he had a bachelor's degree from the University of Punjab. On appeal, and in response to the AAO's NOID, the petitioner, in reliance on the educational documents that the beneficiary provided, obtained educational evaluations that discussed the beneficiary's bachelor's and MBA from the University of Punjab. The beneficiary knowingly and intentionally submitted fraudulent educational documents on his own behalf in order to obtain an immigration benefit after he admitted to authorities that they were not his.

By signing the labor certification form, and submitting falsified educational documents, the beneficiary has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the beneficiary has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue. While the petitioner has chosen to withdraw his appeal, this does not negate our finding that the beneficiary has sought to procure immigration benefits through fraud.

ORDER: The appeal is dismissed based on its withdrawal by the petitioner with a finding of fraud and willful misrepresentation of a material fact against the beneficiary.

FURTHER ORDER: The AAO finds that the beneficiary knowingly misrepresented a material fact by submitting fraudulent documents in an effort to procure a benefit under the Act and the implementing regulations.

⁶ Additionally, the AAO observes that, like the Board of Immigration Appeals, this office cannot rule on the constitutionality of laws enacted by Congress. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992).