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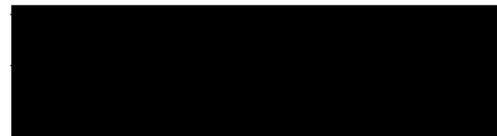
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **APR 10 2012**

Office: TEXAS SERVICE CENTER

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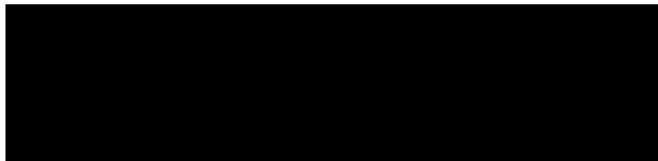
Petitioner:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center and the labor certification was invalidated. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a finding of fraud/misrepresentation against the petitioner and the beneficiary. The AAO affirms the director's decision to invalidate the labor certification.

The petitioner is an Italian restaurant. It seeks to employ the beneficiary permanently in the United States as an Italian specialty cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL).<sup>1</sup> The director determined that the petitioner did not reveal that its owner and officer had a familial relationship with the beneficiary and that the evidence submitted concerning the beneficiary's experience contained discrepancies amounting to misrepresentation. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely 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.

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.<sup>2</sup>

As set forth in the director's January 17, 2008 denial, the issues in this case are whether the petitioner failed to disclose to DOL that its sole owner and officer is the brother of the beneficiary and whether the petitioner and beneficiary fraudulently or willfully misrepresented material facts with respect to the beneficiary's qualifications for the position. Due to the petitioner's failure to disclose the familial relationship between the beneficiary and the sole owner and officer of the petitioner, the director invalidated the labor certification. The director also found that the beneficiary was not qualified for the position and that he misrepresented his work experience on the Form ETA 750B.

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<sup>1</sup> Form ETA 750 lists the name of the petitioner as [REDACTED]. Although the address listed on Form ETA 750 matches that of the petitioner, nothing in the record explains the nature of the relationship, if any, between [REDACTED] and the petitioner. If the petition is pursued further, the petitioner should explain any such relationship.

<sup>2</sup> Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Concerning the relationship between the petitioner's owner and the beneficiary, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is left to United States Citizenship and Immigration Services (USCIS) to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).<sup>3</sup> *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

\* \* \*

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

*Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).<sup>4</sup> In this case, the petitioner has failed to demonstrate that the certified job opportunity was "clearly open to any qualified U.S.

<sup>3</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

<sup>4</sup> The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

worker” as attested on Item 22-h of Part A of the Form ETA 750 because the beneficiary is related to the owner of the petitioning business.

On appeal, counsel asserts that no affirmative duty exists to disclose any familial relationship as the Form ETA 750 does not have a specific question regarding family relationship and DOL never made such an inquiry. Although the Form ETA 750 does not have a specific item, such as the one that appears on the ETA Form 9089, requesting information about any familial relationship between the beneficiary and any stockholder or officer of the petitioner, Item 22-h of Part A of the Form ETA 750 states that the petitioner certifies by his signature that “The job opportunity has been and is clearly open to any qualified U.S. worker.” A petitioner who seeks to hire a family member or other person closely related to an officer or shareholder may not put forth a true effort in its duty to look for a U.S. worker who is appropriately qualified. As stated above, a familial relationship may impact the pool of workers to whom the job is actually available or whether the job offer is truly bona fide. Although the director issued a Notice of Intent to Deny concerning the relationship between the petitioner’s owner and the beneficiary, the petitioner submitted no evidence concerning its recruitment efforts or other evidence to demonstrate that the job was actually available to qualified U.S. workers. Instead, it relied upon statements of counsel to that effect. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition’s priority date. See 8 C.F.R. § 103.2(b)(1), (12). See also *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Fundamentally, the job offer must be “clearly open to any qualified U.S. worker.” It is noted that a relationship invalidating a bona fide job offer may arise where the beneficiary is related to the petitioner by “blood” or it may be “financial, by marriage, or through friendship.” See *Matter of Sunmart* 374, 00-INA-93 (BALCA May 15, 2000).

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The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien’s performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien’s entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir.1983).

The INS, [now USCIS] therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

*Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). Where the petitioner is owned by a close family member to the alien beneficiary applying for the position, it is not a *bona fide* offer. See *Bulk Farms, Inc. v. Martin*, 963 F.2d 1286 (9th Cir. 1992) (denied labor certification application for president, sole shareholder and chief cheese maker even where no person qualified for position applied). The court noted:

The regulatory scheme challenged by Bulk Farms is reasonable related to the achievement of the purpose outlined in section 212(a). As the district court correctly noted, “the DOL certification process is built around a central administrative mechanism: A private good faith search by the certification applicant for U.S. workers qualified to take the job at issue.” See 20 C.F.R. § 656.21. This “good faith search” process operates successfully because all employers are subject to uniform certification requirements. The two independent safeguards challenged by Bulk Farms—the ban on alien self-employment and the bona fide job requirements—make the good faith search process self-enforcing. The prophylactic rules permit the Department of Labor to process more than 50,000 permanent labor certification requests each years. . .

The challenged regulations also represent a reasonable construction of section 212(a) insofar as they ensure the integrity of the information gathered by DOL. As a practical matter, where an employer is indistinguishable from the alien seeking the job in question, there is reason for the employer to abuse the process. . .

*Bulk Farms, Inc., v. Martin*, 963 F.2d 1286-1289 (1992).

The regulation at 20 C.F.R. § 656.30 (2001) provided in pertinent part:

(d) After issuance labor certifications are subject to invalidation by the INS 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 a labor certification. If evidence of such fraud or willful misrepresentation becomes known to a RA or to the Director, the RA or Director, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notice shall be sent to the regional or national office, as appropriate, of the Department of Labor’s Office of Inspector General.<sup>5</sup>

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<sup>5</sup> The current regulation provides in pertinent part:

(d) *Invalidation of labor certifications.* After issuance, a labor certification may be revoked by ETA using the procedures described § 656.32. Additionally, after

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the affected party willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). “The intent to deceive is no longer required before the willful misrepresentation charge comes into play.” *Id.* at p. 290.<sup>6</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 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, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

An occupational preference petition may be filed on behalf of a prospective employee who is closely related to the 100% shareholder in the corporation. The prospective employee’s relationship to the owner of the corporation is a material fact to be considered in determining whether the job being offered was really open to all qualified applicants. The concealment, in labor certification proceedings, of a familial relationship to the owner of the petitioning corporation constitutes willful misrepresentation of a material fact and is a ground for invalidation of an approved labor certification under 20 C.F.R. § 656.30(d) (1986). *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401,406 (Comm. 1986).

In the circumstances set forth in this case, failure to disclose the beneficiary’s relationship to the sole shareholder of the petitioning company amounts to the willful effort to procure a benefit

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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. 20 C.F.R. § 656.30 (2010).

<sup>6</sup> In contrast, a finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed an acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

ultimately leading to permanent residence under the Act. *See Kungys v. U.S.*, 485 U.S. 759 (1988), (materiality is a legal question of whether “misrepresentation or concealment was predictably capable of affecting, i.e., had a natural tendency to affect the official decision.”) Further, the petitioner’s attestation that the job was open to United States workers is a material misrepresentation. In the context of a visa petition, a misrepresented fact is material if the misrepresentation cuts off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of a visa petition. *See Matter of Ng*, 17 I&N Dec. at 537.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. A misrepresentation of a material fact may include but not be limited to such consequences as a denial of a visa petition, a decision rendering an alien inadmissible to the United States, and possible criminal prosecution. It is noted that section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182 provides that any “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. An alien may be found inadmissible 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). 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, in determining admissibility, the materiality test has three parts. First, if the record shows the alien is inadmissible on the true facts, then the second and third questions must be addressed. The second question is whether the relevant line of inquiry has been shut 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 failure to disclose the fact that the beneficiary was related to the sole shareholder at the time the labor certification was secured was a material misrepresentation that was willful, because the officer, principal and owner of the company was presumed to be aware and informed of the organization and staff of the enterprise. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 at 403. The petitioner’s misrepresentation as to the beneficiary’s relationship to the company cut off a potential line of inquiry regarding the *bona fide* nature of the offer of employment. This is directly material as to whether the petitioner is an “employer” which “intends to employ” the beneficiary as required by section 204(a)(1)(F) of the Act, and is therefore material to whether the beneficiary is eligible for the benefit sought. *See Matter of S & B-C*, 9 I&N Dec. at 447.

On appeal, counsel asserts that neither the petitioner nor the beneficiary had any “intent . . . to conceal or hide the familial relationship between them, nor was there any intention on the part of either to misstate or misrepresent the alien’s previous employment experience.” Counsel states

that as the last name of [REDACTED] is uncommon, DOL should have been put on notice that a family connection was possible and that DOL may have inquired as to the bona fides of the position without notifying either the petitioner or USCIS. Counsel concludes that USCIS does not have the authority to invalidate the labor certification without first allowing DOL to investigate any effect of family relationship upon the certification except if evidence of misrepresentation was presented. As stated above, the regulations allow USCIS to inquire into the particulars of the labor certification as relevant to whether the beneficiary is entitled to the benefit sought. The evidence submitted in response to the director's NDI did not establish that the job was available to U.S. workers, but instead consisted of counsel's and the brothers' uncorroborated statements. The petitioner did not submit copies of any recruitment results. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The petitioner has failed to resolve the doubt cast upon the remaining evidence by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Considering the petitioner's failure to inform the Department of Labor of the close family relationship with the beneficiary at the time of recruitment, the AAO finds that the petitioner misrepresented a material fact involving the Labor Certification and will affirm the director's decision finding misrepresentation and invalidating the labor certification. For this reason alone, the petitioner must be denied and the appeal dismissed.

The director also found that the beneficiary misrepresented his work experience on the Form ETA 750 and that the beneficiary was not qualified for the job as of the priority date. The AAO agrees. The director's NOID notified the petitioner of the discrepancy in the beneficiary's dates of employment between the information on the ETA 750 and a letter of experience in the record and requested information concerning the relationship between the beneficiary and the petitioner's owner and officer.<sup>7</sup> Specifically, the Form ETA 750B lists the beneficiary's previous experience as working as an Italian cook from February 1996 to November 2000 for Pepe Viola. The beneficiary signed the Form ETA 750B on April 12, 2001 under penalty of perjury. The experience letter in the record, dated February 14, 2007 states that the beneficiary worked as a cook for Sammy's Pizzeria Restaurant from February 1997 to May 1999.

In response to the NOID, counsel stated that the petitioner was represented by [REDACTED] of Legal Resources, a "notary public-seemingly the type that typically prey upon unsuspecting immigrants in situations of this nature." Counsel stated that he attempted to contact both [REDACTED]

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<sup>7</sup> The Notice of Intent to Deny also requested information to demonstrate that the petitioner had the ability to pay the proffered wage from the priority date onwards. That information was submitted and no further discussion of the petitioner's ability to pay the proffered wage is necessary.

[REDACTED], but was unable to reach or locate either.<sup>8</sup> Counsel also stated that “no one, including the undersigned had any idea that incorrect information had been entered on the ETA 750—at least not until the receipt of the Service’s NOID in this matter.” As a result, counsel concludes that as it was an inadvertent error and evidence was submitted concerning the beneficiary’s “legitimate previous work experience that satisfies the job requirements as per the labor certification application[,]” the parties did not engage in any fraud or misrepresentation.

In response to the NOID, the petitioner submitted an affidavit from the beneficiary stating that he informed the preparer of the Form ETA 750 where he worked and does not know why that place of employment was not included on the Form ETA 750. He also stated that he signed the Form ETA 750 before it had been filled out and relied upon the preparer to put in the correct information. He stated that he did not see the completed Form ETA 750 prior to the director’s NOID.

On appeal, counsel notes that the beneficiary had no reason to misrepresent his experience on the Form ETA 750 because he had worked the required two years albeit in the employ of a different restaurant than the one listed. The petitioner submitted an affidavit from the petitioner’s owner stating that the Form ETA 750B was erroneously completed by someone other than himself or the beneficiary and that she probably was “confused.” The petitioner also submitted an affidavit by the beneficiary stating that he had no reason to misrepresent his experience.

The beneficiary’s disavowal of participation in fraud cannot be sustained in light of his admission of willingly signing a blank document. Specifically, his failure to apprise himself of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. *See Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application’s contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993). To allow the beneficiary to absolve himself of responsibility by simply claiming that he had no knowledge or participation in a matter where he provided all the supporting documents and signed a blank document would have serious negative consequences for USCIS and the administration of the nation’s immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS

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<sup>8</sup> Although counsel notes that the petitioner was not assisted by an attorney but by an agent, there is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

In consideration of the fact that the beneficiary signed the Form ETA 750B in and that such avoidance resulted in a material misrepresentation, the AAO finds that the beneficiary misrepresented a material fact in order to obtain an immigration benefit.<sup>9</sup>

In addition, the petition may not be approved because the petitioner failed to present evidence that the beneficiary had the experience required as of the priority date. Employment not listed on the Form ETA 750 must be considered with caution. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted. Despite being notified by the director that USCIS questioned the reliability of the letter from [REDACTED] due to it not being listed on the Form ETA 750B, the petitioner presented no new evidence to demonstrate that the beneficiary, in fact, worked for [REDACTED] such as Forms W-2, paystubs, or other contemporaneous evidence of the beneficiary's employment. Thus, the AAO finds that the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position as of the priority date. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner also failed to establish that it is a successor-in-interest to the entity that filed the labor certification. The petitioner is a different entity from the employer listed on the labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

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<sup>9</sup> 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." The beneficiary received notice of the director's concerns through the appearance of his attorney who also represents the petitioner.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of the predecessor company, [REDACTED]. Accordingly, the petition must also be denied because the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification and that a valid labor certification in the petitioner's name accompanied the filing of the petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed with a finding that the petitioner willfully misrepresented a material fact.

**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.

**FURTHER ORDER:** The AAO finds that the petitioner's job offer was not *bona fide* based on the beneficiary's undisclosed relationship interest to the petitioner, which constituted willful misrepresentation of a material fact underlying eligibility for a benefit sought under the immigration laws of the United States. The labor certification application is invalidated pursuant to 20 C.F.R. § 656.30(d) based on the petitioner's willful misrepresentation.