

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

B6



DATE: DEC 14 2012 OFFICE: VERMONT SERVICE CENTER



IN RE:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Ron Rosenberg  
Administrative Appeals Office

**DISCUSSION:** On June 24, 2002, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (EAC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the EAC director on June 14, 2003. However, the Director of the EAC revoked the approval of the immigrant petition on November 13, 2007 and the petitioner subsequently appealed the director's decision. The decision of the director is now before the Administrative Appeals Office (AAO). On August 14, 2012, this office provided the petitioner with a Notice of Intent to Dismiss and Derogatory Information (NOID/NODI) based on evidence in the record and afforded the petitioner an opportunity to provide evidence that might overcome this information.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a supervisor of baker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3). As required by statute, a labor certification approved by the Department of Labor accompanied the petition. The director revoked the approval of the petition, in part, because he failed to receive a response from your organization to his request that you affirm that you authorized [REDACTED] an attorney under investigation for fraudulent filings of Form I-140 petitions and supporting applications for labor certifications, to file the Form ETA 750 Application for Labor Certification and the Form I-140 petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On August 14, 2012, this office notified the petitioner that authorization for [REDACTED] to file the petition did not appear in the record, that the individual who signed on behalf of the petitioner did not seem to have a legal relationship to the petitioner, and that the record did not establish that the beneficiary had the experience required by the terms of the labor certification. Specifically, the AAO advised that an investigation by the U.S. Consulate had been conducted concerning the company for which the beneficiary claimed to work in Brazil, which yielded results indicating that the company did not seem to exist during the time period when the beneficiary claimed he was employed.

This office notified the petitioner that willful misrepresentation of a material fact in these proceedings may render the beneficiary inadmissible to the United States, unless the petitioner is able to overcome the findings of the investigation done to verify the operation of the Brazilian company where the beneficiary claimed to have been employed. Furthermore, this office notified the petitioner that a finding of misrepresentation may lead to invalidation of the Form ETA 750.

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 DHS 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).

The administrative findings in an immigration proceeding must include specific findings of fraud or material misrepresentation for any issue of fact that is material to eligibility for the requested immigration benefit. 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 DHS 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.<sup>1</sup>

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. Section 212(a)(6)(C) of the Act governs misrepresentation and states the following: "Misrepresentation. – (i) In general. – 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."

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:

---

<sup>1</sup> 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 and USCIS have the authority to enter a fraud finding, if during the course of adjudication, the record of proceedings discloses fraud or a material misrepresentation.

- (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.

Furthermore, a finding of misrepresentation may lead to invalidation of the Form ETA 750. *See* 20 C.F.R. § 656.31(d) regarding labor certification applications involving fraud or willful misrepresentation:

Finding of fraud or willful misrepresentation. If as referenced in Sec. 656.30(d), a court, the DHS or the Department of State determines there was fraud or willful misrepresentation involving a labor certification application, the application will be considered to be invalidated, processing is terminated, a notice of the termination and the reason therefore is sent by the Certifying Officer to the employer, attorney/agent as appropriate.

In the instant case, the AAO's NOID/NODI stated that [REDACTED] signed the appeal and prior documents, but no evidence appeared in the record to indicate that [REDACTED] was an authorized representative of the petitioner.<sup>2</sup> As stated in the AAO's NOID, [REDACTED] name does not appear on any documents on file with the Commonwealth of Massachusetts Secretary of the Commonwealth, Corporations Division for any of the companies involved in the Form I-140. Because no evidence appears in the record to demonstrate that [REDACTED] was an authorized representative, the AAO enters a finding of misrepresentation concerning whether the job offer was bona fide.

In addition, the AAO's NOID/NODI noted that the evidence submitted concerning the beneficiary's experience contained material inconsistencies. Specifically, the letter from [REDACTED] manager of [REDACTED], located in Rio De Janeiro, Brazil, stating that the beneficiary worked for that establishment as a cook, contained an invalid CNPJ number.<sup>3</sup> In

---

<sup>2</sup> Under 20 C.F.R. § 656.3, the Code of Federal Regulations pertaining to the Employment and Training Administration, DOL defines an "authorized representative" of the petitioner as "an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters."

<sup>3</sup> The director found this information by searching the CNPJ database (The CNPJ database can be accessed online at <http://www.receita.fazenda.gov.br/>). CNPJ or Cadastro Nacional da Pessoa Juridica is a unique number given to every business registered with the Brazilian authority. In

addition, the NOID/NODI noted that a general internet search to verify the address of Padaria e Confeitaria Aurora Ltda did not demonstrate that the address provided was for the company indicated. As a result, we are unable to verify that Padaria e Confeitaria Aurora Ltda was a valid company operating as a restaurant or bakery where the beneficiary could have gained the experience required by the terms of the labor certification. The AAO did not receive a response from the petitioner.

This office allowed the petitioner 30 days in which to provide evidence that it authorized [REDACTED] to file the petition, that [REDACTED] was authorized to represent the petitioner, and that the evidence submitted by the petitioner concerning the beneficiary's previous employment experience was complete and correct. More than 30 days have passed and the petitioner has failed to respond to this office's request for additional documentation. Thus, the appeal will be dismissed as abandoned.

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 appeal is dismissed as moot.

**FURTHER ORDER:** The AAO finds that the petitioner did not authorize the filing of the Form ETA 750 and Form I-140 so that no job offer was proffered to the beneficiary, 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 willful misrepresentation that the petitioner intended to employ the beneficiary in the proffered position.

---

Brazil, a company can hire employees, open bank accounts, buy and sell goods only if it has a CNPJ. The Department of State has determined that the CNPJ provides reliable verification with respect to the adjudication of employment-based petitions in comparing an individual's stated hire and working dates with a Brazilian-based company to that Brazilian company's registered creation date.