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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

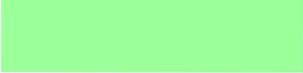
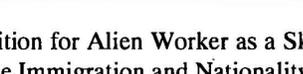


U.S. Citizenship
and Immigration
Services



DATE: **FEB 05 2013**

OFFICE: NEBRASKA SERVICE CENTER FILE: 

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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reopen. The director reopened the matter and affirmed his decision finding that the petitioner failed to overcome the grounds for denial. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a separate finding of willful misrepresentation against the petitioner. The labor certification application will also be invalidated based on the petitioner's willful misrepresentation.

The petitioner seeks the beneficiary's classification as an ethnic chef pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). The director denied the Immigrant Petition for Alien Worker (I-140) based on the petitioner's failure to establish its ability to pay the full proffered wage to the beneficiary from the priority date onward. The petitioner appealed this decision.

On October 31, 2012, and in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a Notice of Intent to Dismiss and Notice of Derogatory Information (NOID/NDI) advising the petitioner of derogatory information indicating that it had submitted discrepant and questionable material in support of the petition.

The AAO's NDI/NOID stated:

- A. It is noted that the Form I-140 was filed on October 9, 2007 by petitioner identified as [REDACTED]. The address given is [REDACTED]. No Internal Revenue Service (IRS) federal employer identification number (FEIN) is given and no U.S. Social Security number is listed. Part 2, e. designates the selected visa classification sought as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act, (the Act). Part 5 is completed only to the extent that the petitioner is identified as a restaurant that was established in 1999. No number of employees, gross income or net income is stated. The Form I-140 is purportedly signed by [REDACTED]. Counsel's signature also appears with the date of October 5, 2007.

A copy of a business license issued by the village of Schaumburg to an entity specified as [REDACTED] also accompanies the Form I-140. Its validity period is from December 27, 2006 to December 31, 2007. No business license issued to [REDACTED] has been submitted to the record.

A copy of a letter dated October 4, 2007, signed by [REDACTED] as President also accompanies the Form I-140. The letter is on a [REDACTED] letterhead, which gives the location as [REDACTED]. The letter states that the beneficiary is offered permanent employment by [REDACTED] and that he will be working at [REDACTED] as an ethnic chef. The letter also states that job requires two years of experience as a chef. There is no job offer letter from [REDACTED] which is stated as the employer on the Form ETA 750 and on the Form I-140.

The record also contains copies of two letters, both dated May 7, 2001, signed by [REDACTED] is President. One letter is on a [REDACTED] letterhead, which also gives the location as [REDACTED] and claims that the beneficiary has been working there as a chef from June 1998 to March 2001. The other letter, also dated May 7, 2001, is virtually identical except it is on the letterhead of "[REDACTED]" giving the same [REDACTED] address and claiming the same employment of the beneficiary.

A Form ETA 750, Application for Alien Employment Certification identifying the employer as "[REDACTED]" at [REDACTED] also accompanied the Form I-140 that was filed on October 9, 2007. The Form ETA 750 appears to be certified by the U.S. Department of Labor (DOL) on November 13, 2006. The priority date of the petition as set forth on the Form ETA 750 is April 30, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). An unusual number of what appear to be DOL correction stamps appear on the Form ETA 750. Seven (7) appear on page 1 of Part A of the Form ETA 750. The stamps are all dated May 8, 2006, except for one at the bottom which has no date or initials and is almost completely "whited out" with the word "Chef" printed on top of the whited out portion. Five (5) of the other six (6) correction stamps seem to acknowledge corrections requested on February 2, 2003, signified by either a lined-through portion or an addition of language. One correction stamp at the top of Part A of the Form ETA 750 does not correlate to any change. It is noted that in part 14 relating to education, training and experience, two corrections appear to have been made. "No minimum Education required" has been substituted for one year of college that was originally required, and "No Minimum Experience Required" has been added. Two years of experience was originally required. Four correction stamps appear on page 2 of the Form ETA 750, one stamp appears on page one of Part B, and two correction stamps appear on page 2 of Part B of the Form ETA 750.

In view of the fact that the accompanying correspondence to the Form I-140 and the business license submitted at the same time with the Form I-140 both reference an entity identified as "[REDACTED]" as the employer offering the job as an ethnic chef, the AAO finds it suspect that the Form I-140 identifies the petitioner as a [REDACTED]. Further, in view of the numerous corrections that were purportedly requested by the petitioner and were seemingly approved by DOL as signified by the red correction stamps on the Form ETA 750, it is highly suspect that a correction was not requested to correct the name of the employer from "[REDACTED]" to "[REDACTED]".

The record contains copies of the 2002, 2003, 2004, 2005, and 2006 individual tax returns of [REDACTED] and [REDACTED]. None include any reference to the [REDACTED].

[REDACTED] or [REDACTED] restaurant. The record also contains copies of the 2002, 2003, 2004, 2005, and 2006 corporate tax returns of [REDACTED] FEIN [REDACTED]. The petitioner did not list any FEIN on Form I-140 to confirm that this is the same entity as [REDACTED]. The corporation records of the state of Illinois, which are also contained in the record, indicate that this entity was incorporated on May 18, 2001 (which is after the priority date) and uses the business name of [REDACTED]. No documentation has been submitted that establishes any connection of the entity of [REDACTED] to a restaurant with the name of [REDACTED]. No documentation has been submitted that establishes any connection of [REDACTED] to a restaurant named [REDACTED].

- B. It is noted that the Form ETA 750 bears the signature of [REDACTED]. It is additionally noted that the signature appearing on an undated (facsimile date of August 7, 2008) G-28, Notice of Entry of Appearance as Attorney or Representative is identical to that given for [REDACTED]. However, the signature on the G-28 is suppose to be that of [REDACTED] indicating that one or both signatures are fraudulent. It is further noted that the petitioner in the October 4, 2007 letter and on appeal (through counsel) continues to claim that the Form ETA 750 requires two years of experience, seemingly ignoring the purported correction, which amended this requirement to no experience.

The AAO's NOID/NDI informed the petitioner that no explanation or clarification of the above-noted inconsistent and contradictory information was contained in the record. The AAO further stated:

Moreover, any such concealment of the true status of the organization by the petitioner seriously compromises the credibility of the remaining evidence in the record and raises a consideration that a finding of material misrepresentation may be made if warranted by the record. The AAO may consider such a finding in this matter. *See Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988)(stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Id.*¹

¹As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien 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. 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

The AAO's NOID/NDI also requested the petitioner to submit additional documentation of its ability to pay the proffered wage of \$38,000 per year (and additional overtime of \$28.50 per hour) from the priority date and continuing until the present pursuant to the regulation at 8 C.F.R. § 204.5(g)(2) and requested that the petitioner provide:

All items specified above in A and B. Additionally you are instructed to submit:

Certified copies of business licenses issued from Schaumburg, Illinois to [REDACTED] at [REDACTED] for the years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012.

An explanation of the identical signatures of [REDACTED] and [REDACTED] submitted, along with five exemplars of the signatures of [REDACTED] and [REDACTED] notarized and accompanied by notarized state or federal photo identification of each individual containing his signature.

A sworn statement of the business structure of [REDACTED] during all of the relevant years from 2001 to the present, accompanied by, if applicable, original documentation from the state of incorporation that would establish that [REDACTED] had been incorporated as of the April 30, 2001, priority date.

Copies of [REDACTED] 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012 federal corporate income tax returns, accompanied by original IRS-issued transcripts of [REDACTED] 2001 through 2011 federal corporate income tax returns. If applicable, copies of 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012, individual federal tax returns, which clearly identify [REDACTED] as a sole proprietorship, accompanied by original IRS-issued transcripts of the corresponding tax returns.

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. In contrast, a finding of fraud requires a determination that the alien made a false representation of fact 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).

Certified copies of the state of Illinois annual corporate report filed, if applicable, by [REDACTED] for 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011.

Certified copies of the state of Illinois quarterly wage reports for all quarters of all years for 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012, representing quarterly wage reports filed by [REDACTED] which clearly identifies [REDACTED] as the filer. They must identify employees and wages paid. The social security numbers of non-sponsored foreign workers may be redacted.

The petitioner was allowed (30) thirty days to respond to the AAO's NDI/NOID. No response has been received by this office.

Upon review of the record, the AAO affirms the director's determination that the petitioner failed to establish its continuing ability to pay the proffered wage from the priority date onward. The AAO affirms the dismissal of the petition on these grounds.

Additionally, in filing the instant petition, and appeal, along with submitting documents purporting to show that the petitioner is an ongoing business making a *bona fide* job offer, together with evidence of alteration of documents and signatures as set forth above, and visible unexplained highly unusual anomalies on the certified labor certification, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. The AAO concludes that the petitioner has failed to provide any independent and objective evidence in response to the AAO's notice to overcome, fully and persuasively, the indices of willful, material misrepresentation as stated above. Further, the AAO will invalidate the Form ETA 750 pursuant to 20 C.F.R. § 656.31(d) based on the petitioner's willful, material misrepresentation.

ORDER: The appeal is dismissed.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents in an effort to mislead USCIS on elements material to the beneficiary's 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. § 656.31(d) based on the petitioner's willful, material misrepresentation.