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

(b)(6)

DATE: FEB 19 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: On September 21, 2012, the Director of the United States Citizenship and Immigration Services (USCIS) Nebraska Service Center (NSC) reaffirmed the decision to revoke the approval of the preference visa petition. The petitioner has appealed the director's decision to the Administrative Appeals Office (AAO). Upon review, the director's decision will be withdrawn. The petition will be remanded.

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. The petitioner is a greenhouse sales, maintenance, and construction services company. It seeks to employ the beneficiary permanently in the United States as a painter pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. §1153(b)(3)(A)(i).[1]

On November 25, 2003, USCIS-NSC received the Immigrant Petition for Alien Worker, Form I-140, from the petitioner. As required by statute, the petition is accompanied by an approved Form ETA 750 labor certification. The employment-based immigrant visa petition was initially approved by the NSC director (the director) on January 19, 2005, but the approval was later revoked on August 11, 2008. The petitioner subsequently filed an appeal to the AAO (the first appeal), but the appeal was rejected as untimely filed pursuant to 8 C.F.R. § 205.2(d), and the matter was returned to the director for consideration as a motion to reopen and reconsider. On September 21, 2012, the director reopened the matter, but after a complete review of the record of proceeding, the director held that the grounds of denial had not been overcome and affirmed the previous decision. The director determined that the beneficiary did not have the requisite work experience in the job offered as of the priority date and that the documentation submitted to verify the beneficiary's past work experience is fraudulent.

On appeal to the AAO (the second appeal), counsel for the petitioner contends that none of the evidence submitted is fraudulent and that the director relied on hearsay evidence as provided by the U.S. Embassy in Guatemala. Counsel maintains that the petitioner submitted sufficient evidence to demonstrate that the beneficiary possessed the requisite work experience in the job offered as of the priority date. Counsel further asserts that the director failed to consider all relevant evidence submitted, and therefore violates 8 C.F.R. § 103.3(a) and the beneficiary's due process rights. Counsel also argues that the petitioner and the beneficiary are victims of ineffective assistance of counsel.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381

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[1] Section 203(b)(3)(A)(i) of 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.

F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

As a preliminary matter, we will not elaborate on the ineffective assistance claim. Under the *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), any appeal or motion based upon a claim of ineffective assistance of counsel requires:

(1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;
(2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond; any subsequent response from counsel, or report of counsel's failure or refusal to respond should be submitted with the motion; and
(3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not why not.

Here, we cannot conclude that the representation of the former counsel was ineffective. While the beneficiary has submitted an affidavit outlining the basis for the ineffective assistance claim against his former counsel and filed a formal complaint with the Ohio State Bar, no evidence of the second requirement in *Lozada* has been submitted. Thus, the claim of ineffective assistance of counsel cannot be considered.

Further, we also cannot conclude that there has been violation of due process rights, because we cannot consider whether there has been ineffective assistance of counsel. Ineffective assistance of counsel in a deportation proceeding is a denial of due process only if the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case. *Matter of Lozada, id.* at 638 (citing *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986); *Lopez v. INS*, 775 F.2d 1015 (9th Cir. 1985); *see also Magallanes-Damian v. INS*, 783 F.2d 931 (9th Cir. 1986)). Here, we do not find any evidence showing that the proceeding was so fundamentally unfair that the beneficiary was prevented from reasonably presenting his case.

Therefore, the single issue in this case is whether or not the beneficiary possessed the requisite work experience in the job offered prior to the priority date. We will address this issue as follows.

Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate that the beneficiary had all of the qualifications stated on the Form ETA

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[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

750 as certified by the U.S. Department of Labor (DOL) and submitted with the petition as of the priority date. Here, the priority date is October 15, 2002, which was the date when the Form ETA 750 was filed and accepted for processing by any office within the employment system of DOL. *See* 8 C.F.R. § 204.5(d).

The name of the job title or the position for which the petitioner seeks to hire is "Painter." The job description listed on the Form ETA 750 part A item 13 partly states, "Applies coats of paint, varnish, stain, enamel, or lacquer to decorate and protect interior or exterior surfaces, trimmings, and fixtures of buildings and other structures." Under section 14 of the Form ETA 750A the petitioner specifically required each applicant for this position to have a minimum of two years of work experience in the job offered.

On the Form ETA 750, part B, signed by the beneficiary on October 9, 2002, he listed the following relevant work experience under item 15 of the Form ETA 750, part B:

Name and address of employer:	
Name of Job:	Painter.
Date started:	November 1997.
Date left:	December 1999.

To show that the beneficiary did work in the job offered before October 15, 2002 (the priority date), the petitioner originally submitted the following evidence:

- A letter of employment verification dated November 19, 2003 from General Manager, who certified that the beneficiary worked at from November 5, 1997 to December 14, 1999.

The record reflects that on June 13, 2005 the USCIS Cleveland Field Office (CFO) contacted the Consul General of the American Embassy in Guatemala concerning A review of USCIS electronic records reveals that the petitioner had also filed an employment based petition (Form I-140) on behalf of in July 2004.[3] According to the record, a Fraud Prevention Analyst at the U.S. Embassy in Guatemala called Mr. and spoke on the telephone with him. The Fraud Prevention Analyst stated in his email conversation to the CFO that Mr. is the owner of and that " worked for Mr. last year for about 4-6 months."

On September 20, 2005 the CFO contacted the Fraud Prevention Analyst at the U.S. Embassy in Guatemala concerning the beneficiary, and requested the Fraud Prevention Analyst to once again

[3] We note that the attorney who filed the petition and labor certification application on behalf of Mr. also filed the petition and the labor certification on behalf of the beneficiary in this case. Her representation in this matter was terminated after the AAO rejected the appeal as untimely on January 6, 2012. She will be referred to as former counsel or by Ms. in this proceeding.

contact Mr. and ask if the beneficiary ever worked for Mr. , and if so, when did he previously work there. On that same date the analyst, according to the record, contacted Mr. , who then claimed that he did not know the beneficiary or Mr. and that neither of them had ever worked for him.

The record shows that the beneficiary was interviewed in connection with his Application to Register Permanent Residence or Adjust Status (Form I-485) on October 3, 2005. During the interview, the beneficiary verified the information on the Form I-485 and the information provided in the petition and the labor certification. He was then informed about the discrepancies in Mr. statements to the Fraud Prevention Analyst. On February 6, 2006, counsel for the petitioner submitted a letter dated January 18, 2006 from Mr. who stated that the call he received was not in regards to the beneficiary and that he had never been contacted concerning the employment of the beneficiary.

The director issued a Notice of Intent to Revoke (NOIR) on June 27, 2008 informing the petitioner of the findings of the Fraud Prevention Analyst in 2005. Specifically, the director noted that: "It appears that the beneficiary has submitted a fraudulent verification letter and does not have the required two years experience necessary for the job offered."

The director then advised the petitioner of his intention to revoke the approval of the petition and to submit additional evidence in support of the petition and in opposition to the proposed revocation.

In response to the director's NOIR, the petitioner submitted the following evidence:

- A notarized statement dated July 24, 2008 from Mr. confirming that the beneficiary worked at his company as a painter from November 1997 to December 1999, that no one from the U.S. Embassy had contacted him to request information about the beneficiary, and that the only call he received from the U.S. Embassy was about Mr. in which he said he did not know Mr.
- An affidavit dated August 6, 2008 from the petitioner's former counsel stating that she personally called and talked with Mr. on the telephone, where Mr. said that he knew the beneficiary very well, that the beneficiary worked for him from November 1997 to December 1999, and that Mr. indicated he only had one conversation with the U.S. Consulate agent. She added that she had also contacted the U.S. Embassy in Guatemala and received their willingness to contact Mr. again provided that USCIS would make the request;
- A copy of the email correspondence between the petitioner's former counsel and the representative from the U.S. Embasy in Guatemala; and
- Copies of untranslated documents which purportedly are receipts of payments from Mr. to the beneficiary issued from 1997 to 1999.

The director stated in the decision dated August 11, 2008 that "the letters of January 18, 2006 and July 24, 2008 from Mr. have little credibility [when] compared to the simultaneous

memo made by a Fraud Prevention Analyst on September 20, 2005." Accordingly, the director revoked the approval of the petition.

On appeal to the AAO after the director issued the decision on August 11, 2008, former counsel to the petitioner contended that the director had not provided any tangible, credible evidence to establish that the Fraud Prevention Unit actually spoke with Mr. by telephone on two separate occasions, and that the director's conclusion that the beneficiary must have submitted fraudulent employment verification letters was based on wholly unreliable and untrustworthy hearsay evidence. Former counsel also argued that the director failed to provide the petitioner with a copy of the notes/memo from the Fraud Prevention Analyst who called Mr. so that the petitioner could rebut the allegation of fraud/willful misrepresentation against the beneficiary. Former counsel further indicated that the record lacked evidence as to how the investigation was conducted, and that the director failed to consider Mr. offer and willingness to speak with the U.S. Embassy official again about the beneficiary's employment.

The AAO agrees. The record lacks evidence to support the director's conclusion that the beneficiary submitted fraudulent employment verification letters in support of his qualifications. The record does not contain, for instance, the simultaneous memo that the director mentioned in his 2008 decision.[4] Nor does it include any evidence showing how the investigation was conducted by the Fraud Prevention Analyst. It is not clear when the analyst called and who he spoke to when he called, what questions were asked by the analyst, what answers were given by Mr. and so forth. In addition, the director failed to consider the affidavit from the petitioner's counsel, the email correspondence between the petitioner's former counsel and the representative of the U.S. Embassy in Guatemala, and the purportedly copies of the receipts of payments to the beneficiary from Mr. from 1997 to 1999 as evidence of the beneficiary's qualifications.

When the AAO rejected the petitioner's appeal as untimely, the petitioner submitted an affidavit dated October 13, 2008 from the beneficiary requesting the director to give the U.S. Embassy in Guatemala permission to contact and question Mr. once again regarding the beneficiary's employment in Guatemala. In this affidavit, the beneficiary also stated the following concerns about Mr. claim of employment with Mr. :

> We [referring to both he and Mr.] were both clients of Ms. [the petitioner's former counsel]. I gave Ms. my employer letter from Guatemala. I never discussed with Mr. I never showed him my employer letter, nor told him of my previous's employer's name, address, or phone number.

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[4] The record contains a copy of the email correspondence between the Cleveland Field Office and the Fraud Prevention Analyst with the U.S. Embassy in Guatemala. There is no formal memo issued by the U.S. Embassy in Guatemala concerning the investigation of the beneficiary's employment and employer in Guatemala.

> I never saw Mr. work at I was never aware that he [Mr.] ever worked at . Mr. and the engineer are not acquainted with Mr.
>
> Mr. lived hundreds of miles from me in Guatemala. We are not related in any way. Ms. email to the Embassy states that she thinks that we are related, that we are cousins. This is not true.
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> Notwithstanding this, apparently Mr. submitted an employment letter to the Service [USCIS] indicating that he worked at
>
> I have no idea how he [Mr.] obtained this letter. In any event, any misconduct by Mr. or another has no bearing on the fact that I DID WORK AT .

The following evidence was also submitted immediately after the AAO rejected the appeal as untimely:

- A statement dated October 10, 2008 from Engineer, stating that the beneficiary worked in "our project of from November 1997 to December 1999 as the employee of ;
- An affidavit dated January 20, 2012 from the beneficiary claiming ineffective assistance of counsel by Ms. for filing the appeal untimely; and
- Various statements from people who are familiar with the beneficiary's work and performance with the petitioner.

The director does not appear to have considered the additional evidence outlined above. In the director's decision dated September 21, 2012, he pointed to the similarities between the letters of employment verification for the beneficiary and Mr. . The letters of employment verification for the beneficiary and Mr. were from Mr. and both letters stated that Mr. and the beneficiary were employed [by Mr.] from November 5, 1997 to December 14, 1999. The director then concluded that the beneficiary must have submitted a fraudulent employment verification letter.

On the appeal of the denial of the motion to the AAO, the following evidence is further submitted by the petitioner:

- A notarized statement dated January 13, 2012 from Mr. confirming that the beneficiary worked at his company as a painter from November 1997 to December 1999 and that he is available for additional questioning concerning the beneficiary's employment;

- An affidavit dated October 16, 2012 from the beneficiary describing how Mr. and [unspecified] others might have forged his letter of employment verification from Mr. ;[5]
- A copy of the filing of the complaint to the Ohio Bar Association regarding Ms. conduct in handling the beneficiary's case; and
- Copies of documents which purportedly are receipts of payments from Mr. to the beneficiary issued from 1997 to 1999 with translation into English.

Based on the evidence submitted above, we are persuaded that the beneficiary more likely than not possessed the minimum experience requirements for the position. The petitioner has submitted independent objective evidence to resolve the inconsistencies in the record. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence). Accordingly, we withdraw the director's decision.

With regard to the finding of fraud, we note that at the time the labor certification was submitted in 2002, the regulation at 20 C.F.R. § 656.31(d) (2002), states:

> 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.

A misrepresentation is material if the petitioner misrepresented the beneficiary's past work experience by submitting a fraudulent work experience letter or sworn statement, DOL would have been unable to make a proper investigation of the facts when determining certification because the fraudulent submission would have shut off a line of relevant inquiry.

Willful misrepresentation of a material fact in these proceedings may render the beneficiary inadmissible to the United States. An alien is inadmissible to the United States where he or she

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[5] The beneficiary stated in his affidavit that he and Mr. were represented by Ms. during the labor certification and the petition process, and that and , the translators mentioned in the director's decision dated September 21, 2012, were employed by Ms. He also indicated that Mr. , and possibly others, misappropriated my employment verification letter and altered it for their own purposes, and further request USCIS to authorize the U.S. Embassy in Guatemala to contact and interview Mr. regarding his employment and to conduct a forensic analysis of the verification letters submitted by him and Mr. to determine which one was altered. In the alternative, the beneficiary requested that USCIS release the verification letter used by Mr. so he could hire a forensic document expert to analyze the document. The beneficiary also requested that USCIS provide him with a copy of the emails and/or other documents generated by the U.S. Embassy in Guatemala with regards to the interviews with Mr.

"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." *See* section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182(a)(6)(c).

The term "willfully" in the statute has been interpreted to mean "knowingly 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) ("knowledge of the falsity of the representation" is sufficient); *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (interpreting "willfully" to mean "deliberate and voluntary"). Materiality is determined based on the substantive law under which the purported misrepresentation is made. *See Matter of Belmares-Carrillo*, 13 I&N Dec. 195 (BIA 1969); *see also Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). A material issue in this case is whether the beneficiary has the required experience for the position offered, since the substantive law governing the approval of immigrant visa petitions requires an employer and alien beneficiary to demonstrate that the alien meets the minimum qualifications for the job offered. *See* 8 C.F.R. §§ 204.5(g)(1), 204.5(l)(3)(ii)(B)-(C). Moreover, as a necessary precondition for obtaining a labor certification, employers must document that their job requirements are the actual minimum requirements for the position, *see* 20 C.F.R. § 656.21(b)(5) (1998), and that the alien beneficiary meets those actual, minimum requirements at the time of filing the labor certification application, *see Matter of Saritejdiam*, 1989-INA-87 (BALCA Dec. 21, 1989). A misrepresentation is material where the application involving the misrepresentation should be denied on the true facts, or where the misrepresentation tends to shut off a line of inquiry which is relevant to the applicant's eligibility and which might well have resulted in a proper determination that the application be denied. *See Matter of S-- and B--C--*, 9 I&N Dec. 436, 447 (AG 1961). USCIS may also invalidate the labor certification based on fraud or willful misrepresentation. *See* 20 C.F.R. § 656.31(d) (2001).

Here, the evidence of record does not support the director's finding that the beneficiary knowingly or willfully misrepresented his own past work experience based on the criteria of *Matter of S & B-C-*, 9 I&N Dec. at 447. Thus, the director's finding of fraud or misrepresentation against the beneficiary is also withdrawn.

However, the appeal cannot be sustained, and the petition be approved, as the petitioner has not established the continuing ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 204.5(g)(2), in pertinent part, provides:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be

> accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

As noted above, the ETA 750 labor certification was accepted for processing on October 15, 2002. The rate of pay or the proffered wage specified on the ETA 750 is $18.73 per hour or $38,958.40 per year.

The beneficiary claimed on his Form G-325 that he had been working for the petitioner since March 2004.[6] The record contains Internal Revenue Service (IRS) Forms W-2 Tax and Wage Statement for the years 2004 through 2010 issued by the petitioner to the beneficiary, reflecting the following wages to the beneficiary:

Tax Year	*Actual wage (AW) (Box 1, W-2)*	*Yearly Proffered Wage (PW)*	*AW minus PW*
2004	$19,148.44	$38,958.40	$19,809.96
2005	$25,047.33	$38,958.40	$13,911.07
2006	$26,426.63	$38,958.40	$12,531.77
2007	$34,702.20	$38,958.40	$4,256.20
2008	$37,568.33	$38,958.40	$1,390.07
2009	$48,847.67	$38,958.40	Exceeds the PW
2010	$49,818.27	$38,958.40	Exceeds the PW

Therefore, the petitioner has established the ability to pay in 2009 and 2010, but not from the priority date (October 15, 2002) through 2008.

In adjudicating the appeal, the AAO further noted that the petitioner filed another employment-based immigrant visa petition on behalf of Mr. . Consistent with the regulation at 8 C.F.R. § 204.5(g)(2), the petitioner is therefore required to establish the ability to pay the proffered wages *not only* for the current beneficiary but also for the other beneficiary until each beneficiary receive his lawful permanent residence (LPR), or until each petition is withdrawn, denied, or revoked.

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[6] In his notarized letter dated January 15, 2012 to USCIS, the beneficiary stated that he had been working for the same construction company for ten years. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Upon review, the AAO finds that the evidence submitted above is not sufficient to demonstrate that the petitioner has the continuing ability to pay the proffered wages of the beneficiary in the instant case and of the other beneficiary from their respective priority date.

On remand, the director should issue a new NOIR requiring the petitioner to demonstrate financial ability to pay all of the beneficiaries' proffered wages including the beneficiary in the instant case from the priority date until the beneficiary obtains lawful permanent residence, or until the petition is withdrawn, denied, or revoked. The acceptable evidence, pursuant to 8 C.F.R. § 204.5(g)(2) would include any of the following:

- Copies of Forms W-2 or 1099-MISC issued to the beneficiary from the priority date to 2003;
- Copies of Forms W-2 or 1099-MISC issued to the other beneficiary as listed above during the relevant period from his or her respective priority date to the date the petition was revoked;
- Copies of the labor certifications filed on behalf of the other beneficiary; and
- The petitioner's annual reports, federal tax returns, or audited financial statements from the priority date to 2008.

The director may request and the petitioner may submit other evidence not listed above. The director may also consider the petitioner's totality of circumstances if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for review and consideration of the additional issues that impact the petitioner's eligibility for the visa that were not initially identified by the director. The director may issue a new notice of intent to revoke approval of the petition and may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director may review the entire record and enter a new decision. If the new decision is contrary to the AAO's findings, it should be certified to the AAO for review.

ORDER: The director's decision to revoke the previously approved petition is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.