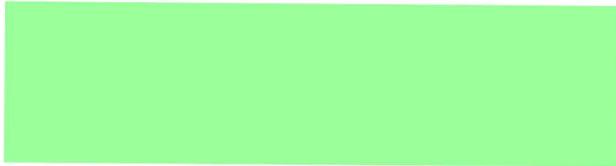




U.S. Citizenship
and Immigration
Services

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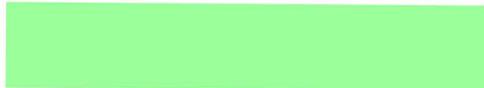


DATE: JUN 03 2013

OFFICE: TEXAS 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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Texas Service Center (the director). In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker. The petitioner then filed a motion to reopen with the director. The motion was subsequently dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as a head cook. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).¹ The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is October 31, 2006. *See* 8 C.F.R. § 204.5(d). The director's decision revoking the petition concludes that the petitioner and beneficiary willfully misrepresented material facts and that the beneficiary did not possess the minimum experience required to perform the offered position by the priority date.

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. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 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).

1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for “good and sufficient cause” when the evidence of record at the time of issuance, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The director’s NOIR notified the petitioner that documents submitted into the record by the beneficiary contradicted the employment experience claimed on the ETA 9089. The NOIR sufficiently detailed the evidence of the record, including derogatory information of which the petitioner may have been unaware, pointing out the possible misrepresentations concerning the beneficiary’s prior employment that would warrant a denial if unexplained and un rebutted, and thus was properly issued for good and sufficient cause.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Whether or not the beneficiary had the prerequisite work experience for the proffered position as of October 31, 2006 (the priority date) is material in this case, since the beneficiary must qualify for the job offered in the labor certification as of that date for visa eligibility.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: None.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: Verifiable references. Able to work overtime, weekends and holidays.

The labor certification also states that the beneficiary qualifies for the offered position based on experience as a pizza cook with [REDACTED] in Baltimore, Maryland from February 1, 1999 to September 30, 2002 and as a cook with the [REDACTED] in Nepal from February 1, 1995 to May 31, 1998. No other experience is listed. The beneficiary did not claim to be a current employee of the petitioner or to have ever worked for the petitioner. The beneficiary signed the labor certification on February 26, 2007, under a declaration that the contents are true and correct under penalty of perjury.

As noted in the director's NOIR and NOR, the record shows that the beneficiary submitted a Form G-325A signed on August 9, 2007 and a copy of a previously filed Form ETA 750, signed on March 26, 2001, in conjunction with a Form I-485 application for adjustment of status to permanent residence. On the Form G-325A, the beneficiary states that he worked as a head cook for the petitioner from June 2002 to the present (August 2007) and that he worked for [REDACTED] as a pizza cook from February 1999 to September 2002. The beneficiary signed the ETA 750 on March 26, 2001. He lists his prior employment as experience as a cook with the [REDACTED] from February 1995 to May 1998. He states that he was either unemployed or self-employed from July 1998 to March 2001.

The employment history reported by the beneficiary on the Form G-325A and ETA 750 directly contradicts the information submitted on the ETA 9089. As noted above, with regard to the beneficiary's employment with the petitioner, the ETA 9089 submitted with the instant case states that the beneficiary was not working for the petitioner at the time of filing and does not list the petitioner in the beneficiary's work experience section. In order to ascertain the true facts, USCIS officers contacted the petitioner's president, [REDACTED] via phone in June 2010. [REDACTED] reaffirmed his offer of employment to the beneficiary and stated that the beneficiary has been working at the petitioner's business as head cook for over six years, thus prior to 2006 when the ETA 9089 was filed. The beneficiary and petitioner willfully misrepresented the beneficiary's qualifications on the Form ETA 9089, when they signed the document as true and correct, knowing that the beneficiary's employment with the petitioner was not listed and that the question J.23. "In the alien currently employed by the petitioning employer?" was answered "no".

With regard to the beneficiary's prior claimed employment with [REDACTED], publically available records show that the business name was actually spelled '[REDACTED]'. In both the ETA 9089 and G-325A, forms where the information was supplied by the beneficiary, the employer's name is incorrectly spelled as '[REDACTED]'. In the NOIR, the director questioned the beneficiary's statement that he was working at [REDACTED] and the petitioner's business between June 2002 and September 2002 when both jobs were full-time positions. The director also raised questions regarding the beneficiary's claims to have been both self-employed and employed by [REDACTED] from February 1999 through March 2001. In the NOIR, the director specifically notified the petitioner that these inconsistencies in the record raised questions about the veracity of the beneficiary's claimed work experience with [REDACTED] and the authenticity of the ETA 750.

In order to confirm the information submitted, USCIS officers contacted the owner of [REDACTED], [REDACTED]. [REDACTED] confirmed in a telephone conversation with the USCIS officer that he had owned [REDACTED]. However, [REDACTED] said that the beneficiary had never worked for him and that he had never filed a labor certification on his behalf. The USCIS officer asked [REDACTED] if he ever signed his name '[REDACTED]' as it was written on the ETA 750 and he replied that he did not sign his name in this way. The petitioner responded to the director's NOIR with an affidavit dated February 10, 2011, from [REDACTED] recanting what he said to the USCIS officer. Instead, [REDACTED] states that he had misspoken because he referred to the beneficiary by his middle name during the time he worked there. As noted by the director, if [REDACTED] employed the beneficiary for over three years and filed a labor certification application for him, he would have known his name.

Furthermore, the petitioner does not explain why [REDACTED] signed his name "[REDACTED]" on the affidavit. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592. The petitioner has not provided independent objective documentary evidence to rebut this finding or to resolve the inconsistencies in the record to establish the beneficiary's true employment history.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* Thus, the letter from [REDACTED] is not sufficient to establish that the beneficiary had the required two years of experience. Therefore we affirm the director's finding that the petitioner has failed to establish that the beneficiary meets all of the requirements of the offered position set forth on the labor certification as of the priority date.

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). As immigration officers, USCIS Appeals Officers and Center Adjudications Officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the Secretary of the Department of Homeland Security's (DHS) delegation of authority. *See* sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003). Additionally, the Secretary of Homeland Security has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, make recommendations for prosecution, and take other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I).

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

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 by 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.³

If USCIS were to be barred from entering a finding of fraud after a petitioner withdraws the visa petition or appeal, or after the petition is automatically revoked, the agency would be unable to subsequently enforce the law and find an alien inadmissible for having “sought to procure” an immigrant visa by fraud or willful misrepresentation of a material fact. See section 212(a)(6)(C) of the Act.

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

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

Pursuant to section 204(b) of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In the present matter, the petitioner willfully misrepresented the beneficiary’s qualifications on the Form ETA 9089, when its representative signed the document as true and correct, knowing that the beneficiary’s employment with the petitioner was not listed. Further, the beneficiary willfully misrepresented his prior employment with Asad and his employment with the petitioner when signing the ETA 9089 as true and correct. The petitioner has not provided independent, objective documentary evidence rebut this finding or to resolve the inconsistencies in the record to establish the beneficiary’s true employment history. *Matter of Ho*, 19 I&N Dec. at 591-592.

On appeal, counsel contends that any perceived misrepresentation concerning the beneficiary’s prior employment with [redacted] is not material to the case and therefore cannot be the basis for revoking the petition’s approval. 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.”

³ It is important to note that, while it may present the opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. See *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. See sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a). Nevertheless, the AAO has the authority to enter a fraud finding, if during the course of adjudication, it discloses fraud or a material misrepresentation. In this case, the beneficiary has been given notice of the proposed findings and has been presented with an opportunity to respond to the same.

A material issue in this case is whether the beneficiary has the required two years of experience for the position offered. Submitting false information amounts to a willful effort to procure a benefit ultimately leading to permanent residence under the Act. The Attorney General has held that a misrepresentation made in connection with an application for a visa or other document, or with entry into the United States, is material if either:

- (1) the alien is excludable on the true facts, or
- (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

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

Moreover, the AAO finds the beneficiary is inadmissible. An alien is inadmissible to the United States where he or she "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).⁴ As a third preference employment-based immigrant, the beneficiary's proposed

⁴ 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).

employer was required to obtain a permanent labor certification from the DOL in order for the beneficiary to be admissible to the United States. *See* section 212(a)(5) of the Act. Although the petitioner in this case obtained a permanent labor certification, the DOL issued this certification on the premise that the alien beneficiary was qualified for the job opportunity. The resulting certification was erroneous and is subject to invalidation by USCIS. *See* 20 C.F.R. § 656.30(d). Moreover, to qualify as a third preference employment-based immigrant professional, the beneficiary was required to establish that he met the petitioner's minimum work experience requirements. *Compare* 8 C.F.R. § 204.5(g) with § 204.5(1)(1)(3)(ii)(B). The petitioner did not establish the beneficiary's qualifications in this case, as the beneficiary does not possess two years of work experience as a cook. Thus, the beneficiary is not admissible as a third preference employment-based immigrant, and as such the misrepresentation of his credentials was material to the instant proceedings.

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

In this case, the DOL was unable to make a proper investigation of the facts when determining certification, because the petitioner shut off a line of relevant inquiry by submitting false information concerning the beneficiary's employment with the petitioner. If the DOL had known the true facts, it would have more closely examined the beneficiary's employment with and role in the petitioning business in order to determine whether or not a *bona fide* job opportunity was open to qualified U.S. workers. In other words, the concealed facts, if known, may have resulted in the employer's labor certification being denied. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 403 (Comm'r 1986). Accordingly, the misrepresentation was material under the second and third inquiries of *Matter of S & B-C-*.

On appeal, counsel asserts that the failure to state that the beneficiary was employed by the petitioner at the time of the ETA 9089 filing did not hinder the DOL in their analysis of the case. However, 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).

By misrepresenting the beneficiary's work experience and certifying false information as true to both USCIS and the DOL, the petitioner and the beneficiary sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. See also *Matter of Ho*, 19 I&N Dec. at 591-592. As noted above, it is proper for USCIS to make a finding of fraud pursuant to section 212(a)(6)(c) of the Act, 8 U.S.C. § 1182. For these reasons, the AAO agrees with the director that the labor certification has been obtained through willful and material misrepresentation.

Further, the director found that because there was fraud or willful misrepresentation involving the labor certification, the labor certification must be invalidated. The AAO agrees. USCIS, pursuant to 20 C.F.R. § 656.31(d) (2004), may invalidate the labor certification based on fraud or willful misrepresentation. On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, Form ETA 9089, replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004, with an effective date of March 28, 2005. See 69 Fed. Reg. 77326 (Dec. 27, 2004). The regulation cited at 20 C.F.R. § 656.31(d) is the pre-PERM regulation applicable to the instant case. The regulation stated:

If a Court, the INS or the Department of State determines that there was fraud or willful misrepresentation involving a labor certification application, the application shall be deemed invalidated, processing shall be terminated, a notice of the termination and the reason therefor shall be sent by the Certifying Officer to the employer, and a copy of the notification shall be sent by the Certifying Officer to the alien, and to the Department of Labor's Office of Inspector General.

The director's decision to invalidate the certified ETA Form 9089 is affirmed as there is fraud or willful misrepresentation involving the labor certificate. As the underlying labor certification has been invalidated, the petition must also be denied. By signing the ETA Form 9089, certifying that the false information was true, the beneficiary has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. This finding of material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

Beyond the decision of the director, it is also noted that counsel, [REDACTED] whose name is listed on the ETA 9089 as the preparer, did not sign the certified ETA Form 9089 submitted with the petition. USCIS will not approve a petition unless it is supported by an original certified ETA Form 9089 that has been signed by the employer, beneficiary, attorney and/or agent. See 20 C.F.R. § 656.17(a)(1). 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 at 145 (3d Cir. 2004). As such the petition must also be denied.

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.