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

(b)(6)

DATE: JUN 2 7 2013 OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an 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:

SELF-REPRESENTED

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 immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal with a finding of willful misrepresentation against the petitioner and the beneficiary. The AAO additionally invalidated the labor certification. The matter is now before the AAO on a motion to reconsider. The AAO will grant the petitioner's motion but will affirm its previous decision of March 8, 2013, dismissing the appeal with a finding of willful misrepresentation. The petition remains denied.

The petitioner, is a roofing firm. It sought to employ the beneficiary permanently in the United States as a roofer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The Form ETA 750 required two years of employment experience in the job offered as a roofer.[1]

The director denied the petition on August 16, 2007, concluding that the petitioner had failed to establish its continuing financial ability to pay the proffered wage and also that the owner of the petitioner failed to explain the nature of the familial relationship with the beneficiary.

On March 8, 2013, the AAO summarily dismissed the appeal on abandonment[2] after issuing two Notices of Intent to Dismiss and Derogatory Information (NOID/NDI).[3] The AAO determined that:

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[1] The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (ii) *Other documentation*—
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> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.
> >
> > (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

[2] The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

[3] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

1. The petitioner failed to establish that is a successor-in-interest to the petitioner and failed to explain why the petitioner filed the appeal and not
2. The petitioner failed to establish that DOL was aware that the petitioner's owner and the beneficiary were brothers during the labor certification process. Thus the case lacks evidence as to whether the petition is based on a *bona fide* job offer or whether this familial relationship may have influenced the labor certification process.
3. The petitioner and beneficiary's misrepresented the beneficiary's work experience and submitted a false employment verification letter, dated April 1, 2001, purportedly signed by The AAO specifically issued the notice to the petitioner and permitted the petitioner an opportunity to respond or submit evidence to overcome the alleged misrepresentation, but no response to the AAO's NOID/NDI issued on September 7, 2012, was received. Therefore, the AAO found that the letter from was fraudulent and that the work experience claimed for from May 1997 to March 2001 was false. The AAO additionally invalidated the labor certification pursuant to 20 C.F.R. § 656.31(d).

On April 8, 2013, the petitioner filed a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision. The petitioner's owner disputes that the employment verification letter was falsified. In support of this assertion, he submits a copy of a letter, signed on April 3, 2013, by appears on the letterhead of the document. The petitioner also submits a copy of a "Certificate of Completion of Apprenticeship," naming the beneficiary as a Roofer & Waterproofer, issued on September 29, 1999 by the "California Apprenticeship Council." Further, the petitioner submits copies of selected payroll records labeled as issued to the beneficiary and showing wages paid in December 1998, December 1999 and November 2000. The W-2s bear the same apparently false Social Security number discussed by the AAO in its first NOID/NDI.

The AAO notes that the petitioner's owner had 30 days to respond to the AAO's second NOID/NDI related to the beneficiary's claimed experience and failed to do so.[4] Moreover, had

[4] The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted

already personally stated that he had not written the employment verification letter submitted to the record in this matter. Therefore, observation that signed the "attached letter," which has not been attached on motion, carries no probative value. The petitioner has not explained the significance of the apprenticeship certificate relevant to the beneficiary's claimed experience at , and in view of the forged letter submitted to the record, such a document could not be accepted without further authentication. The fraudulent letter also raises a question as to the veracity of W-2s submitted to the record in the name of which standing alone are not sufficient to verify the claimed two years of employment as a roofer for this company. Based on the foregoing and upon a review of the underlying record, the AAO cannot conclude that the petitioner established that the beneficiary acquired the required employment experience as of the March 29, 2002, priority date.

The petitioner did not address the other bases for the appeal's dismissal. Although the AAO accepts the petitioner's filing as a motion to reconsider, the AAO does not find a sufficient basis to disturb its prior March 8, 2013, dismissal of the appeal on this or any of the other issues cited therein. The prior decision of the AAO, dated March 8, 2013, is affirmed. The petition remains denied and the labor certification remains invalidated based on the prior finding of willful misrepresentation. The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reconsider is granted. The prior decision of the AAO, dated March 8, 2013 is affirmed. The petition remains denied.

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evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of the evidence submitted on appeal.