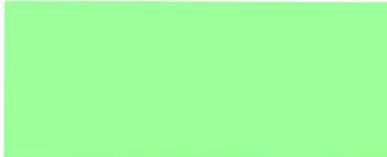


(b)(6)

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

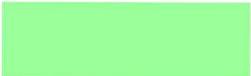


U.S. Citizenship
and Immigration
Services

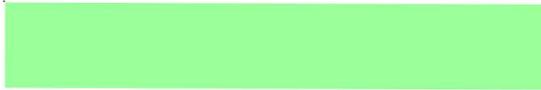


DATE: **NOV 14 2013**

OFFICE: TEXAS SERVICE CENTER

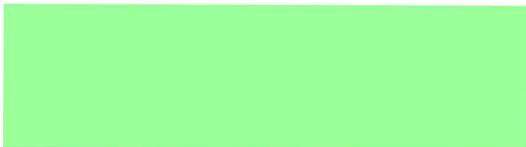
FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Elizabeth McCormack

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: On October 18, 2004, United States Citizenship and Immigration Services (USCIS), Texas Service Center (TSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The employment-based immigrant visa petition was initially approved by the TSC director on December 22, 2004. The director, however, revoked the approval of the immigrant petition on December 3, 2012, and the petitioner subsequently appealed the director's decision to revoke the petition's approval to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition's approval will remain revoked.

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 [s]he deems to be good and sufficient cause, revoke the approval of any petition approved by h[er] 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 is a retail establishment/deli.¹ It seeks to employ the beneficiary permanently in the United States as a merchandise displayer pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. §1153(b)(3)(A)(i).² As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. As stated earlier, this petition was approved on December 22, 2004 by the TSC, but that approval was revoked on December 3, 2012. The director determined that the evidence in the record did not establish that the beneficiary had the experience required by the terms of the labor certification and that the beneficiary owns or otherwise has a financial interest in the company for which he claimed to have worked previously to gain the required experience. Accordingly, the director revoked the approval of the petition under the authority of 8 C.F.R. § 205.2.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The Administrative Appeals Office (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.³

¹ The petitioner states on appeal that it is not a deli but primarily a liquor store with other convenience items.

² 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.

³ 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).

The threshold issue on appeal is whether the director adequately advised the petitioner of the basis for revocation of approval of the petition. As noted above, the Secretary of DHS has the authority to revoke the approval of any petition approved by her under section 204 for good and sufficient cause. See section 205 of the Act; 8 U.S.C. § 1155. This means that notice must be provided to the petitioner before a previously approved petition can be revoked. More specifically, the regulation at 8 C.F.R. § 205.2 reads:

(a) *General.* Any [USCIS] officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition **upon notice to the petitioner** on any ground other than those specified in § 205.1 when the necessity for the revocation comes to the attention of this [USCIS]. (emphasis added).

Further, the regulation at 8 C.F.R. § 103.2(b)(16) states:

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

Moreover, *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988); and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987), provide that:

A notice of intention to revoke the approval of a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. However, where a notice of intention to revoke is based upon an unsupported statement, revocation of the visa petition cannot be sustained.

The director advised the petitioner in his Notice of Intent to Revoke (NOIR) dated August 9, 2010 that the instant case might involve fraud. Specifically, the NOIR noted that the existence of and address for the previous employer for which the beneficiary claimed to have worked could not be verified. In addition, the director noted that the type of business listed for the petitioner conflicts with publicly available information and questioned the petitioner's need for a retail merchandiser. The NOIR also notes an inconsistency in the record concerning the identity of the actual employer, whether a successor-in-interest exists for the petitioner, and whether the petitioner had the ability to pay the proffered wage from the priority date onwards. Specifically, the beneficiary began working for [REDACTED] in April 1997 and that company states that it was the company that filed the Form I-140. The NOIR noted that [REDACTED] was not the company listed as the petitioner and stated that if it claims to be a successor to the original employer, it must submit evidence of a

change of ownership and assumption of rights, duties, obligations, and assets of the original employer. The director also questioned whether recruitment had been conducted pursuant to the applicable DOL guidelines.

The AAO finds that the director appropriately reopened the approval of the petition by issuing the NOIR, and that the NOIR gave the petitioner notice of the derogatory information specific to the current proceeding. Under the facts outlined by the director in the NOIR, the AAO finds that the director's NOIR would warrant a revocation of the approval of the petition if unexplained and unrebutted by the petitioner and thus, that the director had good and sufficient cause to issue the NOIR. See, *Matter of Arias*, 19 I&N Dec. at 568; *Matter of Estime*, 19 I&N Dec. at 450.

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

- The beneficiary's IRS Forms W-2 and Forms 1040 for 1998 to 2002.
- A letter from [REDACTED] concerning the liquor store's need for a merchandise displayer.
- A letter from [REDACTED] stating that it employs the beneficiary full-time as a stock buyer and display merchandiser and that it is not the new petitioner.
- The petitioner's IRS Form 1120S for 2003 to 2009.
- Recruitment materials for the position including advertisements placed and an affidavit from the petitioner's owner.

The director analyzed the documents submitted and determined that the documents satisfied the inquiry regarding whether appropriate recruitment had been conducted pursuant to DOL regulations and that the petitioner established the ability to pay the proffered wage from the priority date onwards. The director, however, found that the evidence submitted by the petitioner did not establish that the beneficiary had the experience required by the terms of the labor certification as of the priority date. Specifically, the director noted in the Notice of Revocation (NOR) that the evidence submitted did not establish that the beneficiary was employed by [REDACTED] in the position claimed on the Form ETA 750. The director stated that Grishna's tax returns and checks were signed by the beneficiary as that company's president and that the letter to verify past employment was signed by [REDACTED]. No evidence was submitted either to indicate that this individual ever managed the beneficiary and the tax records submitted indicated that [REDACTED] had only one employee during the time the beneficiary states that he worked for the company. The director also noted that the beneficiary was not authorized to work by the U.S. government until 1995. The director additionally stated that the letter submitted from [REDACTED] indicates that the beneficiary is employed as a merchandise stocker and not in the proffered position of merchandise displayer so that the provisions of AC21 would not apply. The director thus concluded that the petition's approval must be revoked and that the parties engaged in fraud or willful misrepresentation of a material fact in seeking to procure immigration benefits.

Concerning the beneficiary's qualifications for the position, the AAO finds that the record does not support the petitioner's contention that the beneficiary had the requisite work experience in the job

offered before the priority date.⁴ Consistent with *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petitioner must demonstrate, among other things, that, on the priority date, the beneficiary had all of the qualifications stated on the Form ETA 750 as certified by the DOL and submitted with the petition.

The Form ETA 750 was filed and accepted for processing by the DOL on June 16, 2003. The name of the job title or the position for which the petitioner seeks to hire the beneficiary is "merchandise displayer." Under the job requirements, the labor certification requires 24 months of experience in the proffered position. The job duties, as set forth on the labor certification, are: "Under direction of store manager, set up displays for sale of merchandise to promote specials, create attractive displays."

On the ETA Form 750B, signed by the beneficiary on July 9, 2004, he represented that he worked as a merchandise displayer for [REDACTED] from May 1998 to May 2000. The petitioner submitted a letter from [REDACTED] manager, [REDACTED] dated October 13, 2004, which states that the beneficiary worked "at our busy retail store from May 1998 to May 2000," where he was responsible for "creating attractive displays for the purpose of moving merchandise." The letter states that the beneficiary consulted with the owner to determine proposed sale items, used holiday ideas of interest to customers and was responsible for setting up windows with decorations.

The director's NOIR questioned whether [REDACTED] actually existed at the location noted on the experience letter and whether the letter's signatory had managed [REDACTED]. In the Notice of Revocation (NOR), the director found that [REDACTED] had only one employee during the relevant time period and that the beneficiary was its owner. The petitioner submitted sufficient payroll and tax information to establish the existence of the business at its claimed location during the time period in question.

The director found, however, that the experience letter was insufficient to demonstrate that the beneficiary had the required experience as of the priority date. Experience letters must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. See 8 C.F.R. § 204.5(g)(1) and (1)(3)(ii)(A). The letter does not state specific dates of employment and thus, it cannot be determined that from "May 1998 to May 2000" is 24 months of employment as the employment dates could be for less than 24 months, for example, from May 30, 1998 to May 1, 2000. In addition, the letter does not specify that the beneficiary worked in a full-

⁴ This petition involves the substitution of the labor certification beneficiary. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. See 72 Fed. Reg. 27904 (codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since another beneficiary has not been issued lawful permanent residence based on the labor certification, the requested substitution will be permitted.

time capacity during this time. The beneficiary's 2000 IRS Form W-2 states wages paid to the beneficiary from [REDACTED] of \$12,000. The beneficiary's 2001 W-2 Form shows wages from this employer of \$7,500. The beneficiary's individual tax return for 1998 did not attach a Form W-2, but states total wages paid of \$6,000. No evidence was submitted to demonstrate that these wages were paid by [REDACTED] or that [REDACTED] paid the beneficiary any wages in 1999. This evidence suggests that the beneficiary was not employed in a full-time capacity as opposed to a part-time capacity. As a result, we cannot conclude that the beneficiary has the full two years of experience required by the terms of the labor certification.

Section 204.5(g)(1) and (l)(3)(ii)(A) of the INA requires that letters to verify employment be written by an employer. The individual who signed the above referenced experience letter, [REDACTED] is not listed as a company employee in any of the employee federal tax information provided by the petitioner for 1998, 1999 or 2000. As a result, it is unclear that Mr. [REDACTED] was the beneficiary's employer during this time and was permitted under the regulations to write a letter verifying the beneficiary's previous employment.

In addition, evidence in the record contains contradictory statements concerning the beneficiary's actual dates of employment and job duties. As noted above, the experience letter states that the petitioner was employed from May 1998 to May 2000. The petitioner, however, submitted other documentation showing a 2001 W-2 Form issued to the beneficiary by [REDACTED] stating wages paid to the beneficiary of \$7,500. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner submitted payroll and federal employee tax information from [REDACTED] which shows that the beneficiary was the only employee of that company in at least part of 1998 and 1999. A State of New Jersey Employer Report of wages paid for the quarter ended September 30, 1998 lists the beneficiary as the only employee of [REDACTED] during that quarter with wages paid to the beneficiary of \$3,000. A document entitled Employee Detail for [REDACTED] from January 31, 1999 through March 31, 1999 lists only one employee for [REDACTED] the beneficiary, with wages paid to the beneficiary during that time frame of \$3,000. Tax filings list the beneficiary as the president of the company and the beneficiary signed tax documents and business checks on behalf of the company. Thus, it is more likely than not that the beneficiary was required to perform other types of labor than set up displays for sale of merchandise to promote specials, create attractive displays as required by the labor certification.

For all of these reasons, the [REDACTED] experience letter cannot be accepted to establish the 24 months of experience in the occupation required by the labor certification. 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

⁵ The AAO notes the author's letter for [REDACTED] as well as for the petitioner's representative and a letter signed by another entity to demonstrate the beneficiary's experience all share the same surname.

truth, in fact, lies, will not suffice. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, the petitioner submitted a new experience letter signed by [REDACTED] President, [REDACTED] stating that the beneficiary worked for that company from January 2001 to May 2003, where he "was responsible for day to day operations of the store, including work to organize inventory, to promote inventory and sales, and to manage other staff in the store."

This letter is insufficient to establish that the beneficiary has two years of experience in the proffered position as required by the Form ETA 750. This employment was not listed by the petitioner on the labor certification. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), where the Board's *dicta* notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B lessens the credibility of the evidence and facts asserted. This is especially true as the petitioner did not provide any other evidence of said employment such as Forms W-2/ Forms 1099 or federal employee tax filing information. Further, it cannot be determined from the job description provided how much experience the beneficiary has in the proffered position as the beneficiary was required to perform other duties such as the supervision of other staff members.

On appeal, the petitioner submitted a letter dated January 2, 2013 from [REDACTED] President, [REDACTED] stating that the beneficiary has been employed by that organization since April 2007. In a letter dated February 1, 2008, Mr. [REDACTED] stated that [REDACTED] was the filer of the Form I-140 petition. The director correctly noted in its NOIR that [REDACTED] did not file the petition and that if it were now claiming to employ the beneficiary under the terms of the labor certification it would have to establish that it was the successor-in-interest to the original petitioner, [REDACTED]. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1987). [REDACTED] subsequently, in a letter dated September 25, 2010, recanted its statement that it was the petitioner and stated it had misunderstood the situation. [REDACTED] stated that it was "of the understanding that we were taking over the immigration application as per AC21 regulations in relation to the delayed processing of I-485 Application of Adjustment."

To the extent that the beneficiary claims to have ported to [REDACTED] in April 2007, according to the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), an application for adjustment of status may be approved despite the fact that the initial job offer is no longer valid. The language of AC21 states that the I-140 "shall remain valid" with respect to a new job offer for purposes of the beneficiary's application for adjustment of status despite the fact that he or she no longer intends to work for the petitioning entity provided (1) the application for adjustment of status based upon the initial visa petition must have been pending for more than 180 days and (2) the new job offer the new employer must be for a "same or similar" job.

A plain reading of the phrase "will remain valid" suggests that the petition must be valid prior to any consideration of whether or not the adjustment application was pending more than 180 days and/or

the new position is the same or similar.⁶ Section 106(c) states that the underlying I-140 petition "shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed." Pub. L. No. 106-313, § 106(c), 114 Stat. 1251, 1254 (Oct. 17, 2000); § 204(j) of the Act, 8 U.S.C. § 1154(j). Thus, the statute simply permits the beneficiary to change jobs and remain eligible to adjust based on a prior approved petition if the processing times reach or exceed 180 days.

There is no evidence that Congress intended to confer anything more than a benefit to beneficiaries of long delayed adjustment applications. In other words, the plain language of the statute indicates that Congress intended to provide the alien, as a "long delayed applicant for adjustment," with the ability to change jobs if the individual's application for adjustment of status took 180 days or more to process. Thus, the only possible meaning for the term "remains valid" was that the underlying petition was approved and would not be invalidated by the fact that the job offer was no longer a valid offer. *See Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010). The AAO concludes that is not the case here, as the underlying petition's approval has been revoked. *Herrera v. USCIS*, 571 F.3d at 881. Thus, the beneficiary would not be eligible to port off of the current petition.

The director found that the insufficiencies in the letter from [REDACTED] amounted to fraud and misrepresentation of a material fact. 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

⁶ Furthermore, it would subvert the statutory scheme of the U.S. immigration laws to find that a petition is valid when that petition was never approved or, even if it was approved, if it was filed on behalf of an alien that was never entitled to the requested immigrant classification. The AAO will not construe section 204(j) of the Act in a manner that would allow ineligible aliens to gain immigrant status simply by filing visa petitions and adjustment applications, thereby increasing USCIS backlogs, in the hopes that the application might remain unadjudicated for 180 days. In a case pertaining to the revocation of an I-140 petition, the Ninth Circuit Court of Appeals determined that the government's authority to revoke a Form I-140 petition under section 205 of the Act survived portability under section 204(j) of the Act. *Herrera v. USCIS*, 571 F.3d 881 (9th Cir. 2009). Citing a 2005 AAO decision, the Ninth Circuit reasoned that in order to remain valid under section 204(j) of the Act, the I-140 petition must have been valid from the start. The Ninth Circuit stated that if the plaintiff's argument prevailed, an alien who exercised portability would be shielded from revocation, but an alien who remained with the petitioning employer would not share the same immunity. The Ninth Circuit noted that it was not the intent of Congress to grant extra benefits to those who changed jobs.

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. 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 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.⁷

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:

- (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.

⁷ 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.

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.

Here, the evidence of record currently does not support the director's finding that the petitioner submitted falsified documents to verify the beneficiary's past employment based on the criteria of *Matter of S & B-C-*, 9 I&N Dec. at 447. The AAO withdraws the director's finding of fraud and material misrepresentation against the petitioner.

The approval of the petition will remain revoked 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 director's decision is affirmed. The appeal is dismissed and the approval of the petition remains revoked.