



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **NOV 15 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was initially approved by the Director, Texas Service Center. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with 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 matter is now before the Administrative Appeals Office (AAO) on motion to reopen and reconsider. The motion to reopen will be approved. Upon review, the appeal will again be dismissed.

Section 205 of 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 regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." On motion, the petitioner presents an affidavit from the beneficiary indicating that she did not knowingly misrepresent or falsify any material fact in submitting the Form I-140 and Form ETA 750. The petition is reopened.

The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The AAO's decision dismissing the previous appeal concluded that the director correctly found that the petitioner and beneficiary participated in willful misrepresentation in order to secure an immigration benefit for the beneficiary. 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.

On motion, counsel asserts that the petitioner and beneficiary did not participate in willful misrepresentation of the beneficiary's work experience. Counsel asserts that the petitioner and beneficiary were deceived by an unscrupulous attorney (Javier Lopera) during the filing of the labor certification and Form I-140.

The petitioner's previous counsel was [REDACTED] who was taken into custody on May 23, 2003, and charged with conspiracy to commit immigration fraud by making false representations in multiple visa petitions, knowingly accepting visas procured by fraud, and harboring illegal aliens for profit. Additionally, Mr. [REDACTED] was charged with 11 counts of making materially false, fictitious statements to United States Citizenship and Immigration Services (USCIS) and 7 counts of harboring illegal aliens for profit, all of whom worked for Mr. [REDACTED]. The director concluded that since Mr. [REDACTED] represented the petitioner, the instant petition could contain fraudulent documents, so she sent a detailed list of items she sought clarification about or additional

evidence and information for. Since that notice is contained in the record of proceeding, which is a public access document, it will not be recited in this decision.

In support of the motion, the petitioner has provided a new affidavit from the beneficiary dated June 21, 2013.<sup>1</sup> The beneficiary states under penalty of perjury that she hired and paid the attorney to file her labor certification and Form I-140. Further, the beneficiary affirms that she signed incomplete forms and never made copies of the forms she had signed in support of the labor certification and Form I-140. Additionally, the beneficiary claims to have been the innocent victim of the actions of Mr. [REDACTED] and that she and the petitioner did not engage in any wrongdoing; the beneficiary also claims that it was never her intention to deceive USCIS.

The record also contains a copy of an email composed by the beneficiary to the attorney in question dated March 8, 2001. At that time the beneficiary sought an update to her “labor certificate / green card process” with [REDACTED] and reiterated that she has paid at least \$4000.00 in order to obtain her labor certification and green card. In a letter written by the beneficiary to the Florida Bar dated March 5, 2010, the beneficiary claims to have been wronged by Mr. [REDACTED] who represented her in the Form I-140 application and labor certification process.

The petitioner and the beneficiary restate that they only signed incomplete forms. However, the beneficiary’s and the petitioner’s disavowal of participation in fraud cannot be sustained in light of their admission of willingly signing blank or incomplete documents. Specifically, their failure to apprise themselves of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve them of responsibility for the content of the petition or the materials submitted in support. *See Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6<sup>th</sup> Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application’s contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11<sup>th</sup> Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5<sup>th</sup> Cir. 1993). To allow the beneficiary and the petitioner to absolve themselves of responsibility by simply claiming that they had no knowledge or participation in a matter where they provided information and all supporting documents and signed incomplete documents would have serious negative consequences for USCIS and the administration of the nation’s immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentation, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution. The petitioner and beneficiary cannot be absolved from a finding of fraud by claiming they did not know what they were signing.

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<sup>1</sup> We note that the petitioner’s current counsel has also provided numerous affidavits attesting to the beneficiary’s moral character. The beneficiary’s character is not at issue. Rather, USCIS analyzes the facts to determine eligibility for the benefit.

The petitioner and the beneficiary also seek to be excused from fraud by claiming ineffective assistance of counsel. 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, 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.

*Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988).

The petitioner and the beneficiary claim to have been wronged by Mr. [REDACTED] and submit the documents described above in support of their claim of ineffective assistance of counsel. Mr. [REDACTED] conviction for immigration fraud and debarment from the practice of law corroborates the petitioner's and the beneficiary's claim that their counsel was ineffective. Nevertheless, as noted, the petitioner and the beneficiary each had an affirmative duty to apprise itself/herself of the content of the Form ETA 750 and Form I-140. By signing the forms they each represented that the assertions were true under penalty of perjury. The petitioner and the beneficiary now state such assertions were not true. Thus, the AAO will not disturb the previous findings of the director and of the AAO that the petitioner and the beneficiary engaged in material misrepresentation involving the labor certification application. As such, the labor certification underlying the petition is invalidated.

The petitioner does not contest on motion the reasons for dismissing the appeal set forth in the AAO decision dated, May 23, 2013. Those findings and conclusions are affirmed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motions are dismissed and the decision of the AAO dated May 23, 2013 is affirmed. Approval of the petition remains revoked.