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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: **FEB 05 2014**

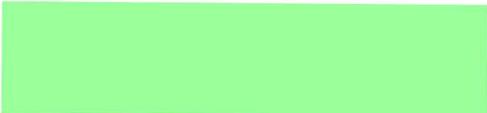
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IN RE:

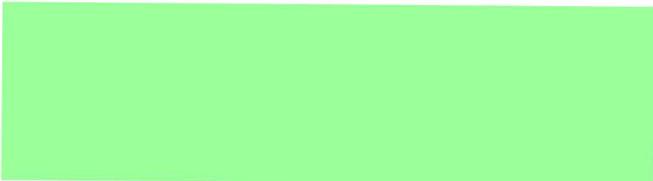
Petitioner:

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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved. Upon determining that the petition had been approved in error, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the petition. Subsequently, the director revoked the approval of the preference petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider the decision in accordance with 8 C.F.R. § 103.5. The AAO will grant the motion and affirm the previous decision of the director and the AAO's dismissal of the appeal, dated August 31, 2012. The petition's approval remains revoked.

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. A motion to reopen must state the new facts to be submitted in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

Counsel reiterates that the AAO's decision relevant to its dismissal of the appeal based on the petitioner's debarment violated the petitioner's due process rights.<sup>1</sup> Again, counsel cites no legal authority for this theory and it will not be further considered. The AAO accepts the motion as a motion to reopen and reconsider, but does not concur with counsel's assertion that the dismissal of the appeal should be reversed and the petition approved.

In revoking the approval of the Form I-140, Immigrant Petition for Alien Worker, which had been initially approved, the director found that the [REDACTED] employment verification letter, dated June 2, 2004, that had been submitted with the petition had been determined to contain a forged signature, according to an investigation conducted by United States Citizenship and Immigration Services (USCIS) officers. The director concluded that it called into question the validity of the other

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<sup>1</sup> The AAO had issued a Notice of Derogatory Information telling the petitioner that DOL had informed USCIS that the petitioner had engaged in certain actions that made it subject to mandatory debarment provisions of section 212(n)(2)(c)(i) and (ii) of the Immigration and Nationality Act, as amended. The debarment period was set from September 30, 2010 to September 29, 2012. Accordingly, no immigrant visa petitions were able to be approved for this petitioner during the debarment period, regardless of when it was filed.

The petitioner in this case was the subject of an investigation by the DOL in accordance with the H-1B provisions of the Act. *See generally* 20 C.F.R. § 655 related to Temporary Employment of Aliens in the United States; and 8 C.F.R. § 214.2(h) provisions related to H-1B nonimmigrants. If DOL determines that there has been a violation of 20 C.F.R. § 655, then under 20 C.F.R. § 655.855(c), USCIS shall not approve a petition during the debarment period: USCIS "shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the INA (8 U.S.C. 1154 and 1184(c)) for the period of time provided by the Act and described in Sec. 655.810(f)."<sup>1</sup> Therefore, USCIS may not approve a nonimmigrant or immigrant petition during the debarment period, *regardless of when it was filed.*

employment verification documents that the petitioner had submitted. Moreover, the director determined that the beneficiary did not have a four-year U.S. bachelor's degree or its foreign equivalent and that the beneficiary's claimed Master's degree was from an unaccredited Indian institution, and would not demonstrate that the beneficiary had the required education

In its decision of August 31, 2012, the AAO affirmed the director's decision revoking the petition's approval for failure to demonstrate that the beneficiary had the required education or its foreign equivalent and the required work experience set forth on the Form ETA 750. As a separate basis for dismissal, the AAO additionally found that the petitioner's debarment prevented the approval of the petition. The debarment period expired as of September 30, 2012.

Counsel's motion was filed on September 28, 2012. Counsel submits a copy of an ADP payroll record for November and December 2001 reflecting the beneficiary's name and the name of [REDACTED] one of the beneficiary's claimed prior employers, and a copy of a payroll record with the name of [REDACTED] from December 2003. Counsel additionally asserts that the beneficiary may be found to have equivalent experience to a bachelor's degree in lieu of an actual four-year bachelor's degree.

The AAO would note that the petitioner has never addressed the director's forgery allegation relevant to the [REDACTED] letter submitted with the petition. The cumulative submission of payroll records does not substantiate the nature and kind of employment. To that end, the AAO issued another Notice of Derogatory Information (NDI) on June 25, 2013. The AAO advised the petitioner of the following:

On September 15, 2010, you filed an appeal of that decision with the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider.

The labor certification requires that that the job of programmer analyst requires four years of college culminating in a Bachelor's degree or equivalent experience in engineering, math, science or equivalent and 1 year of experience in the job offered or 1 year in a related occupation also defined as a programmer analyst.

As set forth in the AAO's decision of August 31, 2012, the petitioner submitted a credentials evaluation from [REDACTED]. He relies upon the beneficiary's unaccredited (possibly "fake")<sup>2</sup> Indian Master's degree and three-year Bachelor's degree to find that they are respectively the equivalent to U.S. bachelor's and master

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<sup>2</sup>The University Grants Commission (UGC) of India states that a "fake" university "is not established under either Central or State or UGC Act and hence, these institutions are fake universities/vishwavidyalayas and do not have any right to confer/grant degrees." See [http://www.ugc.ac.in/ugcpdf/906434\\_pressrelease\\_eng.pdf](http://www.ugc.ac.in/ugcpdf/906434_pressrelease_eng.pdf) (accessed June 5, 2013).

[REDACTED] has been determined to be a Fake University. See <http://www.ugc.ac.in/page/Fake-Universities.aspx> (accessed June 5, 2013).

degrees and that a combination of these degrees along with post-secondary computer courses as well as work experience to conclude that the beneficiary has an “undergraduate degree in Computer Science.” The AAO found this evaluation to be unreliable and determined that the beneficiary possessed a 3-year degree from [REDACTED] India in chemistry, botany, and zoology.<sup>3</sup> As the evaluation relied upon the beneficiary’s unaccredited Master’s degree and unverified experience, any claimed educational equivalency had not been established. Moreover, the labor certification required 4 years of college and a specific field of study of engineering, math or science or equivalent and the ETA 750 contained no defined quantifiable level of “equivalent” experience. The AAO concluded that the beneficiary was not eligible to be approved in the professional or skilled worker visa classification.

As referred to in the prior decisions of the director and the AAO, the employment verification letter<sup>4</sup> from [REDACTED] dated June 2, 2004 and appearing to be signed by

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<sup>3</sup> The AAO also indicated that it had reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) and found that EDGE considered an Indian “Bachelor of Arts/Bachelor of Commerce/Bachelor of Science” to represent no more than two to three years of comparable U.S. university study. In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion.

<sup>4</sup> A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(l)(3), which provides:

(ii) *Other documentation*—

(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

[REDACTED] (IT) has been determined by a fraud investigation based on a telephone conversation with Ms. [REDACTED] on June 6, 2008, that this letter was fraudulent. Further, according to the fraud investigator and based on an e-mail response from HR Manager, [REDACTED] received on June 10, 2008, the employment verification letter from [REDACTED] dated June 7, 2005 and signed by [REDACTED] also appears to be fraudulent as the letter is dated after Mr. [REDACTED] employment with [REDACTED] ended in March 2004. As the letters were determined to be suspect and based on the information provided appear to contain a forged signature, the AAO intends to make a supplemental finding of misrepresentation and/or fraud against the beneficiary. Although the petitioner submitted evidence of pay that indicates that the beneficiary worked for these employers, this does not discount evidence that suggests the experience letters were not signed by the parties asserted and are fraudulent documents, which were submitted in an attempt to establish that the beneficiary has the required experience for the position offered and to obtain an immigration benefit.

It is noted that only a U.S. employer that desires and intends to employ an alien may file a petition to classify the alien under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). See 8 C.F.R. § 204.5(c).

The AAO hereby issues this Notice of Derogatory Information relevant to the petition and informs the petitioner and the beneficiary of derogatory information pertinent to this proceeding, pursuant to 8 C.F.R. § 103.2(b)(16), which provides in relevant part:

*(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 [U.S. Citizenship and Immigration Services (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.

With regard to immigration fraud, the Act provides immigration officers with the authority to administer oaths, consider evidence, and further provides that any person

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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.

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 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 eligibility for the requested immigration benefit, 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. 582, 591-592 (BIA 1988).

Outside of the basic adjudication of visa eligibility, there are many critical functions of the Department of Homeland Security 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.<sup>5</sup>

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 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 . . . .

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<sup>5</sup> 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 discovers fraud or a material misrepresentation.

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.

A labor certification is subject to invalidation by USCIS if it is determined that fraud or a willful misrepresentation of a material fact was made in the labor certification application. See 20 C.F.R. § 656.30(d) which states the following: "After issuance labor certifications are subject to invalidation by [USCIS] . . . upon a determination, made in accordance with those agencies, procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application."<sup>6</sup>

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."<sup>7</sup>

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<sup>6</sup>The underlying labor certification supporting this application may be invalidated pursuant to 20 C.F.R. § 656.30, which provides in pertinent part:

(d) After issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application. . . ." Further, it is noted that section 212(a)(6)(C)(i) of the Act provides that 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.

<sup>7</sup> 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 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).

The certified position requires one year of experience in the job offered of programmer analyst or one year of experience in a related occupation, also defined as a programmer analyst. The beneficiary<sup>8</sup> appears to have submitted fraudulent and forged documentation in an attempt to qualify for the position offered.

If you elect to respond to this notice, please address the AAO's concerns as raised above. You must submit evidence to establish that the letters submitted were not forged, and were properly signed by the respective parties as initially submitted. Any signed documents submitted must be notarized and must be submitted in the original with a photo ID containing the signer's signature. If you elect to submit a response to this notice, you are instructed to provide independent and credible evidence to overcome the indices of misrepresentation and /or fraud set forth herein. Based on the foregoing, the AAO will enter a finding of material misrepresentation and/or fraud against the beneficiary and invalidate the labor certification unless independent credible evidence sufficient to overcome the indices of misrepresentation and/or fraud is submitted to the record.<sup>9</sup> Please be advised that by submitting false documents to USCIS, a beneficiary may be deemed to seek to procure a benefit provided under the Act through willful misrepresentation. The burden of proof remains with the petitioner and beneficiary to show by a preponderance of the evidence that any proposed invalidation of the labor certification is not appropriate and that a willful misrepresentation and/or fraud has not been committed in these proceedings. See *Matter of Ho*, 19 I&N Dec. at 589. A finding of misrepresentation or fraud may lead to invalidation of the Form ETA 750. See 20 C.F.R. § 656.30(d).

Counsel has submitted a response to the AAO's last NDI. Accompanying counsel's response are two statements from the beneficiary and the petitioner's business manager, both disclaiming any knowledge of the employment verification letter, purportedly signed by [REDACTED] Technical Lead (IT), dated June 2, 2004, from [REDACTED] and a letter, dated June 7, 2005, signed by [REDACTED] referred to in the director's decision and specifically mentioned in the AAO's dismissal of the appeal and the NDI. Counsel asserts that the dates of the letters were wrong. The beneficiary's statement submitted with the response states that employment letters from

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<sup>8</sup>Alien beneficiaries do not normally have standing in administrative proceedings. See *Matter of Sano*, 19 I&N Dec. 299, 300 (BIA 1985). Alien beneficiaries ordinarily do not have a right to participate in proceedings involving the adjudication of a visa petition, as the petition vests no rights. See *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Moreover, there are no due process rights implicated in the adjudication of a benefits application. See *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9<sup>th</sup> Cir. 2008); see also *Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment.").

<sup>9</sup>Failure to respond to this notice may result in a finding of fraud as the record would not contain independent objective evidence to overcome the indices of fraud as set forth above.

and were both dated in 2003, and that he has no knowledge of any employment letter from dated June 2, 2004, or an employment letter from dated June 7, 2005. A statement from the petitioner's representative, Business Manager, claims that the letters from , both dated 2003 were submitted in support of the Form ETA 750 and the Form I-140. Copies of 2003 employment letters accompanied the response.<sup>10</sup> Both statements assert that the beneficiary has the employment experience required by the labor certification.

The AAO issued an Amended Notice of Derogatory Information on October 30, 2013. In pertinent part, the notice stated:

As referred to in the prior decisions of the director and the AAO, the employment verification letter from dated June 2, 2004 and appearing to be signed by Technical Lead (IT) has been determined by a fraud investigation based on a telephone conversation with Ms. on June 6, 2008, that this letter was fraudulent. Further, according to the fraud investigator and based on an e-mail response from HR Manager, received on June 10, 2008, the employment verification letter from dated June 7, 2005 and signed by also appears to be fraudulent as the letter is dated after Mr. employment with which ended in March 2004. As the letters were determined to be suspect and appear to contain a forged signatures, the AAO intends to make a supplemental finding of misrepresentation and/or fraud against the beneficiary. Although the petitioner submitted evidence of pay that indicates that the beneficiary worked for these employers, this does not discount evidence that suggests the experience letters were not signed by the parties asserted and are fraudulent documents, which were submitted in an attempt to establish that the beneficiary has the required experience for the position offered and obtain an immigration benefit. As the letters were submitted to establish the beneficiary's asserted experience, they are material to the benefit sought.

The petitioner, through counsel, claims in response to the AAO's earlier NDI that two 2003 letters were submitted in support of the Form I-140 filed in this case. Copies of both letters were submitted with counsel's response. One is dated May 1, 2003, contains the signature of and the other is dated May 8, 2003, and contains the signature of . The AAO has reviewed all Form I-140 filings contained in the record and does not find that either of these letters have been submitted in support of any Form I-140 filing. The letters submitted in support of the instant Form I-140 are the ones dated June 2, 2004 containing a signature claimed to be that of and the one dated June 7, 2005 containing a signature claimed to be that of . As set forth above, copies of these letters are herein attached.

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<sup>10</sup> Copies of 2010 employment verification letters from and which were originally submitted to the director in response to his Notice of Intent to Revoke, were also provided with the response.

(footnotes omitted)

In response to this amended notice, additional affidavits from both the beneficiary and Mr. [REDACTED] denied knowledge of the June 2, 2004 [REDACTED] letter and the June 7, 2005 [REDACTED] letter. Mr. [REDACTED] also denies that the petitioner did not obtain either letter, but now claims that an “offshore team in India” that handles the petitioner’s immigration work, “may have submitted the allegedly forged letters.”

Despite the disclaimer of knowledge of the 2004 and 2005 letters from [REDACTED] respectively, and the implication that an offshore team in India representing the petitioner may have submitted forged letters, the AAO cannot ignore employment verification letters that have been found by investigation to be highly suspect and fraudulent. Based on the foregoing, through the submission of letters not signed by the purported companies’ representatives, the beneficiary has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact: that the letters submitted to verify his experience and meet the terms of the certified labor certification have been signed by the claimed respective parties. This finding is additionally made to the grounds set forth in the AAO’s August 31, 2012 dismissal of the appeal and may be considered in any future proceeding where admissibility is an issue. Further, as Mr. [REDACTED] claims that the petitioner’s own offshore team may have submitted the forged letters, the petitioner has sought to procure a benefit through willful misrepresentation of the beneficiary’s past experience. Additionally, the AAO hereby invalidates the Form ETA 750 pursuant to 20 C.F.R. § 656.30(d) based on the willful misrepresentation.

With regard to the acceptance of experience in lieu of an actual four-year Bachelor’s degree, counsel reiterates on motion that the minimum education requirement for the position is a four-year bachelor's degree or the equivalent of a bachelor's degree earned through “equivalent experience” based on the DOL’s specific vocational level (SVP). He maintains that the DOL’s job zone level of four permits a bachelor’s degree to equate to two years of experience toward the SVP. As stated in the AAO’s previous decision, the beneficiary does not actually possess the foreign equivalent of a four-year U.S. Bachelor’s degree and the Form ETA 750 does not define “equivalent experience.”<sup>11</sup> The AAO also determined that the credentials evaluation from [REDACTED] was unpersuasive, observing that it did not contain descriptions of the beneficiary’s courses, specifically assign any academic value to post-secondary courses that appeared to be brief vocational training classes, or discuss the lack of accreditation of the entity that awarded the Master’s degree to the beneficiary. Moreover, the evaluation referred to the combination of the beneficiary’s four years of work experience as

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<sup>11</sup> Additionally, it is noted that the regulations pertinent to immigrant petitions, in contrast to non-immigrant petitions, do not permit experiential equivalencies to equate to college or university study. The non-immigrant H-1B regulations set forth an equation of three years of experience for one year of education, but as stated herein, that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. See 8 C.F.R § 214.2(h)(4)(iii)(D)(5).

extrapolated from a resume that is not in the record and is not supported by the jobs listed on Part B of the ETA 750, combined with all of the beneficiary's education as equivalent to a bachelor's degree.<sup>12</sup>

Further, the petitioner has not provided any recruitment documentation in the nature of job advertisements and correspondence with the Department of Labor that would otherwise support that the petitioner specifically advised prospective U.S. workers without a 4-year bachelor's degree applying for the position of programmer analyst what methodology would be used to calculate "equivalent experience."<sup>13</sup>

Based on the foregoing, the AAO reaffirms its previous dismissal of August 31, 2012. The revocation of the petition's approval will remain.

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 and motion to reopen is granted. The prior decision of the AAO dated August 31, 2012, is affirmed. The petition's approval remains revoked.

**FURTHER ORDER:** The AAO additionally finds that the petitioner and the beneficiary made a material willful misrepresentation of the beneficiary's past employment experience. The AAO additionally invalidates the labor certification ( [REDACTED] pursuant to 8 C.F.R. § 656.30(d).

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<sup>12</sup> Even if work experience was permitted to constitute an educational equivalency, the same experience is not permitted to be used to satisfy the employment experience required by a labor certification as well as any educational requirement.

<sup>13</sup> "When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." See Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). The DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [USCIS] to accept the employer's definition." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). The DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.