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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 18 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as a Professional or Skilled Worker Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 205(b)(3)

ON BEHALF OF THE 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,

A handwritten signature in black ink that reads "Elizabeth McCormack".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Nebraska Service Center. In connection with the denial of the Form I-140, Immigrant Petition for Alien Worker, filed on behalf of the beneficiary's spouse, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the petition. In a Notice of Revocation (NOR), the director revoked the approval of the visa petition based on his invalidation of the underlying labor certification. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner has described itself as a computer internet service and software business. It seeks to employ the beneficiary permanently in the United States as a computer programmer. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date DOL accepted the labor certification for processing, is April 17, 2001. See 8 C.F.R. § 204.5(d).

The record shows that the appeal is properly filed 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

Notification Provided the Petitioner

As a threshold matter, the AAO has considered whether the director adequately advised the petitioner of the basis for revocation in the present matter.

As set forth in section 205 of the Act, 8 U.S.C. § 1155, “[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.” This means that

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.

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).

United States Citizenship and Immigration Services (USCIS) must provide notice to the petitioner before a previously approved petition can be revoked. The regulation at 8 C.F.R. § 205.2 specifically 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].

Pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987), a NOIR 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 its burden of proof. Here, the director’s NOIR, issued on May 25, 2012, identified multiple problems with the evidence of record, noting that the petitioner’s authority to do business had been suspended by the State of California and that the petitioner appeared to be out of business, that the beneficiary was married to the individual who had signed the labor certification benefiting him and that this individual had used her maiden name on the labor certification, that no evidence in the record established that a labor market test for the offered position had been performed and that the beneficiary had attempted to establish his qualifications for the offered position using evidence that had previously been submitted by his spouse in connection with another visa petition. In that the NOIR is found to have sufficiently identified the issues on which the director revoked the approval of the petition, the AAO finds it to have been properly issued for good and sufficient cause.

Procedural History

In response to the director’s NOIR, the petitioner indicated that it had been acquired by another business as of January 1, 2010 and requested that this entity be allowed to continue as the petitioner on the Form I-140. The petitioner also claimed that it had conducted the necessary labor market test for the offered position and that the signing of the labor certification by the beneficiary’s spouse on behalf of the petitioner was appropriate as she was the petitioner’s vice president. In support of these assertions, the petitioner submitted a labor certification completed by its claimed successor-in-interest, a Business Acquisition Agreement (BAA) documenting its purchase by this business entity, a 2011 tax return for the claimed successor business and documentation of its recruitment efforts relating to the offered position.

On October 18, 2012, the director revoked the approval of the visa petition, finding the signing of the labor certification by the petitioner’s spouse, a relationship he concluded had not been disclosed to the U.S. Department of Labor (DOL), to indicate that the offered position was not a *bona fide* job offer, and that the petitioner and beneficiary had willfully misrepresented a material fact pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Based on his finding of willful misrepresentation, the director invalidated the labor certification pursuant to DOL regulation and then revoked the approval of the visa petition as it was no longer supported by a valid labor certification.

The director also found that the petitioner had failed to submit sufficient evidence to establish that the business that acquired the petitioner on January 1, 2010 was its successor-in-interest.

The petitioner appealed the director's decision on November 13, 2012, asserting that the signing of the labor certification by the beneficiary's spouse is not indicative of fraud or willful misrepresentation. Instead, counsel for the petitioner contends that the beneficiary's spouse signed the labor certification using her maiden name because that was the name she had been using in the United States. He further states that the Form ETA 750, unlike the ETA Form 9089, Application for Permanent Employment Certification, did not provide the petitioner with the opportunity to reveal the marital relationship between its vice president and the beneficiary at the time it filed the labor certification. Counsel also asserts that the submitted BAA establishes the purchaser of the petitioner as its successor-in-interest and that USCIS has previously interpreted *Matter of Dial Auto Shop, Inc.* 19 I&N Dec. 481 (Comm. 1986) (*Matter of Dial Auto*) as not requiring a successor-in-interest to assume all of its predecessor's rights, duties and obligations. Counsel again contends that the offered position was available to U.S. workers as it was advertised in a "wide circulation newspaper, . . . [and] a specialty magazine in addition to the recruitment process and the internal posting."

On August 27, 2013, the AAO issued a Notice of Intent to Dismiss and Request for Evidence (NOID/RFE) in which it informed the petitioner that the record did not establish a basis for reinstating the approval of the Form I-140 petition and sought additional evidence relating to the offered position and to the company claimed by the petitioner to be its successor-in-interest. In its NOID/RFE, the AAO advised the petitioner that, as it could not substantively adjudicate the appeal without a meaningful response to each line of inquiry, it would dismiss the appeal if the petitioner failed to submit requested evidence that precluded a material line of inquiry. See 8 C.F.R. § 103.2(b)(14). On September 27, 2013, the petitioner responded to the NOID/RFE.

Successor-in-Interest

In the August 27, 2013 notice, the AAO indicated that it had found the BAA in the record to offer insufficient information regarding the specifics of the purchase of the petitioner by the business entity claiming to be its successor-in-interest. The AAO, therefore, requested the submission of additional documentation of the January 1, 2010 transfer of ownership and indicated that such documentation might include bank statements reflecting the payment or receipt of funds by the involved parties; the final Form 1120, U.S. Corporation Income Tax Return, filed by the petitioner; documentation of the inventory and equipment acquired in the purchase of the petitioner; and deeds or other documentation relating to the transfer of the petitioner's rental property and buildings.

The AAO also informed the petitioner that the record did not demonstrate that the job opportunity with its claimed successor-in-interest remained the same as that originally certified, noting that the record did not provide sufficient information to establish that the successor company operated the same type of business as the petitioner's or that its essential business functions were substantially the same as those of the petitioner. Moreover, the AAO found the Form ETA 750 submitted by the claimed successor-in-interest to indicate that its business was located in [redacted] California, within

the [REDACTED] California MSA while the Form ETA 750 filed by the petitioner reported its location as [REDACTED] California, in the [REDACTED] California MSA.³ Accordingly, the petitioner was asked to provide evidence describing its business operations and those of the claimed successor-in-interest. The AAO also requested a Prevailing Wage Determination for a Software Developer, Applications (SOC/O*Net Code 15-1132.00)⁴ employed in [REDACTED] County, California in order to determine whether the wages for the occupation in the [REDACTED] California MSA matched those in the [REDACTED] MSA.

The NOID/RFE further indicated that the record did not establish that the petitioner's claimed successor-in-interest was eligible for the immigrant visa in all respects. *See Matter of Dial Auto* at 482-483. Specifically, the AAO informed the petitioner that the record did not demonstrate its ability to pay the proffered wage from the April 17, 2001 priority date until the January 1, 2010 transfer of ownership or that its successor-in-interest had the ability to pay the proffered wage from January 1, 2010 onward. 8 C.F.R. § 204.5(g)(2); *see also Matter of Dial Auto* at 482. Accordingly, the petitioner was asked to submit its tax returns for the years 2007 and 2009, and its successor's tax returns for 2010 onward, or, in the absence of tax returns, annual reports or audited financial statements for those years. *See* 8 C.F.R. § 204.5(g)(2).

In response to the AAO's request for additional documentation relating to the January 1, 2010 transfer of ownership, the petitioner has submitted a copy of a January 4, 2010 receipt for a \$780,000.00 payment made to the petitioner by its claimed successor-in-interest and a copy of a Seller's Permit issued by the California State Board of Equalization. The petitioner has not, however, provided any bank statements reflecting the payment or receipt of funds, its final tax return reflecting the sale of its business, any documentation of the inventory and equipment acquired by its successor-in-interest or deeds or documentation relating to the transfer of the petitioner's rental property and buildings.⁵

As for evidence of its business operations and those of its claimed successor-in-interest, the petitioner has submitted a one-sentence statement in which it indicates that it specialized in software development and that its claimed successor-in-interest has a software development branch. The

³ The AAO notes that the Form I-140 petition indicates that petitioner was located in [REDACTED] California, also within the [REDACTED] California MSA.

⁴ The Form ETA 750 certified by DOL indicates that the offered position of computer programmer was found to fall under the occupational title of Computer Software Engineers, Applications (SOC/O*Net Code 15-1031.00). *O*Net Online*, which is sponsored by DOL, indicates that this occupational title is no longer in use and that Software Developers, Applications (SOC/O*Net Code 15-1132.00 is the correct occupational title. *See* <http://www.onetonline.org/find/> (accessed August 22, 2013).

⁵ In response to the NOID/RFE, the petitioner has indicated that the reference to rental income in the BAA relates to income obtained by renting space in its office.

petitioner has also failed to submit a Prevailing Wage Determination for a Software Developer, Applications (SOC/O*Net Code 15-1132.00) employed in ██████████ County, California to establish the wages for this occupation in the ██████████ California MSA. Instead, it states that “[in] 2008 the average salary for a Software Developer in ██████████ California was approximately 68,000.00 DOE,” wages that are significantly lower than the \$92,123.20 proffered wage reflected in the labor certification,⁶ raising questions as to whether the claimed successor intends to employ the beneficiary in the certified occupation. Going on record without supporting documentation is not sufficient to meet the petitioner’s burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has also failed to submit the 2010 tax return for its claimed successor-in-interest, as requested by the NOID/RFE. Although the petitioner’s counsel indicates that the 2010 return is included in its September 23, 2013 response to the NOID/RFE, the record reflects that the petitioner has submitted a second copy of the 2011 tax return filed by its claimed successor-in-interest.

As the petitioner has not submitted the evidence necessary to establish that the business entity that purchased it on January 1, 2010 is its successor-in-interest, it has failed to demonstrate that the labor certification remains valid with respect to the employment now offered the beneficiary. Accordingly, the AAO will dismiss the appeal on this basis.

Bona Fide Job Offer

The August 27, 2013 NOID/RFE also informed the petitioner that the AAO had found the record to indicate that it might have familial, financial or business ties to the beneficiary, raising questions as to whether the offered position was a *bona fide* job offer pursuant to the regulations at 20 C.F.R. §§ 656.20(c)(8) and 656.3. The AAO specifically noted that the beneficiary’s spouse, using her maiden name, had signed the labor certification as the petitioner’s vice president and that the beneficiary had signed the Form I-140 petition on behalf of the petitioner. Accordingly, the petitioner was asked for evidence explaining its relationship to the beneficiary and to document that DOL was aware of this relationship during the labor certification process. To that end, the AAO requested the petitioner’s articles of incorporation; a listing of its officers or directors from 2000 to 2010, which identified the beneficiary’s relationship to each; and its Internal Revenue Service (IRS) Forms 941, Employer’s Quarterly Tax Returns, for the period 2000 to 2010. The AAO also asked for copies of the statements

⁶ The significant wage disparity suggests that the geographical area of employment for the approved labor certification is not the same as the geographical location of the claimed successor. As such, the labor certification would not be valid for the claimed successor-in-interest’s office location. See 20 C.F.R. § 656.30(c)(2).

attached to the petitioner's federal income tax returns for 2003 and 2004, listing the name and identifying number of the single shareholder it had reported in these years.

Finding that the BAA submitted to establish the petitioner's acquisition by a successor-in-interest failed to provide the title of the individual who had signed the BAA on behalf of the petitioner, the NOID/RFE further required the petitioner to identify this individual's relationship to its business and to document the authority under which he had signed the BAA. The notice also asked for a complete copy of the Form ETA 750 certified by DOL, including any attachments that DOL had incorporated into that form that would indicate that the relationship between the petitioner and the beneficiary had been disclosed to DOL during the labor certification process.

In response, the petitioner has submitted its Articles of Incorporation, filed in 1999, and the names of two individuals who served as its Chief Executive Officers, the first from 2000 to 2003 and the second from 2003 to 2010. However, it has not, as requested, identified the beneficiary's relationship to these individuals, nor has it provided the names of its other officers, which, as previously noted, appear to have included the beneficiary and his spouse. Further, the petitioner's listing of its officers does not include the two individuals who are identified as officers in its 2002-2007 and 2009 tax returns (Schedule E, Compensation of Officers). The petitioner has also failed to submit the IRS Forms 941 requested by the AAO or copies of the statements identifying the single shareholder reported in its 2003 and 2004 tax returns, although in the latter case, a September 23, 2013 cover letter from the petitioner's counsel indicates that they have been provided.

With regard to the AAO's other evidentiary requests, the petitioner has identified the individual who signed the BAA on its behalf and has also provided what its counsel indicates is a "complete copy" of the Form ETA 750. However, while the petitioner has indicated that the individual who signed the BAA was its Chief Executive Officer from 2003 to 2010, it has not submitted documentary evidence of his position, as requested by the August 27, 2013 notice. The AAO also finds that the copy of the Form ETA 750 submitted by the petitioner does not appear to be a copy of the labor certification application approved by DOL and, further, that it has no attachments that indicate that DOL was aware of any relationship between the petitioner and the beneficiary during the labor certification process.

Under 20 C.F.R. § 626.20(c)(8) and § 656.3, a petitioner has the burden, when asked, to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a bona fide job offer may arise where a beneficiary is related to a petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Sunmart* 374, 00-INA-93 (BALCA May 15, 2000). In *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986), the legacy Immigration and Naturalization Service (INS) Commissioner noted that while it is not an automatic disqualification for a beneficiary to have an interest in a petitioning business, if the alien beneficiary's true relationship to the petitioning business is not apparent in the labor certification proceedings, it causes the certifying officer to fail to examine more carefully whether the position was clearly open to qualified U.S. workers and whether U.S. workers were rejected solely for lawful job-related reasons.

In *Hall v. McLaughlin*, 864 F.2d 868 (D.C. Cir. 1989), the court found that where the alien was the founder and corporate president of the petitioning corporation, absent a genuine employment relationship, the alien's ownership in the corporation was the functional equivalent of self-employment. In *Modular Container Systems, Inc.*, 1989-INA-228 (July 16, 1991) (*en banc*), the Board of Alien Labor Certification Appeals (BALCA) held that "[u]nder the regulatory definition of 'employment,' if the position for which certification is sought constitutes nothing more than self-employment, it does not constitute genuine 'employment' under the regulations, and labor certification is barred per se." Additionally, BALCA stated that although "many aliens with investment interests in the sponsoring employer will have difficulty overcoming this regulatory proscription, we hold that the sponsoring employer can overcome it if it can establish genuine independence and vitality not dependent on the alien's financial contribution or other contribution indicating self-employment." See also *Hall v. McLaughlin, supra*; *Edelweiss Manufacturing Company, Inc.*, 1987-INA-562 (Mar. 15, 1988) (*en banc*).

In the present case, the record reflects that the beneficiary was the petitioner's president and no evidence has been submitted to establish a genuine employment relationship between the petitioner and beneficiary. Without such evidence, the AAO must conclude that the offered position, like the employment considered in the above cases, was, at the time the labor certification was filed, equivalent to self-employment" and, therefore, not genuine employment under DOL regulations.⁷ The record further fails to demonstrate that the petitioner informed DOL of its relationship with the beneficiary during the labor certification process and the AAO finds this failure to constitute the willful misrepresentation of a material fact pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).

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 that is relevant to eligibility and which might well have resulted in a proper determination that the petition be denied. See *Matter of S-- and B--C--*, 9 I&N Dec. 436, 447 (AG 1961).

Here, the petitioner's failure to disclose to DOL that the beneficiary was serving as its president and was married to its vice president, the signer of the labor certification, cut off a potential line of inquiry regarding the *bona fide* nature of the offered position, which is directly material to whether the petitioner was an employer intending to employ the beneficiary as required by section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). In *Matter of Silver Dragon*, the legacy INS

⁷ The regulation at 20 C.F.R. § 656.3 defines employment as "[p]ermanent full-time work by an employee for an employer other than oneself."

Commissioner held that a shareholder's concealment in labor certification proceedings of his or her interest in the petitioning corporation constitutes willful misrepresentation of a material fact. 19 I&N Dec. 401 (Comm. 1986). Based on this same reasoning, the petitioner and beneficiary are found to have willfully misrepresented a material fact, pursuant to section 212(a)(6)(C)(i) of the Act, in seeking an immigration benefit.

A finding of misrepresentation or fraud under section 212(a)(6)(C)(i) of the Act, may lead to the invalidation of an approved labor certification. *Id.* In this regard, the regulation at 20 C.F.R. § 656.30(d) states:

Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in § 656.32. Additionally, 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. If evidence of such fraud or willful misrepresentation becomes known to the CO or to the Chief, Division of Foreign Labor Certification, the CO, or the Chief of the Division of Foreign Labor Certification, as appropriate, shall notify in writing the DHS or Department of State, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

Having found that the record indicates that the petitioner and beneficiary willfully misrepresented the nature of their relationship to DOL, the AAO concurs with the director's invalidation of the labor certification pursuant to 20 C.F.R. § 656.30(d) and will dismiss the appeal on this basis.⁸ It also finds the director to have revoked the approval of the visa petition for good and sufficient cause.

As previously indicated, 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 its approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

With regard to the revocation of the approval of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) has stated:

[A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, 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 decision to revoke will be

⁸ The director incorrectly cites the DOL regulation at 20 C.F.R. § 656.31(d) as the basis of his authority to invalidate the labor certification.

sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

Here, the director revoked the approval of the petition based on his invalidation of the labor certification pursuant to 20 C.F.R. § 656.30(d). The AAO notes that the regulation at 8 C.F.R. § 205.1(a)(iii)(A) requires the automatic revocation of the approval of a Form I-140 petition when the underlying labor certification has been invalidated pursuant to 20 C.F.R. § 656. Accordingly, it finds the director to have revoked the instant petition's approval for good and sufficient cause, and will dismiss the appeal for this reason as well.

Further, as the petitioner has failed to provide meaningful responses to the lines of inquiry set forth in the August 27, 2013 NOID/RFE, the AAO will also dismiss the appeal pursuant to the regulation at 8 C.F.R. § 103.2(b)(14), which states that “[f]ailure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request.” See 8 C.F.R. § 103.2(b)(14).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 appeal is dismissed. The visa petition remains revoked.

FURTHER ORDER: The AAO finds that the beneficiary knowingly misrepresented a material fact by submitting fraudulent documents in an effort to procure a benefit under the Act and implementing regulations.

FURTHER ORDER: The alien employment certification, Form ETA 750, ETA case number [REDACTED] filed by the petitioner is invalidated.