



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF V-N-A- LLC

DATE: AUG. 4, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a motorcycle manufacturer/R&D company, seeks to permanently employ the Beneficiary as an industrial engineer under the immigrant classification of skilled worker. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director, Texas Service Center, initially approved the petition. The Director subsequently revoked the petition's approval on multiple grounds.

The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal as abandoned, dismiss the appeal based on the record, and invalidate the underlying labor certification with a finding of willful misrepresentation of a material fact by the Petitioner and the Beneficiary.

#### I. PROCEDURAL HISTORY

The instant petition, Form I-140, Immigrant Petition for Alien Worker, was filed by the Petitioner on July 11, 2007. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which was filed with the Department of Labor (DOL) on June 1, 2007, and certified by the DOL on June 8, 2007.

The petition was initially approved by the Director on August 30, 2008. The Director issued a notice of intent to revoke the approval of the petition on August 14, 2014. On September 29, 2014, the Director revoked the approval of the petition on three grounds: (1) the record did not establish the Petitioner's ability to pay the proffered wage continuously from the priority date of the petition (June 1, 2007) up to the present; (2) the record did not establish that the Beneficiary has a bachelor's degree in industrial design or a foreign educational equivalent, as required by the labor certification; and (3) the record did not establish that the Beneficiary satisfied all of the experience and associated requirements of the labor certification by the priority date.

The Petitioner filed a motion to reopen and motion to reconsider on October 30, 2014. The Director denied the motions on February 3, 2015. The Petitioner filed a timely appeal on March 6, 2015,

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along with a brief from counsel and supporting documentation. We issued a notice of intent to dismiss (NOID) on August 20, 2015, followed by a request for evidence on November 4, 2015. The Petitioner responded to each with additional briefs and documentation.

On May 23, 2016, we issued a second NOID which stated, in pertinent part:

With regard to the educational requirement of the labor certification, you asserted on the ETA Form 9089 (Part J) that the Beneficiary has a foreign equivalent degree to a bachelor's degree in industrial design from the [REDACTED] Mexico), completed in 2000. As evidence thereof, you submitted photocopied documents which appeared to show that the Beneficiary was issued a "*titulo de Licenciado en Diseno Industrial*" (title of License in Industrial Design) by the [REDACTED] on November 28, 2000. However, a Spanish-language transcript of the Beneficiary's courses at the university, dated August 16, 2000, listing courses which appeared to be completed by the Beneficiary over eight semesters in the years 1997-2000, was not consistent with an English-language translation you submitted, dated February 25, 1999, which only listed courses completed in the years 1997-1999, apparently over five semesters. We addressed this conflicting transcript evidence in our initial NOID, to which you responded with an English translation that correlated with the eight-semester Spanish-language transcript. Based on that documentation it appeared that the Beneficiary received a "*titulo de Licenciado en Diseno Industrial*" in 2000 after completing an eight-semester degree program.

To verify the authenticity of the Beneficiary's educational documents, we requested the assistance of the U.S. Citizenship and Immigration Services (USCIS) field office in Mexico City. The results of that inquiry cast doubt on the veracity of the Beneficiary's claim to have earned a *Titulo de Licenciado en Diseno Industrial* in Mexico. USCIS verified with the [REDACTED] that [REDACTED] studied at the university for only five semesters, from August 1996 to December 1998, did not complete the eight semesters required for a degree, and that the document purported to be the Beneficiary's *Titulo de Licenciado en Diseno Industrial*, dated November 28, 2000, is fraudulent. The Legal Department of the Central Registry of Professionals in [REDACTED] also confirmed that there is no record for [REDACTED] on its database, and that the professional identity card number – [REDACTED] – written on one of the degree documents belongs to another individual.

In light of the above information, it appears that the Beneficiary does not have the educational credential claimed in the labor certification – a foreign equivalent degree to a bachelor's degree in industrial design – and that the documents submitted in support of this claim – the alleged *Titulo de Licenciado en Diseno* and accompanying transcripts – are fraudulent.

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Section 212(a)(6)(C)(i) of the Act states that “in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible.”

The regulation at 20 C.F.R. § 656.30(d) provides that:

After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 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 [Consular Officer] 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.

We stated in the second NOID that based on the derogatory information received from the USCIS field office, we intended to invalidate the labor certification based on a finding of fraud or willful misrepresentation of a material fact, and dismiss the appeal because the petition is not supported by a valid labor certification, as required by 8 C.F.R. § 204.5(l)(3)(i).

We advised the Petitioner that it could submit additional evidence to rebut the derogatory information received from the USCIS field office in Mexico City, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), and that any response to the NOID must be received by us within 33 days. To date, the Petitioner has not responded to the second NOID.

## II. CONCLUSION

The Petitioner did not respond to the second NOID within the permitted 33-day period. Nor has the Petitioner responded up to the date of this decision. Thus, the Petitioner has not submitted any evidence to rebut the derogatory information provided by the USCIS field office indicating that the educational documents submitted by the Petitioner are fraudulent and that the Beneficiary does not have a degree from the [REDACTED]. Therefore, in accordance with the regulation at 20 C.F.R. § 656.30(d), we will invalidate the labor certification based on a finding of willful misrepresentation of a material fact by the Petitioner and the Beneficiary.<sup>1</sup>

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<sup>1</sup> By misrepresenting the Beneficiary's educational background and submitting fraudulent documents to USCIS, and making misrepresentations to DOL, the Petitioner and the Beneficiary sought to procure benefits provided under the Act

(b)(6)

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Furthermore, if a petitioner fails to respond to a NOID by the required date, the appeal may be dismissed as abandoned, dismissed based on the record, or dismissed for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i). In accordance with this regulation, we will dismiss the appeal as abandoned, and dismiss the appeal based on the record because it is not supported by a valid labor certification, as required by 8 C.F.R. § 204.5(l)(3)(i).<sup>2</sup>

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361 (2012); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). That burden has not been met in this case.

**ORDER:** The appeal is dismissed.

**FURTHER ORDER:** The approval of the ETA Form 9089, ETA Case Number [REDACTED] is invalidated under 20 C.F.R. § 656.30(d), based on the Petitioner's and Beneficiary's willful misrepresentation of a material fact.

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through willful misrepresentation of a material fact.

<sup>2</sup> Even if the labor certification was valid, the appeal may be dismissed because the evidence does not establish that the Beneficiary has the requisite educational degree to qualify for the job offered under the terms of the labor certification. The labor certification requires a bachelor's degree in industrial design, together with 36 months of experience in the proffered job. No alternate field of study is accepted, no combination of education and experience is permitted, and a foreign equivalent degree is permitted pursuant to the terms of the labor certification. The Petitioner must demonstrate that, on the priority date, the Beneficiary had the qualifications stated on its labor certification application, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977). As set forth in our second NOID restated in part herein, the Petitioner has not established that the Beneficiary has a bachelor's degree in industrial design as required by the labor certification.