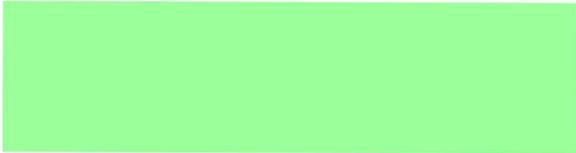
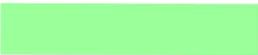


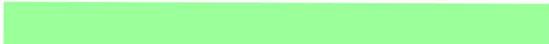


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 10 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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 Director, California Service Center, denied the employment-based nonimmigrant visa petition. The petitioner appealed the matter to the Administrative Appeals Office (AAO). On April 22, 2014, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), we issued a notice advising the petitioner of derogatory information relating to the petition and providing an opportunity for the petitioner to respond with additional evidence. In response, the petitioner submitted a letter requesting that the appeal be withdrawn. We will dismiss the appeal based on its withdrawal by the petitioner. We will also enter a separate administrative finding of willful misrepresentation of a material fact.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as clergy. The director determined that the petitioner failed to establish that it qualifies as a bona fide non-profit religious organization or a bona fide non-profit organization which is affiliated with the religious denomination.

On April 22, 2014, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), we issued a notice advising the petitioner of derogatory information indicating that the petitioner submitted altered documents and made false claims regarding the beneficiary's eligibility. We specifically observed that the petitioner signed the Form I-129, Petition for a Nonimmigrant Worker, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct."

The regulation at 8 C.F.R. § 214.2(r)(9) sets forth the evidentiary requirements to establish that the petitioning organization qualifies as a bona fide non-profit religious organization or a bona fide non-profit organization which is affiliated with the religious denomination. The petitioner asserted that it qualifies as a bona fide organization which is affiliated with the religious denomination by virtue of its affiliation with the "religious denomination [REDACTED]" In our notice, we stated that the petitioner failed to submit required evidence on this issue, and we additionally made the following findings:

[T]here are unresolved inconsistencies in the two letters signed by "Rev. [REDACTED] Secretary," of the [REDACTED] regarding your tax-exempt status. In his first letter, dated April 20, 2012, Rev. [REDACTED] certified your affiliation with the [REDACTED] but the letter is printed on letterhead which states "[REDACTED]." In his second letter, dated January 29, 2013, Rev. [REDACTED] certified your affiliation with the "[REDACTED] and the [REDACTED]" The letter is printed on letterhead which states [REDACTED] (emphasis added)." The bottom of letter contains the same apparent typographical error referencing "[REDACTED]" The letters also list two different employment identification numbers [REDACTED] respectively, indicating that the organizations are two separate entities.

We additionally made findings regarding the documentation submitted to establish the beneficiary's credentials and qualifications as clergy, as required under 8 C.F.R. § 214.2(r)(10). We stated:

On the Form I-129 petition, and in a letter dated February 8, 2013, you indicated that the beneficiary is qualified to serve as clergy for your organization by having "received a Doctor of Theology & Master of Missiona[r]y degree from the [REDACTED] [REDACTED]" and by being "an ordained pastor."

As evidence of the beneficiary's academic credentials, you submitted two different sets of "Certification of Graduation" documents from [REDACTED]. The first set of documents are copies of certificates dated September 22, 2011, purportedly signed by "Dr. [REDACTED] Ph.D., Dean of Student Affairs," for [REDACTED] attesting to the beneficiary's graduation with a Doctor of Theology degree on May 22, 2010, and a "Master of Missionary" degree on June 21, 2008. A third certificate signed by Dr. [REDACTED] on October 19, 2011, attests to the beneficiary's receipt of a Master of Divinity degree on June 4, 2005. You additionally submitted original certificates, dated February 5, 2013, purportedly signed by "Dr. [REDACTED] Dean," [REDACTED] attesting to the beneficiary's graduation with a Doctor of Theology degree, a Master of Divinity degree, and a "Master of Missiology" degree on the same dates listed above. In addition, you submitted a certificate indicating the beneficiary's receipt of a Doctorate in Christian Counseling on May 19, 2012. Although purportedly signed by two different individuals, the certificates all include identical signatures.

On March 3, 2014, two immigration officers from the Charlotte Field Office conducted a site visit at the address of [REDACTED] North Carolina, to confirm the existence of the university and the individuals that signed the submitted documents. Upon arrival, the officers observed a church with a sign in the front that stated "[REDACTED]" and a house to the left of the church that stated "[REDACTED]". There was one car present in the parking lot. The officers attempted to make contact with any occupants that may have been present in the church or the home, but both buildings were locked and no one answered the doors. The officers canvassed the area to determine whether or not any of the residents or commercial establishments were familiar with [REDACTED]. The residents were not familiar with [REDACTED]. Employees with a local utility company [REDACTED] were present in a neighboring community and they indicated that they never saw anyone at the university. In addition, employees at [REDACTED], which is located directly across from [REDACTED], indicated that they never see activity during the week at [REDACTED] and nothing which appears to be school traffic entering or exiting the facility. The employees stated that on Sundays they sometimes see people in the parking lot. Contact was also made with the Chief of Police for the [REDACTED] Police Department; Chief [REDACTED] who stated that there are never more than three to four cars in the [REDACTED] parking lot at any given time. Based on information provided by local residents, commercial establishments, the

[REDACTED] Chief of Police, and signage located inside the university, the officers concluded that “it does not appear that [REDACTED] is operating as an academic [REDACTED].” . . .

Government records additionally indicate that the beneficiary is currently in the United States as an F-1 nonimmigrant for continued attendance at [REDACTED]. The records reflect that the beneficiary is now pursuing a course of study for a Doctorate degree in Divinity/Ministry and Women’s and Youth Ministry from February 7, 2013 until May 21, 2015. . . .

In addition to the beneficiary’s educational credentials, you claimed his ordainment as a pastor as meeting your organizations requirements. You submitted a copy of a Certificate of Ordination, along with a certified translation, stating that the beneficiary “was ordained as a pastor by the [REDACTED] [REDACTED] on February 11, 2007.” According to the certified translation, the ordination certificate was signed by “Moderator: Rev. [REDACTED]” and “Secretary: [REDACTED].” The purported original certificate, although mostly written in foreign characters, included the following English text in the letterhead:

[REDACTED]

The street address, phone number, and web address do not match those found on the website of [REDACTED].¹ Instead, the street name, city, state, and zip code, as well as the fax number, match those found on the documentation from [REDACTED]. Further, the website found on the letterhead of the ordination certificate, “www.[REDACTED].org,” belongs to a school in [REDACTED] California.²

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner was afforded 30 days (plus 3 days for mailing) in which to submit evidence to overcome the derogatory information cited above. We stated that the findings could only be overcome by submitting independent objective evidence to resolve the noted inconsistencies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In response, the petitioner submitted a July 9, 2014 letter requesting that the appeal be withdrawn. A withdrawal may not be retracted and may not be refused. 8 C.F.R. § 103.2(b)(6); *Matter of Cintron*, 16 I&N

¹ [REDACTED] [http://\[REDACTED\]](http://[REDACTED]) / (excerpt added to the record November 25, 2013). The address and phone number are listed on the website as [REDACTED].

² [REDACTED] [contact.html](#) (excerpt added to the record November 25, 2013).

Dec. 9 (BIA 1976). The petitioner's response does not challenge our finding that the petitioner submitted altered documents and made false claims regarding the beneficiary's eligibility. As the petitioner has not satisfactorily responded to the derogatory information discussed above, we will enter a finding of willful misrepresentation of a material fact.

Section 212(a)(6)(C) of the Act provides:

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.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "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." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). In this instance, we find that the petitioner submitted false documentation. The petitioner submitted graduation certificates containing false signatures, and the school that purportedly issued the certificates was not found to be operating as an academic institution. The petitioner also submitted an ordination certificate printed on false letterhead. In addition, the petitioner submitted two letters from the same individual, "Rev. [REDACTED]" purportedly representing two distinct organizations as "Secretary" and attesting to the petitioner's membership and affiliation with each. However, in each letter, the organization listed on the letterhead does not match the organization discussed in the body of the letter. Here, the submission of documents containing false information in support of the Form I-129 petition constitutes a false representation to a government official.

We find that the petitioner willfully made the misrepresentation. The petitioner signed the Form I-129 petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the Form I-129, at part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." On the basis of this affirmation, made under penalty of perjury, we find that the petitioner willfully and knowingly made the misrepresentations.

Similarly, the beneficiary signed several Forms I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, certifying his intent to continue pursuing a full course of study at [REDACTED]. The Form I-20 instructions regarding the student certification state: "The law provides severe penalties for knowingly and willfully falsifying or concealing a material fact." As noted above, a site visit found that [REDACTED] does not appear to be operating as an academic [REDACTED].

Finally, the evidence is material to the beneficiary's eligibility for the benefit sought. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537. The falsified academic credentials and ordination certificate relate to the beneficiary's qualifications as a minister and religious worker under 8 C.F.R. § 214.2(r)(3), as well as the petitioner's evidentiary requirements under 8 C.F.R. § 214.2(r)(10). Accordingly, they are material to this proceeding. Further, as the letters regarding the petitioner's affiliation with a tax exempt organization are relevant to the petitioner's eligibility under 8 C.F.R. § 214.2(r)(9), they are also material to the proceeding.

We find that the petitioner knowingly submitted documents containing false statements, and that the beneficiary made false representations, in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. We will enter a finding of willful misrepresentation of a material fact.

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 based on its withdrawal by the petitioner with a finding of willful misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner, [REDACTED], and the beneficiary, [REDACTED] knowingly misrepresented material information in an effort to mislead USCIS on elements material to eligibility for a benefit sought under the immigration laws of the United States.