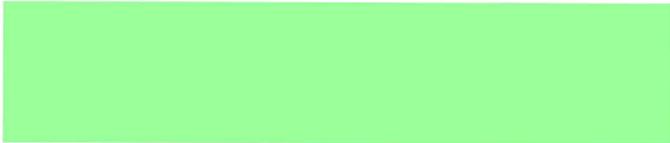


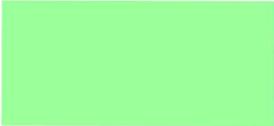
(b)(6)

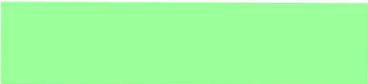
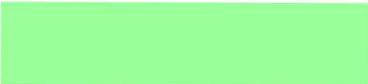
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JUN 19 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. The petitioner is advised that no further action will be taken at this time by the AAO with regard to the appeals of the denied H-1B petitions (with receipt numbers WAC 06 169 52270 and WAC 07 161 51710).

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg" with a stylized flourish.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant petitions [REDACTED] and [REDACTED]. Thereafter, on February 25, 2009, the petitioner's purported counsel submitted appeals with respect to the denied H-1B petitions to the Administrative Appeals Office (AAO). The AAO initially dismissed the appeals, but thereafter reopened the appeals *sua sponte* to permit the gathering and review of the administrative record of proceeding. Subsequently, the AAO rejected the appeals based upon the petitioner's lack of standing. On October 19, 2010, the beneficiary sought favorable action regarding the petitions in the United States District Court for the Western District of Washington at Seattle.¹ The Court remanded the matters, and, on June 7, 2012, the AAO reconsidered them *sua sponte*.

In reconsideration of the matters, and to determine whether the petitioner had established eligibility for the benefits sought under the applicable statutory and regulatory provisions, U.S. Citizenship and Immigration Services (USCIS) conducted administrative site visits at the petitioner's business locations as specified in the record of proceeding. Specifically, the administrative site visits occurred on July 27, 2012 at the petitioner's stated address in Saint Charles, Illinois, and on August 30, 2012 at the petitioner's address in Great Falls, Virginia.

During the course of the administrative site visit in Great Falls, Virginia, [REDACTED] the petitioner's representative, provided a sworn statement indicating that the petitioner's relationship with the beneficiary ended in 2007 – 2008 and that the petitioner did not want to pursue the H-1B petitions and appeals filed on behalf of the beneficiary. He also confirmed that the petitioner did not want to pursue the immigrant petition filed on behalf of the beneficiary.² Moreover, [REDACTED] provided a written and signed statement, in which he wrote the following: "I voluntarily withdraw my involvement and [the petitioner's] involvement in the H1B, I140 and related appeals process for [the beneficiary] since he is no longer working for [the petitioner]." In addition, [REDACTED] provided a signed statement, dated September 19, 2012, confirming the withdrawal of the appeals of the denied H-1B petitions.³ The signed statement was received by the AAO on October 11, 2012.

¹ The AAO notes that in August 2012, the AAO learned through a sworn statement provided by the petitioner's representative that the relationship between the petitioner and the beneficiary ceased in 2007 – 2008 (approximately four to five years earlier) and that the petitioner was not interested in pursuing this matter. It is also apparent that the beneficiary no longer has any intent to work for the petitioner, as he has moved on and accepted employment with a new employer. Thus, the beneficiary's departure from the petitioner has rendered the controversy over the H-1B petitions "no longer live." *See Wong v. Napolitano*, 654 F.Supp.2d 1184, 1192 (D. Or. 2009) (holding that "a live controversy requirement is provided by a present intent by both parties to enter into an employment relationship which is being thwarted by USCIS or some other party").

² The AAO will address the Form I-140, Immigrant Petition for Alien Worker, under separate cover.

³ Specifically, [REDACTED] indicated the following:

As an authorized official of [REDACTED] (the petitioning entity), I hereby confirm [REDACTED] withdrawal of the following matters: (1) the appeal of the denied H-1B petition with receipt number [REDACTED]; (2) the appeal of the denied H-1B petition with receipt number [REDACTED] and (3) the immigrant I-140 petition certified to

The AAO acknowledges receipt of [REDACTED] statement, which included a request to withdraw the appeals of the denied H-1B petitions. The request for the withdrawal of the appeals has been made part of the record. The petitioner is advised that no further action will be taken at this time by the AAO with regard to the appeals of the denied H-1B petitions (with receipt numbers [REDACTED]) except to dismiss them based on this withdrawal request.

Finally, while no further action will be taken with regard to the appeals of the denied H-1B petitions, the AAO notes that as immigration officers, USCIS Immigration Appeals Officers and Center Adjudications Officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the Secretary of Homeland Security's delegation of authority. See sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003).

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

Under the Board of Immigration Appeals (BIA) precedent, a material misrepresentation is 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 S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961). According to the federal courts, the general rule is that a concealment or misrepresentation is material if it "has a natural tendency to influence or was capable of influencing, the decision of the decision-making body to which it was addressed." *Kungys v. United States*, 485 U.S. 759, 770 (1988); *Monter v. Gonzales*, 430 F.3d 546 (2d Cir. 2005). The terms "fraud" and "misrepresentation" are not interchangeable. Unlike a finding of fraud, a finding of material misrepresentation does not require an intent to deceive or that the officer believes and acts upon the false representation. See *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. See *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

As noted above, the AAO acknowledges receipt of [REDACTED], which included a request to withdraw the appeals of the denied H-1B petitions and a declaration that the petitioner

the AAO with receipt number [REDACTED]. Please send any and all future correspondence directly to me. [REDACTED] is NOT currently represented by counsel.

did not want to pursue the nonimmigrant or immigrant petitions filed on behalf of the beneficiary. However, in light of the numerous and unresolved discrepancies in the record of proceeding, including a comparison of the information in the record to information provided by [REDACTED] as well as information provided in a sworn statement from the petitioner's claimed agent in [REDACTED], copies of which are hereby attached, USCIS reserves the right to make a formal finding of material misrepresentation or a finding of fraud in the future under separate proceeding.⁴

ORDER: The appeals are dismissed.

⁴ A USCIS finding of willful, material misrepresentation may lead to criminal penalties. *See* 18 U.S.C. §§ 1001, 1546; *see also U.S. v. O'Connor*, 158 F.Supp.2d 697 (E.D. Va. 2001). Knowingly and willfully making materially false or fraudulent statements or using false writings or documents may result in a fine and imprisonment of not more than 5 years. 18 U.S.C. § 1001. Furthermore, "[w]hoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact . . . [s]hall be fined under this title or imprisoned not more than . . . 10 years"