



U.S. Citizenship
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Services

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FILE: LIN-06-086-52209 Office: NEBRASKA SERVICE CENTER Date: NOV 15 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (“director”), denied the employment-based immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (AAO). On October 30, 2007, the petitioner requested that the appeal be withdrawn. The appeal will be dismissed based on its withdrawal with a separate finding of fraud.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a professional worker. The regulation at 8 C.F.R. § 204.5(I)(2), and Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1153(b)(3)(A)(ii), provides that a third preference category professional is a “qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.”

On September 10, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(8), this office issued a Request for Evidence (“RFE”), which provided notice to the petitioner advising of derogatory information indicating that the beneficiary’s listed education on Form ETA 750 misrepresented his qualifications. Specifically, the RFE provided:

Further, we note that Form ETA 750 lists that the beneficiary completed a Master of Computer Applications at the National Institute for Information Technology, New Delhi, India based on studies from July 1989 to December 1991. The evaluation provided on appeal completed by the Foundation for International Services Inc. provides that this diploma is equivalent to “completion of professional training program in the computer field from a private institution in the United States.” The evaluation does not conclude that it is equivalent to academic education, or a Master’s degree.

Willful misrepresentation of a material fact in these proceedings may render the beneficiary inadmissible to the United States. *See* INA Section 212(a)(6)(c), [8 U.S.C. 1182], regarding misrepresentation, “(i) 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.”

A material issue in this case is whether the beneficiary is qualified to perform the duties of the proffered position through meeting the education requirements of the position offered. The job offered requires a four-year bachelor’s degree. The beneficiary represented that he completed a Master’s degree relevant to the position.

Furthermore, a finding of misrepresentation may lead to invalidation of the Form ETA 750. *See* 20 C.F.R. § 656.31(d) regarding labor certification applications involving fraud or willful misrepresentation:

Finding of fraud or willful misrepresentation. If as referenced in Sec. 656.30(d), a court, the DHS or the Department of State determines there was fraud or willful misrepresentation involving a labor certification application, the application will be considered to be

invalidated, processing is terminated, a notice of the termination and the reason therefore is sent by the Certifying Officer to the employer, attorney/agent as appropriate.

Please address the foregoing issue related to potential misrepresentation.

In response, counsel submitted a letter on the petitioner's behalf, which was received on October 30, 2007, and requested that the appeal be withdrawn. Further, counsel provides related to the issue of misrepresentation:

The form itself requests that the Beneficiary give names and addresses of schools, colleges, and universities, including trade or vocational training facilities, and that he list any degrees or other certificates received. The information the Beneficiary provided was intended to convey that he had attended a post-baccalaureate training institute and had received a certification. It was not intended to convey that he had received the equivalent of a US masters level degree from an institution of higher education. Any incompleteness of the wording to the contrary on our part was inadvertent.

While the petitioner may withdraw the petition on behalf of the beneficiary, the finding of fraud will impact any other application that the beneficiary may have presently filed, or files at a later date. The regulation at 8 C.F.R. § 103.2(b)(15) provides: "Withdrawal or denial due to abandonment shall not itself affect the new proceeding; *but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.*" (Emphasis added.)

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.

By filing the instant petition and listing information on Form ETA 750 that would lead to a positive determination that the beneficiary had the required educational credentials, the beneficiary has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the beneficiary misrepresented his educational background, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue. While the petitioner has chosen to withdraw the instant appeal, this does not negate our finding that the beneficiary has sought to procure immigration benefits through fraud.

ORDER: The appeal is dismissed based on its withdrawal by the petitioner with a finding of fraud against the beneficiary.

FURTHER ORDER: The AAO finds that the beneficiary knowingly misrepresented his educational credentials in an effort to mislead Citizenship and Immigration Services on elements

material to his eligibility for a benefit sought under the immigration laws of the United States.