



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

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

In Re: 19976131

Date: MAR. 18, 2022

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a renewable energy company, seeks to permanently employ the Beneficiary as its Senior Sales Manager under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Texas Service Center denied the petition concluding the Petitioner did not establish that: (1) the Beneficiary was employed abroad in a managerial or executive capacity prior to his entry into the United States as a nonimmigrant; and (2) the Beneficiary would be employed in a managerial or executive capacity in the United States. In addition, the Director determined that the Petitioner willfully misrepresented a material fact.

On appeal, the Petitioner contends that the Director did not acknowledge assertions and evidence submitted in response to the notice of intent to deny (NOID) and failed to articulate the deficiencies in this evidence. The Petitioner asserts the Beneficiary would qualify as a manager in the United States and emphasizes that the Director incorrectly referred to his proposed “executive” capacity in the decision.¹ The Petitioner also states that the Director did not provide sufficient analysis to justify the determination that the Petitioner willfully misrepresented a material fact.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director’s decision and remand the matter for further consideration and entry of a new decision.

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

¹ Although the Petitioner maintained throughout the record of proceedings that it would employ the Beneficiary exclusively in a primarily managerial capacity in the United States, the Director instead determined that the Beneficiary did not qualify under the alternative classification of executive capacity, which is governed by different statutory and regulatory provisions and evidentiary requirements.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

The Director's finding of willful misrepresentation of a material fact appears to relate to the Beneficiary's employment abroad. A finding of willful misrepresentation of material fact against a petitioner or beneficiary requires the following elements:

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;
- The petitioner or beneficiary made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official.

See 8 USCIS Policy Manual J.2(B), <https://www.uscis.gov/policymanual>.

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that one willfully makes 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. at 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).

In the section of the decision addressing willful misrepresentation, the Director stated only that "in this case the beneficiary did not properly address the NOID" after providing a comprehensive overview of evidence it requested from the Petitioner in the NOID. However, the Director did not articulate how the Petitioner's response to the NOID was deficient or how its assertions represented willful and material misrepresentations to an authorized official of the United States government. The Director noted certain discrepancies in the record and in the Beneficiary's immigration history, but did not sufficiently analyze how these assertions and the submitted evidence represented a willful misrepresentation. Further, the Director's conclusion that the Petitioner willfully misrepresented a material fact while also stating that it was the "beneficiary" who did not properly address the NOID leaves substantial ambiguity as to whether the misrepresentation finding was being made against the Petitioner, the Beneficiary, or against both parties.

For these reasons, the Director's decision is withdrawn and the matter will be remanded for further consideration, which should include issuance of a new notice of intent to deny if the new decision will

include a finding of willful misrepresentation of a material fact. The Director may request any additional evidence considered pertinent to the new determination and any other issue.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.