



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

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

In Re: 19941718

Date: FEB. 16, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree)

The Petitioner, a provider of management services for clinical trials, seeks to permanently employ the Beneficiary as a marketing specialist. The company requests her classification under the second-preference, immigrant visa category for professionals holding advanced degrees or their equivalents. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This category allows a prospective U.S. employer to sponsor a noncitizen for lawful permanent residence to perform work requiring at least a master's degree or its equivalent.

After initially granting the filing, the Director of the Texas Service Center revoked the petition's approval. The Director concluded that the Petitioner did not demonstrate the Beneficiary's qualifying experience for the offered position, or her qualifying education for the job or the requested immigrant visa category. The Director also found that the Petitioner and Beneficiary willfully misrepresented her qualifications on the accompanying certification from the U.S. Department of Labor (DOL). On appeal, the Petitioner challenges only the Director's willful misrepresentation findings against it and the Beneficiary.¹

In these revocation proceedings, the Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of evidence.² *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record does not sufficiently support the Director's willful misrepresentation findings against the Petitioner and Beneficiary. As the Petitioner contests no other denial grounds, however, we will dismiss the appeal.

¹ By not contesting the other denial grounds, the Petitioner has "waived" those issues. *See Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

² State records show that the corporation that filed the labor certification application converted into a limited liability company (LLC) shortly before the application's certification. Under state law, the corporation "continues to exist" in the form of the LLC, which assumed the corporation's assets and liabilities. *See* Tex. Bus. Orgs. Code § 10.106(1-3). Thus, despite the change in organizational form, the LLC that filed this appeal is the Petitioner in this matter.

I. LAW

Immigration as an advanced degree professional generally follows a three-step process. First, a prospective employer must obtain DOL certification that: (1) there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and (2) the permanent employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit an approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F). Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(k)(3)(i)(B).

Finally, if USCIS approves a petition, a beneficiary may apply for an immigrant visa abroad or, if eligible, “adjustment of status” in the United States. *See* section 245(a)(1) of the Act, 8 U.S.C. § 1255(a)(1).

“[A]t any time” before a beneficiary obtains lawful permanent residence, USCIS may revoke a petition’s approval for “good and sufficient cause.” Section 205 of the Act, 8 U.S.C. § 1155. The erroneous nature of a petition’s approval justifies its revocation. *Matter of Ho*, 19 I&N Dec. at 590.

USCIS properly issues a notice of intent to revoke (NOIR) a petition’s approval if the un rebutted and unexplained record at the time of the NOIR’s issuance would have warranted the filing’s denial. *Matter of Esteime*, 19 I&N Dec. 450, 451 (BIA 1987). The Agency properly revokes a petition’s approval if a petitioner does not timely respond to a NOIR or the business’s timely response does not overcome all stated revocation grounds. *Id.* at 451-52.

II. ANALYSIS

USCIS approves a petition if “the facts stated in the petition are true” and a beneficiary qualifies for the requested immigrant visa category. Section 204(b) of the Act. A petition includes any supporting evidence - including a labor certification. 8 C.F.R. § 103.2(b)(1). Thus, USCIS cannot approve a petition if the facts stated on an accompanying labor certification are untrue.

Also, although a beneficiary’s inadmissibility does not directly affect a petition’s approvability,³ a finding that the noncitizen willfully misrepresented a material fact may render them inadmissible to the United States. *See* section 212(a)(6)(C)(i) of the Act. Misrepresentations are willful if they are “deliberately made with knowledge of their falsity.” *Matters of Valdez*, 27 I&N Dec. 496, 498 (BIA 2018) (citations omitted). A misrepresentation is material if it has a “natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed.” *Id.* (citation omitted).

³ *See Matter of O-*, 8 I&N Dec. 295, 297 (BIA 1959) (rejecting immigrant visa petition proceedings as a proper forum for determining substantive questions of admissibility).

The Director found that, on the accompanying labor certification, the Petitioner and Beneficiary willfully misrepresented material facts regarding the Beneficiary's claimed qualifying education and experience. The labor certification states the minimum requirements of the offered position of marketing specialist as a U.S. master's degree or a foreign equivalent degree in marketing and two years of experience "in the job offered" or in "any job with core duties involving marketing."⁴ Also, to qualify as an advanced degree professional, a beneficiary must have at least: a U.S. master's degree or a foreign equivalent degree; or a U.S. bachelor's degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(2) (defining the term "advanced degree").

On the labor certification, the Beneficiary attested that a Pakistani university awarded her a master's degree in marketing in 2008. The Petitioner submitted copies of two diplomas and accompanying course transcripts in her name from the university listed on the labor certification. One diploma indicates her receipt of a 2008 master of business administration (MBA) degree in marketing. The other reflects a 2006 bachelor of business administration degree (BBA) in marketing and finance.

The Beneficiary also attested that she gained nearly nine years of full-time, qualifying experience. She stated the following employment history:

- About four years, three months as chief executive officer of a clinical site management company in the United States, from September 2010 through the filing of the labor certification application in December 2014;
- About four months as a general manager at a retail electronics business in Pakistan, from July 2008 to December 2008; and
- About four years, four months as a marketing manager at another Pakistani retail business from March 2004 through June 2008.

The Director's NOIR alleges the following inconsistencies regarding the Beneficiary's claimed qualifications:

- On a labor certification accompanying a prior filing by a different petitioner, the Beneficiary attested that she began work for her purported U.S. employer in July 2009, not in September 2010 as listed on this petition's labor certification.
- The Beneficiary's claimed full-time employment in Pakistan from March 2004 through June 2008 overlaps with her claimed university studies from September 2004 through August 2008.
- The Beneficiary's father signed experience letters from her purported U.S. employer and her second Pakistani employer, suggesting that the documents are biased and unreliable.
- On a March 2005 application for a U.S. visitor's visa, the Beneficiary listed her "Present Occupation" as "Household," rather than as a marketing manager or student as suggested by the information on the labor certification.

⁴ Part H.14 of the labor certification, "Specific skills or other requirements," also indicates that qualifying experience must "include 3 months experience in any managerial or marketing job where the managerial or marketing duties involved marketing, or the oversight of marketing, of site management services to the offices of physicians."

- The Beneficiary stated on a supplement to her 2005 visa application that she received a 1997 BBA degree from a different Pakistani university than the one listed on the labor certification. The visa supplement also states her receipt of a MBA degree from the university listed on the labor certification in 1999.

A. The Petitioner's Alleged Misrepresentations

On appeal, the Petitioner argues that the accuracy and authenticity of the Beneficiary's credentials are "beyond the petitioner's knowledge or reasonable ability to know." The company states that the Beneficiary's educational documentation and experience letters appeared to be valid and correct, noting that an evaluator found her foreign education equivalent to a U.S. master's degree. The Petitioner states that it "is not and cannot be the guarantor of the beneficiary's education and work experience."

We agree. The record lacks evidence that the Petitioner knew that any of the Beneficiary's claimed credentials were false. The record therefore does not support the company's willful misrepresentation of her qualifications.

Also, the Director's NOIR does not allege any misrepresentations by the Petitioner. The NOIR asserts only falsehoods by the Beneficiary. A revocation can only be grounded on, and a petitioner need only respond to, factual allegations specified in a NOIR. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988); *see also* 8 C.F.R. § 205.2(b) (requiring a petitioner to receive an opportunity to offer evidence "in opposition to the grounds alleged for revocation of the approval").

For the foregoing reasons, the record does not support the Petitioner's willful misrepresentation of the Beneficiary's qualifications. We will therefore withdraw the Director's contrary finding.

B. The Beneficiary's Alleged Misrepresentations

Whether the Beneficiary willfully misrepresented her qualifications on the labor certification is a more difficult question. In response to the NOIR, the Petitioner submitted a copy of a 1998 diploma indicating the Beneficiary's receipt of a BBA degree from the Pakistani university omitted from the labor certification. In an affidavit, she stated that she attended this first university after high school "with the understanding that this was an accredited college from which I could later transfer credits." She said she went to the second university, the one listed on the labor certification, to complete the final two years of a bachelor's program but then learned that the first university had not been accredited. She said she had to complete additional coursework at the second university "to make up for" the prior, untransferable credits from the first university and that the second university "reissued" her BBA degree in 2006 and her MBA degree in 2008.

As the Director noted, the record lacks sufficient evidence or explanation regarding the second university's purported "reissuance" of the Beneficiary's degrees. Also, the 1998 date on her BBA diploma from the first university does not match the 1997 date she indicated on the 2005 U.S. visa application.

The Petitioner's NOIR response also included additional evidence of the Beneficiary's claimed qualifying experience. The company provided updated experience letters from her purported former employers. The updated letter from her first employer in Pakistan indicates the business's awareness of her university attendance during her employment. The letter states that the Beneficiary told the employer of her need to take morning and night courses to make up credits from the first, non-accredited university. Also, an updated letter from her second Pakistani employer seeks to bolster the reliability of the business's prior letter, which the Beneficiary's father signed. The updated letter states the business's employment of her father in a management position during her tenure and his prior authorization to verify her employment.

The Director's decision faults the Petitioner for not explaining why the two labor certifications list inconsistent employment dates for the Beneficiary at her second Pakistani employer. The NOIR, however, does not allege inconsistent employment dates at this business. As the Petitioner did not receive notice of this alleged inconsistency, we will withdraw the Director's finding regarding the employment dates. *See* 8 C.F.R. § 205.2(b) (requiring that a petitioner receive an opportunity to offer evidence "in opposition to the grounds alleged for revocation of the approval").

The evidence in the Petitioner's NOIR response, however, creates new inconsistencies regarding the Beneficiary's claimed experience. She attested that she worked for the first Pakistani employer from March 2004 through June 2008 and for the second from July 2008 to December 2008. The NOIR response, however, contains copies of monthly pay slips from the first employer for July 2008 through May 2009. Also, although the Beneficiary claimed to stop working for the second Pakistani employer in December 2008, the response includes evidence that the business employed her in 2009, including copies of a June 2009 pay slip and an August 2009 tax record. Further, as the Director noted, the updated letter from the Beneficiary's first Pakistani employer describes her employment as "30 to 40 hours per week." But the labor certification and the business's prior letters state her total weekly hours as 40.

The Petitioner has not resolved all the inconsistencies regarding the Beneficiary's claimed, qualifying experience. But the evidence does not indicate whether she willfully misrepresented her qualifying education and experience on the labor certification, or just carelessly listed her work and graduation dates and employment hours. Thus, the record does not sufficiently support the Beneficiary's willful misrepresentation of her qualifications on the labor certification. We will therefore withdraw the Director's contrary finding.

III. CONCLUSION

The record does not sufficiently support the willful misrepresentation findings against the Petitioner or Beneficiary. The Petitioner, however, has not challenged the other denial grounds, which remain effective. The petition's approval therefore remains revoked.

ORDER: The appeal is dismissed.