U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10445121

Date: JAN. 20, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, which operates a convenience store and gas station, seeks to employ the Beneficiary as its account manager. The Petitioner seeks to classify the Beneficiary under the third-preference, immigrant visa category for "skilled workers." *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director of the Texas Service Center denied the petition for abandonment in 2010. The Petitioner filed a motion to reopen, establishing that this denial had been in error. The Director denied the petition for a second time in 2013, concluding that the Petitioner had not established its ability to pay the Beneficiary's proffered wage, and that discrepancies in the record cast doubt on the Petitioner's claims regarding the Beneficiary's work history. The Petitioner appealed that decision, and we remanded the matter for a new decision that more fully considered those issues, as well as any other issues that review of the record might reveal. The Director denied the petition for a third time in December 2019, finding willful misrepresentation of material facts and determining that the Petitioner had not established that: (1) the Beneficiary has the experience required for the proffered position; (2) the job offer is bona fide; and (3) the Petitioner has been able to pay the proffered wage since the petition's priority date. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the finding of willful misrepresentation of material facts, as well as the Director's determination related to a bona fide job offer, but we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition (Form I-140) with U.S. Citizenship and

Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. ABILITY TO PAY THE PROFFERED WAGE

To be eligible for the classification it requests for the beneficiary, a petitioner must establish that it has the ability to pay the proffered wage stated on the labor certification. The Petitioner must establish this ability at the time the priority date is established[1] and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. 8 C.F.R. § 204.5(g)(2).

The priority date in this case is April 30, 2001, which is the date the Petitioner filed Form ETA 750, Application for Alien Employment Certification.[2] The proffered wage typed onto the labor certification reads "$30,000 per hr" (sic). This figure was changed, by hand, to $54,360 per year, in a DOL-acknowledged correction in February 2006, six months before DOL approved the labor certification in August 2006.

In determining a petitioner's ability to pay the proffered wage, USCIS first examines whether the beneficiary was employed and paid by the petitioner during the period following the priority date. A petitioner's submission of documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage for the time period in question, when accompanied by a form of evidence required in the regulation at 8 C.F.R. § 204.5(g)(2), may be considered proof of the petitioner's ability to pay the proffered wage.

If the Petitioner does not show that it has paid the Beneficiary a salary equal to or above the proffered wage from the priority date onward, USCIS will generally examine the net income and net current assets figures recorded on the petitioner's federal income tax return(s), annual report(s), or audited financial statement(s). If the net income or net current assets equals or exceeds the proffered wage, or the difference between the proffered wage and the amount paid to the beneficiary in a given year, then the petitioner would ordinarily be considered able to pay the proffered wage during that year.

USCIS may also consider the totality of the Petitioner's circumstances, including the overall magnitude of its business activities, in determining the Petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the petitioner's reputation within its industry, the overall number of employees, whether the beneficiary is replacing a former employee or an outsourced service, the amount of compensation paid to officers, the occurrence of any uncharacteristic business expenditures or losses, and any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

The Petitioner has submitted evidence including copies of some of its tax returns and IRS Forms W-2, Wage and Tax Statements, issued to the Beneficiary. The Petitioner has not paid the Beneficiary more

[1] The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. *See* 8 C.F.R. § 204.5(d).
[2] Form ETA 750 has since been replaced by ETA Form 9089, Application for Permanent Employment Certification.

than $48,000 per year, but the Director determined that the Petitioner's net income was sufficient to cover the shortfall from 2006 to 2009 and in 2011. Review of the Petitioner's 2010 tax return likewise shows sufficient net income.

The record does not contain the Petitioner's post-2011 tax returns. This, by itself, is a serious deficiency, because 8 C.F.R. § 204.5(g)(2) requires a petitioner to establish its ability to pay the proffered wage from the priority date until the beneficiary becomes a permanent resident, which has not yet happened. But the Petitioner has not established its ability to pay in earlier years, which the Director noted in the denial.

The Petitioner's tax returns and the Beneficiary's IRS Forms W-2 for 2001-2005 show the following amounts:

Year	Beneficiary's wages paid	Shortfall	Net Income	Net Current Assets
2001	Not applicable	$54,360	$126	None claimed[3]
2002	Not shown[4]	54,360	19,108	$12,445
2003	$18,000	36,360	16,662	15,550
2004	36,000	18,360	10,268	15,570
2005	36,000	18,360	10,999	16,025

Prior to the denial, the Petitioner submitted bank statements, and argued that the Director did not consider the Petitioner's cash on hand. But bank statements are not among the three types of evidence, listed in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. The same regulation indicates that bank records "*may* be submitted" as optional, supplemental evidence "in appropriate cases," but the Petitioner has not explained why the required primary documentation, such as tax returns, is not applicable or otherwise depicts an inaccurate financial picture of the petitioning employer. Also, bank statements show the amount in an account on a given date, and cannot show the sustained ability to pay a proffered wage. The Petitioner also has not established that the funds reported on its bank statements show additional available funds that were not reflected on its tax returns, such as the Petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that was considered in determining the Petitioner's net current assets.[5] We will not add the balances on the Petitioner's bank statements to its net income or net current assets.

The Petitioner also stated that it "owns the real property that has net equity values of $461,491.00." Real estate and buildings are reportable assets, but not *current* assets that can be readily converted to cash in order to pay the proffered wage. Even then, the Petitioner did not claim "Land" or "Buildings" as positive assets on its tax returns until 2011. The Petitioner does not explain how its property holdings establish that it was able to pay the full proffered wage as of the priority date in 2001.

[3] The Petitioner's appellate brief includes a table showing net current assets totaling $78,838 in 2001 and $78,763 in 2002, but the tax returns themselves do not show these figures.

[4] The Petitioner reported paying $2,490 in wages and salaries in 2002, but the Beneficiary did not claim any wages or salaries on his 2002 individual tax return.

[5] Cash is reportable as a current asset, but most of the Petitioner's tax returns do not list cash among the company's assets. On many of the returns, the only reported assets are in the form of inventory. The 2011 return shows $766 in cash.

After consideration of any wages paid, the Petitioner's tax returns do not show sufficient income or current assets to establish its continuing ability to pay the proffered wage from the priority date onward.

Beyond a petitioner's net income and net current assets, we may consider the factors such factors as the size, longevity, reputation, and growth of the business, and any uncharacteristic expenditures or losses. *See Matter of Sonegawa*, 12 I&N Dec. at 615. Here, however, the Petitioner has not shown that any of these other factors apply. The Petitioner has not demonstrated that the totality of its circumstances would overcome the deficiency in its ability to pay the proffered wage from 2001 to 2005. Also, as noted above, the Petitioner has not submitted any tax returns to account for the time period after 2011.

On appeal, the Petitioner's core argument is that, when the Form ETA 750 Part A was prepared in 2001, the proffered wage was only $30,000, and the amount did not increase until the Petitioner amended the labor certification in 2006. But DOL considered this change to be a "correction" to the initial wage on a document that has at least three other acknowledged errors, such as indicating that the Petitioner was an auto parts trader located in the Beneficiary's house. As noted above, the proffered wage was originally stated as $30,000 per *hour*, not per *year*.

The Petitioner cites no regulation, case law, or other authority that allows a petitioner to alter the proffered wage after filing an application for labor certification, such that the change is only effective from the time of the correction rather than the time of filing the application. The record shows that DOL did not approve the labor certification application when it showed the proffered wage as $30,000 per hour. The Petitioner does not show that it originally obtained a prevailing wage determination that would have permitted the Petitioner to set the proffered wage at $30,000 per year. DOL approved the labor certification with the specific acknowledgment that the Petitioner had corrected the proffered wage to $54,360 per year.

The Petitioner has not established that its wages paid, combined with net income or net current assets, were sufficient to pay the full, DOL-approved proffered wage before 2006. This, by itself, is sufficient grounds for denial of the petition and, therefore, dismissal of the appeal.

III. REQUIREMENTS FOR THE JOB OFFERED

To be eligible for classification as a skilled worker a beneficiary must have at least two years of training or experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B). A beneficiary must also meet the specific educational, training, experience, and other requirements of the labor certification underlying the petition. *Id.* All requirements must be met by the petition's priority date, which in this case is April 30, 2001. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

A. Requirements of the Labor Certification and the Beneficiary's Qualifications

The labor certification indicates that the proffered position requires two years of college education in business or a related subject, and two years of experience, either in the job offered, accounts manager, or in accounting. The Beneficiary holds a Bachelor of Commerce degree from the University of [redacted] Pakistan, which equates to two years of college. Eligibility, therefore, revolves around the

Beneficiary's employment experience. The Beneficiary must have met the job requirements as of April 30, 2001, when the Petitioner filed Form ETA 750. Any job experience after the priority date cannot serve to establish eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The duties of the offered position are listed as follows:

- Preparing all financial and management reports;
- Keeping all accounting records both on a manual and computerized system;
- Organizing staff within departments, cash and carry, housekeeping and maintenance;
- Handling of all cash and banking transactions;
- Account receivable and account payable;
- Preparing payroll and tax reports;
- Analyzing cash flow; and
- Preparing budgets and balance sheet and financial statements;

The original ETA Form 750 Part B, which the Beneficiary signed in April 2001, lists the following claimed employment experience:

Branch Manager	[redacted]	February 1980–December 1998
Account Manager		February 2000–present

Five years later, in July 2006, the Beneficiary crossed out the entry regarding [redacted] and added a supplemental rider showing a different employment history:

Branch Manager	[redacted]	January 1980–December 1998
Accountant		January 1999–February 2000
Owner/Accountant	[redacted][6]	February 2000–March 2002
Account Manager	[The petitioning entity]	July 2002-present

Further below, we will discuss the Director's conclusion that the conflicting employment histories amount to willful misrepresentation of a material fact. But first, we will address the question of how these claimed employment histories affect the Beneficiary's eligibility for the proffered position.

The Petitioner has not established that the Beneficiary's work for [redacted] is qualifying experience as an account manager or accountant.[7] The Petitioner must therefore establish that the Beneficiary accrued at least two years of experience as an account manager or accountant by the April 30, 2001 priority date. The Beneficiary's employment with the petitioning entity occurred after the April 2001 priority date and therefore cannot count toward the required experience.

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[6] The record contains variations of this name. For consistency, we use the business name as shown on licenses issued by authorities in [redacted] Georgia.

[7] A version of the Beneficiary's résumé in the record indicates that the Beneficiary's duties at [redacted] were essentially those of an accountant, but the employer's own letter does not corroborate this claim. Evidence relating to qualifying experience shall be in the form of letters from employers. 8 C.F.R. § 204.5(g)(1). A résumé does not meet this requirement. The Petitioner submitted the résumé in question 2007, and subsequent submissions have not pursued the claim that the Beneficiary worked as an accountant or account manager at [redacted]

An October 2002 letter from [redacted] human resources manager states that the company employed the Beneficiary as an accountant "from 01/99 thru 02/00," and that the Beneficiary "compl[ied] with all accounting regulations. [The Beneficiary] computerized our accounting and human resource functions." The letter provides no further details about the Beneficiary's claimed work at [redacted] and therefore it does not meet the requirement that an employment verification letter must include a specific description of the duties performed. *See* 8 C.F.R. § 204.5(g)(1). In a notice of intent to deny (NOID), the Director notified the petitioner this letter was insufficient as it lacked a specific description of the job duties performed by the Beneficiary.

Furthermore, the letter from [redacted] does not provide specific dates of employment, and therefore this period of employment could have ranged anywhere from just over 12 months (January 31, 1999 to February 1, 2000) to exactly 14 months (January 1, 1999 to February 29, 2000). Given the narrow 28-month window of time during which the Beneficiary had to accumulate 24 months of qualifying experience, this lack of detail is significant. A reference on appeal to the "Beneficiary's Self-Employment (2/1/2000–3/1/2002)" appears to indicate that the Beneficiary left [redacted] on February 1, 2000. The initial Form ETA 750B from 2001 does not show employment with [redacted] The Petitioner did not explain the omission.

The Director also noted that this letter was not consistent with the Beneficiary's individual federal income tax returns, which did not show that the Beneficiary received any wages in 2000 even though [redacted] employment letter claimed the Beneficiary was employed in January and February of that year. The Petitioner must resolve any inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). On appeal, the Petitioner did not address the Director's issues with this letter and the inconsistency with the Beneficiary's tax return. Instead, on appeal, the Petitioner resubmitted the same employment experience letter from [redacted] Group. Therefore, because of these unresolved inconsistencies, the [redacted] letter does not establish that the Beneficiary has two years of experience in the offered position or in the related occupation of accountant.

As noted above, the initial Form ETA 750B named [redacted] as a former employer. The Beneficiary acknowledges that although [redacted] filed a petition to classify him as an H-1B nonimmigrant, he never actually worked there, and for that reason [redacted] ultimately withdrew its nonimmigrant visa petition. Therefore, the Beneficiary accrued no qualifying experience there, and deleted the reference to [redacted] on the supplemental rider to Form ETA 750B.

Citing several of the issues described above, the Director concluded that the Petitioner had not adequately established that the Beneficiary had the required experience as an account manager or accountant as of the priority date. On appeal, the Petitioner asserts that the Beneficiary "was responsible for all financial matters" when he operated [redacted]

In a separate sworn declaration, the Beneficiary states that he "worked as an accountant at the [redacted] Group from January 1999 to February 2000," and "managed all the accounting matters while [he] was self-employed . . . from February 2000 to March 2002." This statement repeats prior claims without adding corroborated details or addressing issues raised by the Director.

The Beneficiary acknowledges that he owned the business that operated as [redacted] which would entail numerous aspects of management beyond accounting, and the Petitioner has not established the extent, if any, to which the Beneficiary delegated other more minor roles to other employees, if any. The record does not contain adequate evidence to establish that the Beneficiary worked there as an accountant or account manager, rather than in some other capacity with ancillary accounting responsibilities.

In 2007, the Beneficiary wrote a letter to verify his own past employment at [redacted] Among his claimed duties, the Beneficiary stated that he "[o]rganized staff within the department." The record does not establish the size of [redacted] staff, or show that the staff was organized into departments.

Since the letter was written by the Beneficiary and repeated the duties of the offered position from the labor certification, the Director's NOID requested that the Petitioner submit a new employment letter describing the Beneficiary's actual job duties and the time allotted to each duty as well as documentary evidence supporting the claims in the letter, including evidence that the Beneficiary's business employed sufficient staff to allow him to perform the duties of a full time accountant. The Petitioner's response did not address this request. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Therefore, the Beneficiary's letter about his claimed employment at [redacted] Food Mart does not establish that the Beneficiary has two years of experience in the offered position or in the related occupation of accountant. Also, less than two years elapsed from February 2000 to the priority date in April 2001. Therefore, the period of time claimed would amount to less than the required two years of full-time experience even if we were to accept the claim.

The record shows that the Beneficiary did not report any salary income on his personal income tax returns for 2000, 2001, and 2002. Instead, he reported business income from an unnamed sole proprietorship engaged in "grocery sales," presumably [redacted][8] On those tax returns, the Beneficiary did not report any wages among his business expenses. Thus, the tax returns argue against the existence of "staff" and "departments" at [redacted], and thus, by extension, they argue against the credibility of the Beneficiary's self-written description of his past employment there. A petitioner may submit a letter or affidavit that contains hearsay or biased information, but such factors will affect the weight to be accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted).

The Petitioner has not established that the Beneficiary possessed the required experience as an account manager or accountant as of the April 30, 2001 priority date, and this deficiency is a basis for denying the petition and dismissing the appeal.

B. Willful Misrepresentation of a Material Fact

The Director found that the Petitioner and the Beneficiary willfully misrepresented the Beneficiary's past experience. Such misrepresentation would be material in this proceeding because employment

[8] We note that the store was operated by the Beneficiary's corporation, and a corporation is not a sole proprietorship, even if the corporation has only one shareholder. A sole proprietorship, by definition, is unincorporated. *See* https://www.irs.gov/businesses/small-businesses-self-employed/sole-proprietorships.

experience is a factor that determines eligibility for the benefit sought in this proceeding. As a result of the finding of willful misrepresentation, the Director invalidated the labor certification under the provisions of 20 C.F.R. § 656.30(d).

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

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine that: 1) the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) the misrepresentation was willfully made; and 3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

In the 2013 denial notice, the Director stated that the Beneficiary and the Petitioner had falsely claimed that the Beneficiary worked for [redacted] in 2000 and 2001. The Director also noted that the Beneficiary incorporated the entity that operated [redacted] in May 1999, several months before he purportedly began working for [redacted] Group.

In our December 2015 remand order, we noted that the Director had *referred* to willful misrepresentation, but had made no formal finding with regard to the issue. We instructed the Director to make "a finding as to whether the DOL received the changes to the Beneficiary's work experience . . . before it stamped the Application for Alien Employment Certification as certified on August 14, 2006."

In response to the Director's NOID, issued in August 2019, the Petitioner maintained that the prior attorney who prepared the labor certification had listed [redacted] by mistake. The Petitioner asserted that the initialed dates on the ETA Form 750 show that the Petitioner and the Beneficiary made corrections to the form before its final submission to DOL for certification, and that this timely retraction demonstrates that the Petitioner and the Beneficiary did not act with fraudulent intent.

In the latest decision, issued December 2019, the Director found that the Petitioner and the Beneficiary had willfully misrepresented material facts regarding the Beneficiary's employment experience. The Director stated that the Petitioner had not established "the actual date the error was discovered, the date any changes were made, the process employed to make the DOL aware of the error, or any correspondence between the petitioner and DOL discussing the changes." The Director also observed that, while the corrections to the Petitioner's address and the proffered wage were stamped "Corrections Approved by DOL Regional Office," there are no such stamps on the changes to the Beneficiary's employment history. In the 2019 decision, the Director did not allege misrepresentation regarding the Beneficiary's 1999 incorporation of the company that operated [redacted]

On appeal, the Petitioner asserts that it the Beneficiary did not willfully misrepresent the Beneficiary's employment history on the labor certification, because the Beneficiary corrected the information "as soon as he found it" and "provided correct employment information [on Form] G-325A when he submitted the form." The Petitioner also maintains that the incorrect reference to [redacted] is not material, because the Beneficiary's experience at [redacted] "from February 2000 to March 2002" is sufficient to establish the required two years of experience. Regarding this last point, the priority date is April 30, 2001, and any experience after that date cannot establish eligibility.

Upon careful consideration, we conclude that the record is simply too ambiguous to support a finding of willful misrepresentation of a material fact, with the serious immigration consequences that arise from such a finding. Nevertheless, our withdrawal of the Director's finding of fraud or willful misrepresentation of a material fact should not be construed as a finding that we find the evidence submitted with this petition to be credible. As discussed elsewhere in this decision, there are numerous discrepancies in the record, which the Petitioner has not adequately resolved or explained.

There are serious questions, for example, regarding [redacted] That employer filed a nonimmigrant petition on the Beneficiary's behalf, but the Beneficiary never worked for [redacted] after that petition was approved. The record shows that the attorney who handled that nonimmigrant petition was aware that the Beneficiary never worked for the company, but the attorney nevertheless listed [redacted] as the Beneficiary's current employer when he prepared ETA Form 750 Part B. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As serious as these doubts are, we cannot conclude that they suffice to support a finding of willful misrepresentation of a material fact. We therefore withdraw the Director's finding to that effect, and we withdraw the invalidation of the labor certification that resulted from that finding.[9]

IV. BONA FIDE JOB OFFER

The Director determined that the Petitioner did not make a bona fide job offer to the Beneficiary. The Director based this determination on evidence that the Beneficiary has closer ties to the petitioning entity than the Petitioner has disclosed, and on discrepancies in the record.[10]

The lack of evidence to establish the Petitioner's ability to pay the proffered wage and the Beneficiary's required experience are sufficient to determine the outcome of the appeal. We withdraw the issue of the bona fide job offer.

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[9] While the record does not rule out the possibility of willful misrepresentation, it does not currently *support* such a finding with the degree of confidence that such a finding would require.

[10] We recognize that that the Director raised significant if somewhat speculative concerns. While the record is not sufficiently developed for purposes of this visa petition, the Director is not barred from further inquiry, investigation, or the development of questions for consular processing or adjustment of status proceedings. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959) (stating that the immigrant visa petition is not the appropriate stage of the process for questions regarding admissibility).

V. CONCLUSION

The record does not adequately support a finding of willful misrepresentation of a material fact, and we withdraw the determination that a bona fide job offer does not exist. But the Petitioner has not established its ability to pay the proffered wage of $54,360 per year as of the priority date and that the Beneficiary had two years of experience as an accountant or account manager by the priority date of April 30, 2001. Therefore, the Petitioner has not established eligibility for the benefit sought.

ORDER: The appeal is dismissed.