



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

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

In Re: 21985913

Date: SEP. 28, 2022

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary as a “database administrator” under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Texas Service Center Director denied the petition, stating that the Beneficiary did not work for the prior employer that filed the cap petition. The Director concluded that the Petitioner misrepresented the work assignment at the time of filing the instant petition, and made a finding of fraud. On appeal, the Petitioner submits a letter from its president and additional evidence, and asserts that it did not misrepresent the work assignment. Upon de novo review, we will withdraw the Director’s decision and remand the petition for further review of the record and a new decision.

Upon review, while we acknowledge the Director’s concerns regarding the Beneficiary not working for the prior employer and filing the instant petition to change employer, we note that the Director did not sufficiently explain the basis to support the finding of fraud. To find a willful and material misrepresentation of fact, an immigration officer must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. 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 Kai Hing Hui, 15 I&N Dec. 288, 289 (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 Healy and Goodchild, 17 I&N Dec. 22, 28 (BIA 1979). A “material” misrepresentation is one that “tends to shut off a line of inquiry relevant to the alien’s eligibility.” 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, they must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully

made; and 3) that 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.

Here, the Director concluded that the “work assignment . . . at the time of filing the instant petition . . . is a willful misrepresentation,” but the Director did not explain why it is willful misrepresentation and did not provide adequate analysis of the factors to support the finding of fraud. Further, the Director stated, “it is unlawful to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of the Act,” but the Director did not discuss which fraudulent documents, if any, the Petitioner submitted in support of the instant petition. Since the Director did not properly analyze the factors outlined above to make a finding of fraud, we will withdraw the Director’s finding of fraud. Further, the Director makes general conclusion stating that the Petitioner has not established eligibility for the requested classification and any requested status; however, the Director does not discuss in detail why evidence in the record is not sufficient to establish it. The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, the Director shall explain in writing the specific reasons for denial.

We note that since filing of the appeal, the Beneficiary’s cap petition was automatically revoked due to the prior employer’s request to withdraw its petition.

Since this is a petition that requests a change of employer, and an extension of stay from a cap petition, the Director should review the latest developments in the case to determine whether the Petitioner is eligible for the benefit requested and whether a finding of fraud or misrepresentation is warranted. If a finding of fraud or misrepresentation is warranted, the Director should provide proper analysis of the factors. The Director may request any additional evidence considered pertinent to the new determination and any other issues.

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