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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 17 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3).

PUBLIC COPY

ON BEHALF OF PETITIONER:

Self-represented.

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded to her for further consideration and action.

The petitioner is a law firm. It seeks to employ the beneficiary as a bilingual secretary. Accordingly, the petitioner filed the current petition to classify the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). The director determined that the beneficiary did not possess the required educational background, as stated on the Form ETA-750, Application for Alien Employment Certification. The director did not issue a request for evidence as the director concluded that the beneficiary was inadmissible based on the denial of two prior applications that had been denied with a finding of fraud.

On appeal, counsel for the petitioner submits a statement. The petitioner did not submit any new evidence in support of the appeal.

Section 203(b)(3) of the Act states, in pertinent part:

> (A) In general. - Visas shall be made available . . . to the following classes of aliens who are not described in paragraph (2):
>
> > (i) Skilled workers. - Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Regarding the required initial evidence, the regulation at 8 C.F.R. § 204.5(l)(3)(ii) states:

> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

As required by 8 C.F.R. § 204.5(l)(3)(i), the petitioner submitted an individual labor certification, Form ETA-750, which has been

endorsed by the Department of Labor. At block 14, the labor certification requires two years of college with a major field of study in "business administration" as the minimum level of education required for a worker to perform the job duties in a satisfactory manner. The labor certification also requires two years of experience in the offered job.

The director denied the petition, observing that the record did not contain evidence of the beneficiary's claimed education and experience. Specifically, the director noted that there was no documentary evidence of the beneficiary's college education or of her claimed experience as a bilingual secretary from 1975 to 1979. The director did not request this required initial evidence as the director determined that the beneficiary was inadmissible and that "[i]t would serve no useful purpose to send a request for evidence when the petition would be ultimately denied because the beneficiary is inadmissible."

On appeal, counsel for the petitioner asserts that the director should have requested the required evidence. Counsel also states that a number of the director's conclusions are immaterial. Although counsel states that the director should have requested the missing evidence, the petitioner did not submit the required evidence on appeal.

The regulation at 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence unless there is evidence of ineligibility in the record:

> If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. . . . Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, *the Service shall request the missing initial evidence*, and may request additional evidence, including blood tests.

(Emphasis added.)

In her decision, the director stated that the beneficiary is inadmissible due to fraud and willful misrepresentation of a material fact. The director based this conclusion on the fact that that the Bureau had previously denied an application filed by the beneficiary based on fraud and willful misrepresentation of a material fact. The director appears to have concluded that the beneficiary's inadmissibility constitutes "evidence of ineligibility" pursuant to 8 C.F.R. § 103.2(b)(8). To the

contrary, the beneficiary's inadmissibility relates to her ability to lawfully enter the United States after inspection. In addition to civil and criminal penalties, a finding of fraud or willful misrepresentation of a material fact may subject a nonimmigrant alien to removal under section 237(a)(1)(C)(i) of the Act and may place the beneficiary in a class of aliens ineligible to adjust status to that of a permanent resident based on an approved immigrant visa petition. However, a previous finding of fraud or willful misrepresentation, outside of the current petition, does not have a bearing on the fundamental elements of eligibility for an immigrant visa under the Act. In the present matter, the beneficiary's eligibility for the requested visa classification depends solely on the satisfaction of the requirements set out by the statute at section 203(b)(3)(A)(i) of the Act.

As the director incorrectly denied the immigrant visa petition without granting the petitioner the opportunity to submit the required initial evidence, the director's decision will be withdrawn. The petition will be remanded to the director so that she may request the required initial evidence. The director may request any other evidence relevant to the adjudication of the petition, including original documents pursuant to 8 C.F.R. § 103.2(a)(5).

After completing the review, and after affording the petitioner the opportunity to submit any additional evidence deemed necessary, the director shall enter a new decision which shall be certified to the AAO for review if the director finds that the petitioner is unable to meet the eligibility requirements.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.