



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 5829233

Date: SEPT. 03, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner seeks to permanently employ the Beneficiary as its general 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). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity. The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that (1) the Beneficiary would be employed in a managerial or executive capacity in the United States; (2) the Beneficiary had been employed in a managerial or executive capacity abroad; and (3) the Petitioner had the continuing ability to pay the proffered wage. 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 dismiss the appeal based on its withdrawal by the Petitioner. We will also enter a finding of willful misrepresentation of material fact against the Petitioner.

I. PROCEDURAL HISTORY AND WITHDRAWAL OF APPEAL

On January 29, 2020, we sent the Petitioner a notice of intent to dismiss (NOID). We indicated in the NOID that the Petitioner submitted two bank statements in support of a prior L-1A nonimmigrant visa petition on behalf of the Beneficiary.¹ We notified the Petitioner that U.S. Citizenship and Immigration Services (USCIS) spoke with a representative of the bank and confirmed that the submitted bank statements were altered and are not genuine. We noted that USCIS also received copies of the original bank statements from the bank. Alterations from the original statements included the account summary portions of each bank statement,² the number and types of deposits and credits, the number and types of withdrawals and debits, the number of items in the previous cycle, the number

¹ Receipt number

² For example, one altered one bank statement shows an ending balance of \$98,962.49 with a wire transfer of \$49,993.27 credited to the account that month. The actual account had an ending balance of \$5,777.11 that month with no wire transfers credited to the account. Further, another altered bank statement shows an ending balance of "\$1,43,858.84" [sic] with a wire transfer of \$45,006.73 credited to the account that month. The actual account had an ending balance of \$1,500.97 that month with no wire transfers credited to the account.

of days in the cycle, and the average and daily ledger balances. The altered bank statements submitted by the Petitioner also omitted the checks written and copies of those checks, which were included with the original statements provided by the bank.

The record in this case contains the same two altered bank statements that were included with the Petitioner's L-1A nonimmigrant visa petition for the Beneficiary. The Petitioner also submitted two additional statements containing altered account numbers, and copies of checks containing altered account numbers. The alterations are facially apparent as the [describe changes, font discrepancies, tonal changes, etc.]. Further, the Petitioner submitted wire transfer statements which purportedly show transfers into its bank account from the Petitioner's purported foreign parent company. The altered bank statements submitted by the Petitioner also indicate that those wire transfers occurred. However, the original bank statements that USCIS received from the bank show that no such wire transfers were ever made.

In these proceedings, the Petitioner must establish its ability to pay the proffered wage as of the priority date continuing until the Beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner asserts that it has the ability to pay the wage based on the submitted bank documentation. The Petitioner must also establish that it has a qualifying relationship with the Beneficiary's foreign employer. To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See section 203(b)(1)(C) of the Act; see also 8 C.F.R. § 204.5(j)(2). The Petitioner asserts that it is wholly owned by a company in India and that the Indian company invested \$251,896.04 into the Petitioner by wire transfers into the Petitioner's U.S. bank account.

The altered bank statements, checks, and wire transfer statements raise the question of whether the Petitioner willfully misrepresented material facts regarding its ability to pay the proffered wage, and the foreign parent company's investment in and ownership of the Petitioner, by submitting fraudulent documentation. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. See *id.* We notified the Petitioner in the NOID that we intended to dismiss its case and enter a finding of fraud or willful misrepresentation against it that based in part on this derogatory information.³ We also stated that the Petitioner may submit additional evidence to rebut this information. 8 C.F.R. § 103.2(b)(16)(i).

³ Immigration officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the delegation of authority of the Secretary of the U.S. Department of Homeland Security (DHS). See sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003). With regard to immigration fraud, the Act provides immigration officers with the authority to administer oaths and consider evidence, and it further provides that any person who knowingly or willfully gives false evidence or swears to any false statement shall be guilty of perjury. Section 287(b) of the Act, 8 U.S.C. § 1357(b). Additionally, the Secretary of DHS has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud; make recommendations for prosecution; and take other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I).

In a response letter dated February 26, 2020, the Petitioner requested to withdraw the appeal and the underlying petition associated with the above-referenced Form I-290B, Notice of Appeal or Motion. We acknowledge the Petitioner's withdrawal of its Form I-290B. A withdrawal may not be retracted and may not be refused. 8 C.F.R. § 103.2(b)(6); Matter of Cintron, 16 I&N Dec. 9 (BIA 1976). As USCIS has already issued an unfavorable decision on the petition, it may not be withdrawn. 8 C.F.R. § 103.2(b)(6). Instead, we construe the Petitioner's letter solely as a request to withdraw its appeal.

II. WILLFUL MISREPRESENTATION OF MATERIAL FACT

While a request for withdrawal of the appeal precludes a decision on the merits, a withdrawal does not prevent us from entering a separate finding of fraud or willful misrepresentation of material fact where the Petitioner or the Beneficiary is found to have attempted to procure a visa through fraud or willful misrepresentation of material fact. We will enter a finding of willful misrepresentation of material fact against the Petitioner in this case.

A finding of willful misrepresentation of material fact against a petitioner requires the following elements:

- ∑ The petitioner procured, or sought to procure, a benefit under U.S. immigration laws;⁴
- ∑ The petitioner made a false representation;⁵
- ∑ The false representation was willfully made;⁶
- ∑ The false representation was material;⁷ and
- ∑ The false representation was made to a U.S. government official.⁸

See 8 USCIS Policy Manual J.2(B), <https://www.uscis.gov/policymanual>.; see also Matter of M-, 6 I&N Dec. 149 (BIA 1954); Matter of Kai Hing Hui, 15 I&N Dec. 288 (BIA 1975).

Here, the Petitioner's actions rise to the level of willful misrepresentation of material fact as they meet all of the required elements. The Petitioner submitted altered bank statements, checks, and wire transfer statements in an effort to procure a visa for employment of the Beneficiary under the first preference immigrant classification for multinational executives or managers. See section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). Further, the Petitioner falsely and willfully represented that the altered documents were genuine, and the documents are material to the Petitioner's ability to pay the proffered wage and the foreign parent company's investment in and ownership of

⁴ See 8 USCIS Policy Manual, *supra*, at J.3(B).

⁵ A misrepresentation is an assertion or manifestation that is not in accordance with the true facts. A false representation may be made in oral interviews, written applications, or by submitting evidence containing false information. See 8 USCIS Policy Manual, *supra*, at J.3(C); see also Legacy INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991).

⁶ See 8 USCIS Policy Manual, *supra*, at J.3(D). 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)).

⁷ A material misrepresentation is a false representation concerning a fact that is relevant to the petitioner's eligibility for an immigration benefit. See 8 USCIS Policy Manual, *supra*, at J.3(E). A material misrepresentation is one that "tends to shut off a line of inquiry relevant to" eligibility. Matter of Ng, 17 I&N Dec. 536, 537 (BIA 1980).

⁸ See 8 USCIS Policy Manual, *supra*, at J.3(F); see also Matter of Y-G-, 20 I&N Dec. 794, 796 (BIA 1994).

the Petitioner. Additionally, the Petitioner's submission of altered documents containing false information to USCIS constitutes a false representation to a government official.

Thus, in addition to dismissing the appeal, we also enter a finding of willful misrepresentation of material fact against the Petitioner. This finding of willful misrepresentation of material fact shall be considered in any future proceedings involving the Petitioner.

III. RETRACTION

The Petitioner's request to withdraw the appeal cannot be considered a timely and voluntary retraction of the Petitioner's false testimony in this case. See *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960).⁹ For a retraction to be effective, it must be done "voluntarily and without prior exposure of [the] false testimony." *Matter of R-R-*, 3 I&N Dec. at 827; see *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that recantation of false testimony one year after the event, and only after it, became apparent that the disclosure of the falsity of the statements was imminent, was not voluntary or timely). There has been no acknowledgement of the false testimony on the part of the Petitioner, nor a timely and voluntary correction of it. See *Matter of M-*, 9 I&N Dec. at 119.

Counsel's request to withdraw the appeal following receipt of our NOID, without comment or evidence submitted to rebut the false testimony, does not have the effect of a recantation. As such, the Petitioner's request to withdraw the appeal does not preclude us from entering a finding of fact on the record, separate and apart from a decision on the merits, based on an attempt to procure a visa for employment of the Beneficiary under the first preference immigrant classification by willful misrepresentation of a material fact.

Based on the foregoing, we will dismiss the appeal and enter a finding of willful misrepresentation of material fact against the Petitioner.

ORDER: The appeal is dismissed based on its withdrawal by the Petitioner.

⁹ The effect of a timely retraction is that the misrepresentation is eliminated as if it had never happened. *Id.*