



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

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

In Re: 23096704

Date: MAY 9, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner seeks to permanently employ the Beneficiary as an operator manager under the first preference immigrant classification for multinational executives or managers. *See* 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 a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that: (1) it has a qualifying relationship with the Beneficiary's foreign employer; (2) the Beneficiary was employed abroad in a managerial or executive capacity for at least one year in the three years prior to the filing of this petition; (3) the Beneficiary would be employed in the United States in a managerial or executive capacity; (4) the Petitioner had the ability to pay the Beneficiary's proffered wage since the date of filing this petition; and (5) the Petitioner and its foreign affiliate have been doing business. The Director also entered a separate finding of willful misrepresentation of a material fact against the Petitioner and the Beneficiary. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal based on its withdrawal by the Petitioner, and affirm the Director's finding that the Petitioner and Beneficiary willfully misrepresented material facts.

I. PROCEDURAL HISTORY AND WITHDRAWAL OF APPEAL

The Petitioner stated on the Form I-140, Immigrant Petition for Alien Workers, that it was a school bus and shuttle services company established in 2017 with 10 employees and a gross annual income of \$82,000. The Petitioner claimed that it would employ the Beneficiary in the position of "operator manager" at the rate of \$11.00 per hour. The Petitioner also submitted corporate documentation from

the State of Georgia demonstrating that the Beneficiary was one of the Petitioner's organizers and members.¹

In addition to submitting copies of the Beneficiary's personal tax returns, the Petitioner also submitted statements in support of the petition which were signed by the Beneficiary. These statements indicated that she was the Petitioner's operator manager, and that the Petitioner is "a corporate entity and subsidiary that specializes in the development and marketing of Innovative Services that will be sales marketed and distributed by our entity and subsidiary within the United States."

The Director issued a notice of intent to deny (NOID), observing that the Petitioner had provided an overly general description of the nature of its business, and found that the initial evidence was insufficient to establish that the Petitioner was eligible to employ the Beneficiary under the first preference immigrant classification for multinational executives or managers. In addition to outlining the specific evidentiary deficiencies, the Director noted numerous material omissions and inconsistencies in the evidence submitted to establish the Petitioner's organizational structure, business activities, staffing levels, and financial status. Specifically, the Director observed that in addition to submitting no evidencing identifying its claimed foreign parent or the Beneficiary's qualifying employment abroad, online record searches showed no results for the Petitioner and revealed that the Petitioner's business address was residential, therefore raising questions regarding the existence of the petitioning entity and its ability to do business as a transportation company.

Regarding the Beneficiary, the Director noted that she indicated on her Form I-485, Application to Register Permanent Residence or Adjust Status, that she had last entered the United States without inspection in 1999. The Director further observed that her personal U.S. tax returns for the years 2007 through 2016 indicated that she had been employed as a housewife, cook, homemaker, and was also self-employed, contradicting her claim on that same form that she had been employed by the Petitioner in a managerial capacity since May 2017.

The Director advised the Petitioner that, based on the inconsistencies and omissions in the submitted evidence, it was reasonable to question whether the Petitioner and Beneficiary misrepresented material facts regarding the Beneficiary's employment and the Petitioner's employees, staffing levels, and the nature and scope of its operations. The Director informed the Petitioner of the potential consequences of a finding of willful misrepresentation of a material fact and requested the Petitioner submit any evidence it deemed appropriate to establish its eligibility for the benefit sought and to rebut the derogatory information outlined in the notice.

The Petitioner failed to respond to the NOID. Consequently, the Director denied the petition for abandonment as well as for cause, noting that the Petitioner had not satisfied any of required elements for this classification.² The Director also made a finding that the Petitioner and Beneficiary willfully misrepresented material facts.

¹ The Petitioner checked box 1.b. in Part 5 of the Form I-140, Additional Information About the Petitioner, indicating that the petition was filed as a "self" petition.

² A petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons if a petitioner does not respond to a request for evidence or a notice of intent to deny/dismiss by the required date. 8 C.F.R. § 103.2(b)(13)(i). In addition to denying the petition for cause, the Director also summarily denied the petition as abandoned based on the Petitioner's failure to respond to the NOID.

On appeal, the Petitioner requests to withdraw “[the] I-140 filing.” 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 U.S. Citizenship and Immigration Services (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. The Petitioner’s request will be granted and the appeal will be dismissed based on that withdrawal.

II. WILLFUL MISREPRESENTATION OF MATERIAL FACT

The remaining issue to be addressed is the Director’s finding that the Petitioner and the Beneficiary willfully misrepresented material facts. For the reasons set forth below, we will affirm the Director’s finding of willful misrepresentation of material fact against the Petitioner and Beneficiary in this case.

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

- The petitioner or beneficiary procured, or sought to procure, a benefit under U.S. immigration laws;³
- The petitioner or beneficiary made a false representation;⁴
- The false representation was willfully made;⁵
- The false representation was material;⁶ and
- The false representation was made to a U.S. government official.⁷

See generally 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).

On appeal, counsel for the Petitioner asserts that the Beneficiary, an organizer/member of the Petitioner and the signatory on the Form I-140, “was scammed by a *notario* or ‘attorney’ in Florida whom she believed to be helping her pursue a legal, truthful, and viable employment based green card through a registered family business in Florida.” Counsel further states that the Beneficiary “unwisely and naively signed her I-140 forms without reviewing them.”

Counsel also submitted an affidavit from the Beneficiary, where she states that she and her family were advised to create a corporation in Georgia by an unidentified person whom they believed to be an attorney. She claims that she did not know the requirements for first preference immigrant classification for multinational executives or managers, and acknowledges that she signed her Form

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

⁴ 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 generally* 8 USCIS Policy Manual, *supra*, at J.3(C); *see also* Legacy INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991).

⁵ *See generally* 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)).

⁶ A material misrepresentation is a false representation concerning a fact that is relevant to the petitioner’s eligibility for an immigration benefit. *See generally* 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).

⁷ *See generally* 8 USCIS Policy Manual, *supra*, at J.3(F); *see also* *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).

I-485 and the Form I-140 on behalf of the Petitioner without knowing their contents due to her limited English. She concedes that the forms contained false information and acknowledges that as the Beneficiary of the Form I-140 petition she is not eligible for the requested classification. She further claims that subsequent attempts to contact the “attorney” that assisted in preparing her application and petition were unsuccessful.⁸

A. The Petitioner’s Willful Misrepresentation of a Material Fact

The Director determined that the Petitioner falsely and willfully represented its business operations, noting that it provided no corroborating evidence to demonstrate that it operated as a provider of school bus and shuttle services with 10 employees and a gross annual income of \$82,000. The Director further determined that the Petitioner falsely and willfully misrepresented that the Beneficiary was employed in a qualifying capacity abroad by a related foreign employer and that she was employed as the Petitioner’s operator manager.

Here, the Petitioner’s actions rise to the level of willful misrepresentation of material facts as they meet all of the required elements. The Petitioner submitted a Form I-140 petition, signed by the Beneficiary in her capacity as operator manager, with supporting documentation in an effort to procure a visa for the Beneficiary’s employment 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 willfully made the misrepresentation. The Petitioner signed the Form I-140, certifying under penalty of perjury that the petition and the evidence submitted with it was true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of Form I-140, at part 8, required the Petitioner to make the following affirmation: “I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” The presence of the Beneficiary’s signature on the statement, in her capacity as operator manager of the Petitioner, creates a strong presumption that she knew its contents and assented to it. *See Matter of A.J. Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). On the basis of this affirmation, made under penalty of perjury, we conclude that the Petitioner willfully and knowingly made the misrepresentations. Additionally, the Petitioner’s submission of a Form I-140 petition containing false information constitutes a false representation to a government official. The Petitioner took legal responsibility for the truth and accuracy of any evidence submitted in support of the petition. We agree with the Director’s determination that the Petitioner made a willful misrepresentation of material fact to USCIS.

B. The Beneficiary’s Willful Misrepresentation of a Material Fact

The Director determined that the Beneficiary willfully misrepresented the existence and operation of the Petitioner, as well as her claimed foreign employment, the proposed job offer, and her current employment in the capacity of operator manager due to the contradictory information presented and lack of corroborating documentation regarding her and prior and current work experience and the Petitioner’s operations. The Director pointed to statements contained in the Beneficiary’s Form I-485, filed concurrently with the Form I-140 and signed under penalty of perjury, where she indicated that

⁸ Neither the Petitioner nor the Beneficiary submit any documentation, such as agreements, correspondence, evidence of payments, etc. demonstrating a relationship with this unidentified individual.

she last entered the United States without inspection in 1999 and had been employed by the Petitioner in a managerial capacity since May 2017.

On appeal, the Beneficiary concedes in her affidavit that she, along with her husband and brother, established the Petitioner on the advice of an unidentified individual in order to pursue a green card. She acknowledges that she never received a salary from the Petitioner and that her full-time job is cleaning houses. She further acknowledges that the Petitioner had no business plan.

The Beneficiary's false attestation on the Form I-140 regarding her employment in the capacity of operator manager with the Petitioner and in her signed statements submitted in support of the Form I-140 petition were not correct and constitute false representations. The Beneficiary further acknowledges that she filed these documents in an attempt to procure a benefit under U.S. immigration laws.

The Beneficiary also willfully misrepresented material facts regarding her employment with the Petitioner. The Beneficiary signed the Form I-140 under penalty of perjury as the Petitioner's operator manager. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). The presence of the Beneficiary's signature creates a strong presumption that she knew its contents and assented to it. *See Matter of A.J. Valdez*, 27 I&N Dec. at 499. As noted by the Director, the Beneficiary's claim that she was employed by the Petitioner in a managerial position since May 2017 is contradicted by her U.S. tax returns, and her affidavit on appeal confirming that she never worked for or received a salary from the Petitioner further contradicts this claim. In this way, the Beneficiary directly participated in the preparation and submission of documents that convey the false impression that she was employed by the Petitioner as its operator manager and was authorized to file the I-140 petition on her own behalf.⁹

Finally, the false representation is material to the Beneficiary's eligibility. The misrepresentation regarding the Beneficiary's employment with the Petitioner, in a capacity she claims was managerial in nature, on the Form I-140 and in her signed statements submitted in support of the Form I-140 is material to whether she meets the minimum requirements of the offered position. These misrepresentations cut off a potential line of inquiry regarding her claimed employment history and experience. *See Matter of Ng*, 17 I&N Dec. at 537.¹⁰

Accordingly, we agree with the Director's determination that the Beneficiary made a willful misrepresentation of material fact on the Form I-140 petition and supporting documents. This finding of willful misrepresentation shall be considered in any future proceeding where the Beneficiary's admissibility is an issue.

⁹ Moreover, as the "Preparer" section on the Form I-140 was left blank, there is no indication that the petition was prepared by another individual as asserted by the Beneficiary.

¹⁰ Moreover, because USCIS rejects benefit requests bearing improper signatures, her false representation that she was employed by the Petitioner and thus authorized to sign the I-140 on its behalf precluded further investigation into whether the Form I-140 petition was properly filed by an individual with the authority to legally bind the Petitioner. *See generally* 1 *USCIS Policy Manual* B(3), <https://www.uscis.gov/policy-manual>.

III. CONCLUSION

Based on the foregoing, we will dismiss the appeal and affirm the Director's finding of willful misrepresentation of a material fact against the Petitioner and the Beneficiary.

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