



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

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

In Re: 23069678

Date: DEC. 19, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree)

The Petitioner seeks to employ the Beneficiary as a computer systems analyst under the second-preference (EB-2), immigrant classification for members of the professions holding advanced degrees or equivalents. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary met the minimum work experience required for the position. The Director also determined that the Petitioner did not demonstrate that it made a bona fide job offer to the Beneficiary. In addition, the Director concluded that the Petitioner and the Beneficiary had both willfully misrepresented material facts for the purpose of obtaining an immigration benefit. 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.

On appeal, the Petitioner does not specifically contest the Director’s conclusion that it did not demonstrate that the Beneficiary met the minimum work experience required for the position or that it did not establish it submitted a bona fide job offer to the Beneficiary. For instance, the Petitioner states on appeal that it is “asking only that the finding of fraud or willful misrepresentation be overturned,” further noting that the Director “evaluated [the Beneficiary’s] experience differently and came to a different conclusion.” Therefore, the only issue before us on appeal is whether the Director correctly concluded that the Petitioner and Beneficiary willfully misrepresented material facts.

In concluding that the Petitioner and the Beneficiary willfully misrepresented material facts, the Director pointed to an expert opinion submitted by the Petitioner. The Director stated that in a previous notice of intent to deny it notified the Petitioner they had discovered that a professor who submitted an expert opinion had fabricated his credentials. The Director determined that since the Petitioner had attested to the accuracy of the materials submitted with the petition, including the expert opinion

drafted by an individual who had fabricated their credentials, that this represented a willful misrepresentation of a material fact. The Petitioner contends that it did not willfully misrepresent material facts because it did not have knowledge of the expert's misrepresentations related to his credentials. The Petitioner asserts that it had an honest belief that the expert was qualified and relied on a contractor for the opinion, who it reasonably believed would confirm the expert's claimed credentials. The Petitioner further indicates that the Beneficiary had no knowledge of the falsity of the expert's credentials.

To make a finding of willful misrepresentation of a material fact in visa petition proceedings, an immigration officer must determine: 1) the person procured, or sought to procure, a benefit under U.S. immigration laws; 2) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 3) that the misrepresentation was willfully made; and 4) 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. 288 (BIA 1975); *See generally* 8 *USCIS Policy Manual* J.2(B), <https://www.uscis.gov/policymanual>.

A willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. *Parlak v. Holder*, 578 F.3d 457 (6th Cir. 2009). For a misrepresentation to be found willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). The misrepresentation must be made with knowledge of its falsity. *Id.* at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we “closely scrutinize the factual basis” of a finding of inadmissibility for fraud or misrepresentation because such a finding “perpetually bars [a noncitizen] from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

Upon review, we agree with the Petitioner's contentions on appeal with respect to willful misrepresentation and we will withdraw the Director's determination that it and the Beneficiary willfully misrepresented material facts. The Director did not sufficiently analyze how the Beneficiary willfully misrepresented materials facts, namely, how he had knowledge of the expert falsifying his credentials and willfully submitted this false information. Likewise, the Petitioner has sufficiently established that it had no knowledge of the inaccuracy of the expert's credentials when it submitted his letter.

Therefore, for the foregoing reasons, we will withdraw the Director's determination that the Beneficiary and the Petitioner willfully misrepresented material facts. However, since this is the Petitioner's only requested relief with respect to the appeal, we will otherwise affirm the Director's denial of the petition as to the other grounds and dismiss the appeal.

ORDER: The appeal is dismissed.