U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-C-&G-, INC.

DATE: AUG. 16, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a convenience store and gas station, seeks to employ the Beneficiary as a store manager. It requests classification of the Beneficiary as a skilled worker under the third preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary meets the experience requirements for the offered job; or that the Petitioner is offering the Beneficiary full-time, permanent employment. The Director also entered a finding of fraud and willful misrepresentation against the Petitioner.

On appeal, the Petitioner submits additional evidence and asserts that the Director ignored independent, objective evidence of the Beneficiary's prior employment, and that the Beneficiary meets the experience requirements for the offered job. The Petitioner also asserts that it is offering the Beneficiary full-time, permanent employment. The Petitioner further asserts that it did not fraudulently or willfully misrepresent material facts in this case.

Upon *de novo* review, we will dismiss the appeal.

I. THE EMPLOYMENT-BASED IMMIGRATION PROCESS

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is July 29, 2002. *See* 8 C.F.R. § 204.5(d). The current DOL regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications filed on or after that date. However, the labor certification application in this case was filed prior to March 28, 2005, and is governed by the prior regulations.

certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national applies for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. THE BENEFICIARY'S EXPERIENCE

The Director determined that the Petitioner did not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date. A beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12); *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

In this case, the labor certification requires two years of experience as a store or retail store manager. Regarding the experience requirement, the labor certification states that the Beneficiary qualifies for the offered position based on experience as a full-time manager of "[redacted][2] in [redacted] Oklahoma from May 2000 to June 2001; and as a full-time manager with [redacted][3] in [redacted] India from 1991 to May 2000. Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. *See* 8 C.F.R. § 204.5(l)(3).

With the petition, the Petitioner submitted a letter from [redacted] [*sic*]" dated July 4, 2002, attesting to the Beneficiary's experience as a store manager from May 1991 to May 2000. The letter is signed by the President of the company, but the President's name is not listed. The letter states that the Beneficiary dealt with supplies and customers, and processed all banking deposits/financial activities. It states that he supervised 12 employees. The letter has a [redacted] logo in the upper left corner, but does not indicate any affiliation with [redacted]

The Petitioner also submitted a letter dated April 5, 2001, from [redacted] located at [redacted] OK [redacted]" The letter attests to the Beneficiary's experience as a store manager from June 2000 to July 2001. The letter is signed by the President of the company, but the President's name is not listed. The letter states that the Beneficiary dealt with supplies and customers, and processed all banking deposits/financial activities. It states that he supervised two employees.

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[2] The name of the business varies throughout the record, including, but not limited to, [redacted] and [redacted] The correct name of the business is not clear.

[3] The name of the business is spelled differently throughout the record. It appears that the correct spelling is [redacted]

In a notice of intent to deny (NOID), the Director noted that the two letters contained the exact same wording except for the name of the company and the number of personnel supervised. The Director also noted the following inconsistencies regarding the letter from

- The letterhead misspelled the company's name; and
- The letter misspells the company's address and lists an incorrect phone number.

The Director noted additional inconsistencies regarding the letter from

- The address given for the company does not exist;
- The letter lists the dates of employment as June 2000 to July 2001, yet the letter is dated April 5, 2001, which is three months prior to the purported end date of employment; and
- The phone number provided has been disconnected.

The Director also noted an inconsistency regarding the Beneficiary's Form G-325A, Biographic Information, submitted with his adjustment of status application. He indicated that the Beneficiary's address is listed as Texas from June 2000 to October 2000, yet the Beneficiary's place of employment is listed as Oklahoma from May 2000 to June 2001. This would place the Beneficiary over 450 miles from his place of employment for five months. These inconsistencies cast doubt on the veracity of the Beneficiary's claimed employment. The Petitioner must resolve any inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the NOID, the Petitioner stated that the incorrect information provided on the letter from resulted from typos. It provided an updated experience letter dated May 15, 2009, from [4] a business card for corporate income statements and tax returns for [5] the Beneficiary's personal tax returns for 1991 through 2000; telephone book listing for advertisements for dealership certificate for and photographs of It asserted that the Beneficiary served as manager of from May 1991 to May 2000, where he performed duties substantially similar to the duties of the offered job.

[4] The updated letter from is written on letterhead that gives a different spelling of the company's name and address, and lists a different telephone number than those listed in the original letter submitted with the petition. The updated letter lists the President's name, and has a logo in the upper left corner indicating that it is an authorized dealer for

[5] Many of the copies are illegible and/or are not properly translated. A full English language translation must accompany any document containing foreign language. 8 C.F.R. § 103.2(b)(3). The translator must certify that the translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of many of the corporate income statements and tax returns for , we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

In response to the NOID, the Petitioner further stated that the incorrect information provided on the letter from [redacted] resulted from typos and that the telephone number had been disconnected. It stated that the Beneficiary purchased [redacted] on [redacted] 2000, and that the Beneficiary operated the business as a sole proprietorship.[6] It provided an affidavit from the Beneficiary; a purchase agreement detailing the Beneficiary's purchase of a grocery store located at [redacted] Oklahoma, on [redacted] 2000; a voided check and checking account statement; a business license; a beer license; a sales tax permit; a cigarette license; a county beverage permit; correspondence from the [redacted] utility bills; copy of a [redacted] card; email correspondence from [redacted] and an internet restaurant listing. It asserted that the Beneficiary served as owner/manager of [redacted] from December 2000 through April 2001, where he performed duties substantially similar to the duties of the offered job.

Further, in response to the NOID, the Petitioner also provided an amended Form G-325A, together with documents supporting the Beneficiary's residential history. The amended Form G-325A changed the Beneficiary's residence during the last five years; changed the dates of his last residence outside of the United States; expanded the names, addresses, and dates of employment for the Beneficiary's prior employers for the last five years; and expanded the address and dates of employment for his last employer abroad.[7] The Beneficiary did not date the amended Form G-325A.

In his decision, the Director noted the similarities between the two original experience letters submitted with the petition. He stated that the letters appear to have been written by the same person. In addition, the Director indicated that the experience letters did not show that the Beneficiary had performed most or all of the job duties listed on labor certification. The Director stated that it was unlikely that two different organizations, a gas station/grocery store and a refrigerator repair center, would have the exact same job duties for the Beneficiary.[8]

Further, the Director noted the inconsistencies in the record regarding the Beneficiary's experience with [redacted] and [redacted], and the inconsistencies on the Beneficiary's Form G-325A. The Director stated that it is unlikely that an employer would issue an experience letter showing an end date of employment occurring in the future. The Director indicated that it was also unlikely that an authorized [redacted] dealer would have been operating for so many years with multiple errors on its letterhead. The Director concluded that based on the evidence submitted in response to the NOID, the Beneficiary had worked as a refrigerator repair mechanic at [redacted]

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[6] If the business is operated as a sole proprietorship, it would not generally have officers such as a president. However, the initial employment verification letter submitted on behalf of [redacted] was purportedly signed by its president.

[7] A petitioner may not make material changes in an effort to conform a petition to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

[8] USCIS may reject a fact stated in the petition if it does not believe that fact to be true. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

but not as a manager. Thus, the Director determined that the Petitioner had not established that the Beneficiary had the required two years of experience. He further determined that the Petitioner fraudulently and willfully misrepresented the Beneficiary's prior employment and, therefore, he entered a finding of fraud and willful misrepresentation against the Petitioner.

On appeal, the Petitioner states that the labor certification was approved for the occupation code relating to managers of retail stores. Thus, the Petitioner asserts that the Beneficiary's experience as a store manager with meets the experience requirements of the labor certification. It further asserts that experience letters are not required to mirror the wording of the labor certification. It states that the Director ignored the evidence submitted in response to the NOID regarding the Beneficiary's experience with which it states clearly showed the Beneficiary's role as a manager in the business. It states that the evidence it supplied in response to the NOID resolved any inconsistencies in the evidence.

Further, the Petitioner states that the Director committed factual error in concluding that the Beneficiary had worked as a refrigerator repair mechanic at It states that the Beneficiary's duties never included refrigeration repair. On appeal, the Petitioner submits a new letter of employment dated May 1, 2017, from , and an affidavit from the Beneficiary. The letter from is written by proprietor of and states that the Beneficiary was a part owner and store manager from 1991 to 2000. It states that typos in the prior letter were made by a secretary. The Petitioner also submits an affidavit from the Petitioner's prior legal counsel stating that the errors on the initial Form G-325A were made by a paralegal employed by the Petitioner's former legal counsel. It also submits a Mumbai shop and institution registration certificate for together with English translation. It states that , a refrigeration repair business, was owned by the Beneficiary and was registered on /1993. The Petitioner also submits an April 2017 letter from stating that has been an authorized sales and service dealer since 1993.

We agree with the Director's determination that the evidence submitted to the record regarding the Beneficiary's prior work experience is not credible.[9] As noted by the Director in his decision, the initial experience letters had similar language, and appear to have been written by the same person. The duties listed are identical. Further, the letter written by was issued before the Beneficiary ended his employment. The Petitioner has not explained these inconsistencies.[10] A petitioner bears the burden of establishing eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

Regarding the Beneficiary's purported employment with the registration certificate for the business states that its owner was the Beneficiary, that it was in the business of

[9] The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).
[10] *See Matter of Ho*, 19 I&N Dec. at 591-92.

refrigeration repairs, and that the business was registered on 1993." The letter from also states that has been an authorized sales and service dealer since 1993. The 1993 registration date contradicts the representations on the labor certification and in the experience letters that the Beneficiary started with in 1991. It is not clear how the Beneficiary started working for in 1991 when the business began in 1993. This inconsistency has not been resolved with independent, objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

Further, the business card for misspells the Beneficiary's last name, and does not list a job title. The personal tax returns for the Beneficiary indicate income from a business "workshop" or "workshop & reseller," but do not list the name of the business or the Beneficiary's job title or duties. The 1995 through 2000 profit and loss statements and income statements for list the Beneficiary as the proprietor, but do not list his job duties. The yellow pages advertisements list as a dealer, but do not list dates of publication and do indicate that the Beneficiary worked there as a manager. The dealership certificate for is not dated and does not list the Beneficiary's name, job title, or duties. While the record does not establish that the Beneficiary served as a refrigerator repair mechanic as indicated by the Director, the materials submitted by the Petitioner do not provide independent, objective evidence of the Beneficiary's experience as a manager of

Based on the foregoing discussion, we find that the Petitioner has not resolved the inconsistencies in the record regarding the Beneficiary's purported employment with with independent, objective evidence. *Id.*

Regarding the Beneficiary's purported employment with the affidavit from the Beneficiary states that he purchased in 2000, and that he served as owner/manager from 2000 through 2001. However, the Beneficiary's affidavit is not independent, objective evidence of his prior employment. Further, the affidavit contradicts the purchase agreement stating that the Beneficiary purchased the business in 2000. The affidavit also does not support the representations on the labor certification, in the experience letters, and on the Form G-325 stating that the Beneficiary served as manager of from 2000 to 2001. While the voided check, checking account statement, business license, beer license, sales tax permit, cigarette license, county beverage permit, tax correspondence, utility bills, and the copy of the card indicate that the Beneficiary was the owner of for a short period of time between the end of 2000 and the beginning of 2001, they do not establish that he also served as manager of the business from 2000 to June 2001.[11]

The Petitioner has not resolved the inconsistencies in the record regarding the Beneficiary's purported employment with with independent, objective evidence. *Id.*

[11] The labor certification requires two years of full-time experience.

In sum, the Petitioner has not resolved the inconsistencies and ambiguities regarding the Beneficiary's prior employment experience with independent, objective evidence. Thus, the Petitioner has not established that the Beneficiary possessed the experience required by the labor certification as of the priority date. We therefore affirm the Director's determination that the Beneficiary did not have the required two years of experience as a store or retail store manager.

III. FULL-TIME, PERMANENT EMPLOYMENT

The Director determined that the Petitioner is not offering the Beneficiary full-time, permanent employment. He indicated that the Beneficiary created two companies during the pendency of this petition, that one of the entities is still operating, and that the Beneficiary's affiliation with this entity raises doubts about the Petitioner's intent to employ the Beneficiary on a full-time basis. He asserts that "nondisclosure of the beneficiary's ownership/employment with these other companies while filing for immigration benefits through the instant petitioner constitutes willful misrepresentation of a material fact on the part of the petitioner." He also noted that the Petitioner has been administratively dissolved[12] and that the Beneficiary was paid less than the proffered wage in 2002 and 2003. The Director indicated that this raises doubts about the Petitioner's intent to employ the Beneficiary on a full-time basis.

On appeal, the Petitioner asserts that it offered the Beneficiary full-time, permanent employment, and that the Beneficiary's investments in other businesses prior to approval of the petition do not affect the full-time nature of the job offer. It states that the Petitioner is not required to pay the Beneficiary the proffered wage prior to approval of the petition. It also states that the Beneficiary has never owned or been affiliated with one of the entities attributed to him by the Director.

The Beneficiary is not prohibited from pursuing investment opportunities simply because a Form I-140 has been filed on his behalf. Additionally, nondisclosure of the Beneficiary's ownership of another company does not constitute willful misrepresentation of a material fact on the part of the Petitioner, as the Petitioner had no obligation to report the Beneficiary's ownership of a company other than the Petitioner in these visa proceedings. Further, the Petitioner is not required to pay the Beneficiary the proffered wage prior to approval of the petition. The Petitioner has established by a preponderance of the evidence that its job offer to the Beneficiary was for full-time, permanent employment. We therefore withdraw the Director's determination that the Petitioner is not offering the Beneficiary full-time, permanent employment.

[redacted]

IV. FRAUD AND WILLFUL MISREPRESENTATION OF A MATERIAL FACT

The Director also determined that the Petitioner fraudulently and willfully misrepresented the Beneficiary's employment on the labor certification, and that nondisclosure of the Beneficiary's ownership of other companies constitutes willful misrepresentation of a material fact by the Petitioner. We find that the Director did not clearly state his reasoning for the finding fraud and willful misrepresentation against the Petitioner in this case.

USCIS will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the claims stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. at 591.

A finding of fraud requires a determination that the Petitioner made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). A finding of material misrepresentation requires a determination that the Petitioner willfully made a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (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). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *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, he or she 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.

In his decision, the Director stated that he was denying the petition with a finding of fraud and willful misrepresentation of a material fact against the Petitioner, based on the Petitioner's submission of "letters of experience that appear to have been written by the two different employers" and its presentation of conflicting evidence on the Beneficiary's Form G-325A. He further stated that the finding of fraud and willful misrepresentation of a material fact was warranted based on a "review of the record and the petitioner's filing history" which "revealed a pattern of conflicting and

inconsistent information." He further stated that nondisclosure of the Beneficiary's ownership of two other companies constitutes willful misrepresentation of a material fact by the Petitioner.

On appeal, the Petitioner asserts that the Director failed to include specific findings of fraud or material misrepresentation for any issue of material fact. It states that it had no knowledge of any falsity in the experience letters, that the Director never specifically found that the experience letters were fraudulent, and that the letters were not fraudulent. Further, it states that it did not sign the Form G-325A, which was filed with the Beneficiary's Form I-485, and that it is not responsible for the statements contained therein.

We find that the Director did not clearly state his reasoning for the finding fraud and misrepresentation against the Petitioner in this case. The Petitioner was not responsible for the information provided on Form G-325, and the Director did not discuss how the Petitioner's inconsistent "filing history" related to the facts of this case. Additionally, nondisclosure of the Beneficiary's ownership of companies other than the Petitioner does not constitute willful misrepresentation of a material fact on the part of the Petitioner, as the Petitioner had no obligation to report the Beneficiary's ownership of these companies in these visa proceedings. Accordingly, we will withdraw the Director's finding of fraud or willful misrepresentation of a material fact against the Petitioner.

V. PORTABILITY

The Petitioner requests that the Beneficiary be able to "port" to another employer under AC21.[13] On appeal, the Petitioner submits a letter dated May 8, 2017, from in Tennessee, stating that it has offered the Beneficiary full-time, permanent employment as a store manager at an annual salary of $38,000. It also submits the 2016 federal tax return of [14] The Petitioner asserts that the Beneficiary may port to another employer under the terms of AC21.[15] The terms of AC21 do not allow this Form I-140, Immigrant Petition for an

[13] Pub. L. No. 106-313, 114 Stat. 1251, codified in relevant part within the Act at section 204(j), 8 U.S.C. § 1154(j). AC21 allows a beneficiary of an approved employment-based immigrant visa petition, whose adjustment of status application has been pending for more than 180 days, to change jobs or employers if the new job is in the same or similar occupational classification, without relying upon the new employer to file a new labor certification or Form I-140 to support his or her adjustment of status.

[14] The record contains a prior AC21 portability request for the Beneficiary dated November 2011 from in Georgia. A letter from states that it has offered the Beneficiary full-time, permanent employment as a store manager at an annual salary of $32,000.

[15] The Beneficiary cites to a USCIS memorandum signed by William Yates, May 12, 2005, which provides that if the initial petition is determined "approvable," then the adjustment application may be adjudicated under the terms of AC21. *See* Memorandum from William R. Yates, Acting Associate Director for Operations, USCIS, HQPRD 70/6.2.8-P, *Interim Guidance for Processing Form I-140 Employment-Based Immigrant Petitions and Form I-485 and H-1B Petitions Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) (Public Law 106-313)* (May 12, 2005), at https://www.uscis.gov/laws/policy-memoranda. In *Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010), we determined that the petition must have been valid to begin with if it is to remain valid with respect to a new job.

Alien Worker, to be approved, as the Petitioner has not demonstrated its eligibility. AC21 allows an application for adjustment of status to be approved despite the fact that the initial job offer is no longer valid. Codified at section 204(j) of the Act, 8 U.S.C. § 1154(j), the provision reads:

> JOB FLEXIBILITY FOR LONG DELAYED APPLICANTS FOR ADJUSTMENT OF STATUS TO PERMANENT RESIDENCE
>
> A [employment-based] petition for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

A plain reading of the phrase "shall remain valid" suggests that the Form I-140 petition must be valid *prior* to any consideration of whether or not the adjustment application was pending more than 180 days and/or the new position is same or similar. In other words, it is not possible for a petition to remain valid if it is not valid currently. We would not consider a petition wherein the initial petitioner has not demonstrated its eligibility to be a valid petition for purposes of AC21. This position is supported by the fact that when AC21 was enacted, USCIS regulations required that the underlying Form I-140 was approved prior to the beneficiary filing for adjustment of status. Thus, when AC21 was enacted, the only time that an application for adjustment of status could have been pending for 180 days was when it was filed based on an approved immigrant petition.[16] The only possible meaning for the term "remain valid" was that the underlying petition was approved and would not be invalidated by the fact that the job offer was no longer a valid offer. *See Matter of Al Wazzan*, 25 I&N Dec. 359 (AAO 2010).

In this case, the initial petition was not approvable because the Petitioner did not establish that the Beneficiary possessed the experience required by the labor certification as of the priority date.[17] Therefore, the petition is not approvable and the Beneficiary is not eligible to port to another employer under AC21.

VI. CONCLUSION

The Petitioner has not established that the Beneficiary gained at least two years of qualifying managerial experience by the priority date of July 29, 2002. Accordingly, the Beneficiary does not

[16] After the enactment of AC21, USCIS altered its regulations to provide for the concurrent filing of immigrant visa petitions and applications for adjustment of status. This created a possible scenario wherein after an adjustment application had been pending for 180 days, the applicant could receive and accept a job offer from a new employer, potentially rendering him or her eligible for AC21 portability, prior to the adjudication of his or her underlying employment-based visa petition.

[17] *See* 8 C.F.R. § 245.25(a)(2)(ii). This section was codified in the final rule, "Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers; Final Rule." 81 Fed Reg. 82,398, 82,490 (Nov. 18, 2016).

meet the minimum experience requirement of the labor certification and does not qualify for classification as a skilled worker. Therefore, we affirm the Director's denial of the petition. However, we withdraw the Director's finding that the Petitioner is not offering the Beneficiary full-time, permanent employment, and his finding of fraud or willful misrepresentation of a material fact against the Petitioner.

ORDER: The appeal is dismissed.

Cite as *Matter of R-C-&G-, Inc.*, ID# 1403817 (AAO Aug. 16, 2018)