U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K&RI-

DATE: JULY 5, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a restaurant, seeks to employ the Beneficiary as an assistant 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, as required, that the Beneficiary possessed the experience or education required by the labor certification as of the priority date. The Director also entered a finding of willful misrepresentation against the Petitioner and Beneficiary and invalidated the labor certification.

On appeal, the Petitioner asserts that the Director's denial of the petition was based on speculation; that the Director incorrectly rejected evidence of the Beneficiary's experience in Bangladesh; that the Director incorrectly determined that [redacted] University of Technology in Bangladesh in unaccredited; and that there is no evidence that the Petitioner or the Beneficiary made a material misrepresentation.

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 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,

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is July 18, 2017. *See* 8 C.F.R. § 204.5(d).

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 denied the petition because 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 a bachelor's degree in business and 24 months of experience as an assistant manager. No alternate combination of education and experience is acceptable. Regarding the experience requirement, the labor certification states that the Beneficiary qualifies for the offered position based on experience as a full-time assistant manager with [redacted] in [redacted] Bangladesh, from April 10, 2010, to March 10, 2013. Her job duties were described as follows: "trained workers in food preparation, service, sanitation and safety procedures; compiled cash receipts at the end of shift; performed various financial activities such as payroll; supervised kitchen and dining area cleaning activities; estimated ingredients and supplies for menu items, etc."

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 written in English and dated April 15, 2013, from [redacted] managing director of [redacted] in [redacted] Bangladesh, attesting to the Beneficiary's experience as a full-time assistant manager of "Hotel [redacted] and Restaurant" from April 10, 2010, to March 10, 2013.

In a request for evidence dated January 29, 2018 (first RFE), the Director stated that on two of the Beneficiary's nonimmigrant visa applications in 2012 and 2013, the Beneficiary did not indicate her employment with [redacted] even though she was purportedly employed there during that time. Instead, she indicated that she was a housewife.[2] The Director requested an explanation of the discrepancies between the nonimmigrant visa applications and the labor certification, and independent, objective evidence of the Beneficiary's claimed employment on the labor certification.

In response to the first RFE, the Petitioner explained that the Beneficiary was the wife of a diplomat in Bangladesh and that she listed her occupation as housewife on her nonimmigrant visa applications because of pride and tradition. It stated that her husband "could be looked down upon for not being able to provide his wife enough money and support and forcing her to take an outside job." It also stated that "tradition of Bangladesh in general is that even if a woman works... they prefer to be called housewife, especially when the husband is a high official." Thus, the Petitioner asserted that the Beneficiary did not list her employment with [redacted] on her nonimmigrant visa applications because she was "coming as a housewife with her high official husband."

[2] The Petitioner must resolve any inconsistencies with independent, objective evidence of the Beneficiary's prior employment. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the first RFE, the Petitioner provided three income tax certificates, written in English, purportedly issued to the Beneficiary by the Bangladesh National Board of Revenue Taxes Department, for the years 2010-2011, 2011-2012, and 2012-2013. They identify the Beneficiary's "Present address" as the Assistant Manager at Hotel [redacted]. In [redacted] Bangladesh. They were all purportedly signed by the Assistant Commissioner of Taxes on the same date, August 3, 2018.[3] Attached to each certificate is an "Acknowledgement Receipt of Income Tax Return." The Beneficiary's name is typed in different font than the rest of the document, and the identified "Circle" has been altered by hand. The acknowledgments do not identify when the returns were received.

In response to the first RFE, the Petitioner also provided a "Certificate of Appreciation from the Managing Director for [the Beneficiary]" dated July 21, 2012, and signed by [redacted] Managing Director of the [redacted] Written in English, it states that the Beneficiary was awarded employee of the year for 2011-2012. It also submitted a Certificate of Re-affirmation dated February 24, 2018, written in English, from [redacted] General Manager of the [redacted] stating that the Beneficiary was employed as an assistant manager from April 10, 2010, to March 10, 2013.

Further, the Petitioner submitted a copy of an appointment letter dated March 15, 2010, from the [redacted] addressed to the Beneficiary and written in English, offering her the position of "Assistant Manager Food & Beverage." It lists her proposed duties and salary. The first RFE response also included four affidavits from purported co-workers of the Beneficiary at the [redacted] each written in English and each dated February 24, 2018, confirming the Beneficiary's employment listed on the labor certification. The response also included salary sheets written in English for the Beneficiary from the [redacted] for the months of April 2010 to March 2013.

In a notice of intent to deny (NOID), the Director noted that the Petitioner's first RFE explanation does not explain why the Beneficiary did not put her dual occupations on the first nonimmigrant visa application, which was a B-1/B-2 visa and not a visa connected with her husband's job. The Director also noted that the Beneficiary's name on the income tax certificates appears "to have been completed at a different time, as they are in a different font and are printed more sharply than what is written on the rest of the documents." He also noted that the Beneficiary signed the salary sheets in ink after the copies were made. He further noted that the affidavits from former colleagues "used similar language, pattern and details" and that is "not reasonable to believe that the colleagues would describe their experiences in such a similar way." The Director stated that "[a]ll of these concerns call into question the credibility of these documents to establish the beneficiary's work experience" and he requested the Petitioner to submit independent, objective evidence of the Beneficiary's experience at the [redacted] such as the Beneficiary's official employment and tax records.

In response to the NOID, the Petitioner stated that employment documentation for individuals in Bangladesh is "mostly missing" because of "inadequate financial strength, poor bureaucratic standard and underdeveloped information technology in comparison to advanced countries like the USA." Thus, it stated that "the desire to have U.S. standard documentation" for the Beneficiary's employment is "over-expected and impractical." It further stated that as a private sector entity, the [redacted] has

[3] Evidence that a petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition raises questions as to its credibility.

not preserved employment documents and that "they generally destroy most of the documents after their yearly audits and within a year or two." It stated that an "Employment Certificate" from a managing director "exclusively serves as the proof/authenticity of employment" and that this system is followed by "most other countries specially in the developing world." It stated that the certificate of employment from [redacted] is the "best possible proof" of the Beneficiary's employment.

With regard to the similar affidavits of the co-workers, the Petitioner stated that English is not the official language or native tongue in Bangladesh. It stated that the four individuals "took the support from the Account Officer [redacted] to prepare, type and print their Affidavits/certificates." It stated that [redacted] prepared the affidavits pursuant to the desires of the individual affiants, and that they were prepared by [redacted] on his computer and later signed in front of a notary public by each individual.

It submitted a "Certificate of Reaffirmation in Respect of the Employment of [the Beneficiary] as an Assistant Manager of [redacted]" written in English and dated June 4, 2018, and signed by [redacted] Managing Director of the [redacted] It states that the Beneficiary was employed at the [redacted] Inn from April 2010 to March 2013, and that it "is neither possible nor necessary to preserve documents of the employees except the essential ones for more than 01(one) year." It also submitted the original appointment letter dated March 15, 2010, a copy of which was provided in response to the RFE.

Further, in response to the NOID, it submitted a sheet written in English and signed by [redacted], Account Officer of the [redacted] detailing the salary for the Beneficiary from April 10, 2010, to March 10, 2013. Further, it submitted Form IT-11GA, "Form of Retun [sic] of Income Under the Income Tax Ordinance, 1984 (XXXVI of 1984)", for the Beneficiary for 2010-2011, 2011-2012, 2012-2013, and 2013-2014. The tax returns, written in English, list her employment as an assistant manager with [redacted] Attached to the tax returns are previously submitted salary sheets showing her monthly income for the relevant periods. The Petitioner also submitted four Income Tax Certificates, written in English, issued by the "Government of the People's Republic of Bangladesh National Board of Revenue Taxes Department" and signed by [redacted] Assistant Commissioner of Taxes, on 08/03/18, stating that the Beneficiary's tax assessment has been completed for the years 2010-2011, 2011-2012, 2012-2013, and 2013-2014.[4] Attached to each certificate is a document written with foreign letters and numbers. The English Income Tax Certificates are not translations of these foreign documents, and it is not clear what the foreign language documents are. 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.*

The NOID response also included a letter from former U.S. Congressman [redacted], dated June 13, 2018, stating that he has visited Bangladesh and that women in Bangladesh prefer to be identified as "Housewife" even if they have full-time work "specially when she is the wife of a highly reputed husband in the society." Thus, he states that it is "not surprising" to him that the Beneficiary listed her occupation as housewife on her nonimmigrant visa application, as it is the "normal practice in

[4] Copies of the certificates for 2010-2011, 2011-2012, and 2012-2013 were previously submitted with the first RFE response.

Bangladesh as per their tradition." It also submitted a letter dated June 10, 2018, from former U.S. Congressman [redacted] who states that he is acquainted with the Bangladesh culture and that for women, "housewife" is the primary occupation, and "any employment is always secondary." It also submitted a letter dated June 11, 2018, from [redacted] Bangladesh, certifying that the Beneficiary worked as an assistant manager at the [redacted] from April 10, 2010, to March 10, 2013, and that she has a BBA from the [redacted] University of Bangladesh. It states that her husband is the [redacted] of the Bangladesh [redacted]. It states that the Beneficiary stated her occupation as a housewife on her nonimmigrant visa applications due to the "tradition in Bangladesh." Finally, it submitted an undated statement of the Beneficiary. She states that she didn't mention her employment with the [redacted] on her 2012 and 2013 nonimmigrant visa applications because both times, she was coming to the U.S. with her husband "as his spouse" and her work experience had no bearing on the adjudication of the applications. She states that "in accord with society," she instinctively refers to herself as a housewife.

In his denial decision, the Director stated that if it is not possible to preserve employment records in Bangladesh as claimed by the Petitioner, then the authenticity of the salary sheets from the Beneficiary's purported employment with [redacted] is questionable. Further, the Director stated that it is not clear that the affiants knew what they were signing, as the Petitioner indicated that they did not speak English and were not computer literate. With regard to the tax return documents submitted to the record, the Director noted that the forms have a typo on them ("Retun" instead of Return). He stated that the typo indicates that they are not government documents. The Director further stated that the letters from former U.S. Congressmen and a [redacted] opining as to why the Beneficiary claimed she was a housewife on her nonimmigrant visa applications do not overcome the discrepancies on her applications. Thus, the Director determined that the Petitioner had not established that the Beneficiary had the required two years of experience as an assistant manager.

On appeal, the Petitioner asserts that the Director's denial was based on "speculation and conjecture" and that the Director dismissed credible evidence of the Beneficiary's qualifications. Specifically, the Petitioner states that "USCIS offered no explanation why it did not accept explanation of former U.S. Congressman and the Bangladesh [redacted] regarding why the beneficiary listed her occupation as housewife on her NIV applications."[5] The explanations provided are not independent, objective evidence of the Beneficiary's qualifying employment. Instead, the three men simply express their opinions as to why the Beneficiary may have misrepresented her experience on her nonimmigrant visa applications. There is no evidence that any of these men personally knew the Beneficiary when she made the misrepresentations on her visa applications, such that they would be able to offer probative or credible evidence regarding her intentions or her employment history. Further, there is no evidence that they had first-hand knowledge of her claimed employment such that they could corroborate her claims.

The Petitioner also states that there is nothing "to suggest that the adjudicating officer had examined documents of other [redacted] s employees for purpose of comparing documents." It states that "it

[5] We may, in our discretion, use as advisory opinion statements submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

is mere speculation to suggest that beneficiary's documents were completed at different times or were printed more sharply without comparison to other documents of [redacted]s employees." However, the burden of proof remains with the Petitioner to show by a preponderance of the evidence that the proposed finding is not appropriate. *See Matter of Ho*, 19 I&N Dec. at 591. The Petitioner did not submit documents from other [redacted] employees for comparison. Further, given that the Petitioner asserts that English is not the official language in Bangladesh, it is not clear why all of the documents purportedly submitted by the [redacted] are written in English.

With regard to the tax documents, the Petitioner states that the "fact that there is a typo in the document does not render the document an unofficial tax document." However, the Petitioner has established with independent, objective evidence that the official tax documents from Bangladesh contain the exact typo reflected in the Beneficiary's documents submitted to the record. Further, the tax returns do not show the date they were actually received by the appropriate tax agency in Bangladesh;[6] and with the exception of the 2011-12 return, they do not show the year in which they were signed. The record contains some documents that are not in English, but they have not been properly translated.[7] It is not clear if the Beneficiary submitted her tax returns in English or another language.

The Petitioner stated that the Director questioned the authenticity of the affidavits "on the assumption that [they] were signed with no knowledge as to what they were signing." It states that the assumption is not warranted because the affidavits were notarized, and that the notary had a duty to "ensure that the person signing an affidavit understands what the document is all about." However, if English is not the official language or native tongue in Bangladesh, it is not clear why the affiants did not write their documents in the official language of Bangladesh and then have the affidavits translated into English. Further, the Petitioner has not established that the notary's signature signifies that he ensured that the affiants understood what they were signing. Notaries may have one or more functions depending on the laws where they operate, including but not limited to: verifying, authenticating, certifying, or attesting the execution of an instrument; administering an oath to, or taking an affidavit from, an individual; preparing, attesting, or authenticating an instrument; and/ or translating a document from one language into another. The notary's function is not clear here, as the notary stamp simply states "Notarized by Me" above the notary's signature.

For the reasons set forth above, the documents submitted to the record regarding the Beneficiary's prior work experience are not credible.[8] The Petitioner has not resolved the inconsistencies and ambiguities in the record with independent, objective evidence of the Beneficiary's prior employment. *See Matter of Ho*, 19 I&N Dec. at 591-592. Thus, the Petitioner has not established that the Beneficiary possessed the experience required by the labor certification as of the priority date. We

[6] The tax returns each contain a small sheet of paper stapled to the top with a seal and signature of the "Receiving officer." For each relevant period from 2010 to 2014, the signatures are identical and are signed in the same pen. The seals are also identical, using the same color ink. Thus, it appears that the tax returns were all "received" at the same time instead of being filed when due.

[7] 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.*

[8] The Petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

therefore affirm the Director's determination that the Beneficiary did not have the required two years of experience as a store manager.

III. THE BENEFICIARY'S EDUCATION

The Director also denied the petition because the Petitioner did not establish that the Beneficiary possessed the education for the offered job as of the priority date. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states:

> 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 [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least two years of training and/or experience.

As noted above, the labor certification requires a bachelor's degree in business and 24 months of experience as an assistant manager. No alternate combination of education and experience is acceptable. A foreign educational equivalent is acceptable.

Regarding the education requirement, the labor certification states that the Beneficiary qualifies for the offered position based on a bachelor's degree in business completed in 1997 issued by [redacted] University in Bangladesh. With the petition, the Petitioner submitted a copy of a provisional certificate issued in 1998 by [redacted] University in Bangladesh states that she attended during the 1994-1995 session.

In a request for evidence dated March 26, 2018 (second RFE), the Director requested a copy of the Beneficiary's official academic record, including degree and transcripts. He also requested an advisory evaluation of the Beneficiary's credentials. In response to the second RFE, the Petitioner submitted a copy of a bachelor of business administration in management certificate issued to the Beneficiary by [redacted] University of Technology in Bangladesh in 1998. The Petitioner also submitted the Beneficiary's transcripts from [redacted] University of Technology indicating that the Beneficiary took courses from 1994 to 1998. It also submitted a credentials evaluation from USCES, stating that the Beneficiary has the equivalent of a U.S. bachelor of business administration degree in management based on her four years of education at [redacted] University of Technology. The Petitioner stated that the reference to [redacted] University on the labor certification "was in error" and that her degree was actually from [redacted] University of Technology.

In the NOID, the Director noted that the certificate issued to the Beneficiary from [redacted] University of Technology identifies the session from 1994 to 1995, but the transcripts are dated from 1994 to 1998 with the degree issued in 1998. The Director also noted that the Beneficiary's degree from [redacted] University identifies the session from 1994 to 1995 and the degree was issued in 1998. He stated that the Beneficiary did not submit the Beneficiary's transcripts from [redacted] University as

requested in the RFE. He also indicated that the Petitioner did not provide an explanation as to why the Beneficiary possesses two degrees from two universities that the Beneficiary attended at the same time, and the [redacted] University does not appear to be an accredited university in Bangladesh. Due to the discrepancies, the Director stated that "USCIS is unable to determine the authenticity of the beneficiary's educational documents." Thus, he asked the Petitioner to submit an explanation regarding the beneficiary's two degrees that were earned simultaneously, and evidence that [redacted] University of Technology is an accredited university.

In response to the NOID, the Petitioner stated that the Beneficiary earned two degrees, one from [redacted] University of Technology in 1998 and one from [redacted] University in 2012. It submitted another credentials evaluation from USCES which states that the Beneficiary has the equivalent of a U.S. bachelor's degree in history based on her three years of education at [redacted] University. The Petitioner also submitted her transcripts from [redacted] University showing her marks in "Theory" during four years at [redacted] University. It also provided a copy of her provisional certificate issued by [redacted] University in 2015, stating that she obtained a four-year bachelor of arts degree in history in 2012.[9] It further provided a copy of the website for [redacted] r University of Technology which states that the University is registered by the government of Bangladesh, and additional documentation supporting the university's registration with the government. Finally, it submitted an undated statement of the Beneficiary. She states that she has two bachelor's degrees, one from [redacted] University issued in 1998, and one from [redacted] University in 2012. She asserts that she did not qualify for two degrees at one time, and that any evidence otherwise was a mistake. She states that she enrolled in [redacted] University in 1994 and graduated in 1998; and that she enrolled at [redacted] University in 2008 and graduated in 2012.

In his decision, the Director stated that the Petitioner submitted two degrees for the Beneficiary from [redacted] University - the first one initially submitted with the petition which was issued in 1998, and the second one submitted in response to the NOID which was issued 2012. The Director also stated that the Petitioner did not submit any evidence regarding the accreditation of [redacted] University of Technology, but instead submitted evidence regarding its registration. Thus, based on the confusion created by multiple degrees with conflicting dates and the accreditation status of [redacted] University of Technology, the Director determined that the Petitioner had not established that the Beneficiary had the required education for the offered position.

On appeal, the Petitioner states that USCES would not have accepted the Beneficiary's degree from [redacted] University if it were not from a duly accredited university. It states that the registration evidence submitted in response to the NOID is evidence of accreditation, and that "it would not make sense for a governmental authority to accept to register a University which does not meet accreditation standards." It further reiterated that the Beneficiary has two degrees, one issued by [redacted] University of Technology in 1998 and one issued by [redacted] University in 2012.

Here, the Petitioner has not established that [redacted] University of Technology's registration with the government in Bangladesh is equivalent to accreditation. The credentials evaluation from USCES does not state that the institution is accredited in Bangladesh. Further, even if [redacted] University of

[9] This conflicts with the information provided on the USCES evaluation, which states that the program length was three years and that the graduation year was 2011.

Technology is accredited in Bangladesh, the Petitioner has not resolved the conflicts between the degrees submitted to the record. The Beneficiary certified on the labor certification that she received her bachelor's degree in business from [redacted] University in 1997. The Petitioner later admitted that this was an error. With the petition, the Petitioner submitted a copy of a provisional certificate purportedly issued to the Beneficiary in 1998 by [redacted] University in Bangladesh. It lists [redacted] and "Session 1994-1995." It states that she obtained the degree of bachelor of arts "appearing at the Degree (pass) Examination of 1996 and that she was placed in the second division."

As noted by the Director, the timeframe of her alleged attendance at [redacted] University, according to the submitted documents, coincides with the same time the Beneficiary later claimed to have been attending [redacted] University of Technology. Her bachelor of business administration in management certificate was issued by [redacted] University of Technology in Bangladesh in 1998, and states that she appeared for examination held in June 1998 and was awarded the certificate "for 04(Four) year/years course/courses for the session of 1994-1995." The Petitioner also submitted the Beneficiary's transcripts from [redacted] University of Technology indicating that the Beneficiary took eight semesters of courses from 1994 to 1998.

Although the Director requested that the Petitioner submit an explanation regarding the Beneficiary's degrees from [redacted] University and [redacted] University of Technology that were earned simultaneously, it failed to do so. Instead, in response to the NOID and on appeal, it asserts that the Beneficiary earned a bachelor's degree in history from [redacted] University in 2002. It does not explain the provisional certificate purportedly issued to the Beneficiary in 1998 by [redacted] University that was submitted with the petition.

A few errors or minor discrepancies are not reason to question the credibility of a foreign national or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, anytime a petition includes numerous errors and discrepancies, and a petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of a petitioner's assertions. Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead us to conclude that the evidence of the Beneficiary's education is not credible. Despite repeated requests, the Petitioner has not submitted independent objective evidence to establish the true facts of the Beneficiary's education. Accordingly, the Petitioner has not established that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

IV. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

The Director also determined that the Petitioner and the Beneficiary willfully misrepresented material facts in this case due to "inconsistencies in the beneficiary's employment history, the suspicious tax documents and inconsistent school documents."

A finding of material misrepresentation requires a determination that the Petitioner and the Beneficiary 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 willful misrepresentation of a material fact against the Petitioner and the Beneficiary, based on the Petitioner's failure to overcome and explain discrepancies in the Beneficiary's claimed work experience with independent, objective evidence; the failure to explain why the Beneficiary has two different degrees from two different universities that were attended during the same years and awarded in the same year; and the submission of tax documents that appear to be fraudulent.

On appeal, the Petitioner asserts that the Director's denial was based on "speculation and conjecture" and that the Director dismissed credible evidence of the Beneficiary's qualifications. It states that there was no misrepresentation regarding where she worked and graduated from in Bangladesh; and that the following facts are true: that the Beneficiary worked at the [redacted] in Bangladesh and graduated from [redacted] University of Technology in 1998. Thus, the Petitioner concludes that there was no willful misrepresentation. However, as previously discussed, the Petitioner has not resolved inconsistencies in the record regarding the Beneficiary's employment and education.

We agree with the Director's finding of willful misrepresentation against the Petitioner and the Beneficiary in this case. First, the Petitioner and the Beneficiary made false representations to an authorized official of the United States government. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). In light of the unresolved contradictory evidence regarding the Beneficiary's prior work experience and education, the entries at Parts J and K on the labor certification, as well as her individual statement submitted in response to the NOID, were not correct and constitute false representations by the Beneficiary. Further, as set forth above, the Petitioner and the Beneficiary submitted evidence with the petition and in response to the RFEs and NOID containing false information regarding the Beneficiary's prior work experience and education.

Second, the misrepresentations of the Petitioner and the Beneficiary were willfully made. The Beneficiary signed the labor certification attesting to the veracity of the claims at Parts J and K on the

labor certification, and she provided an additional signed statement regarding her purported work experience and education. Further, when given the opportunity to address the derogatory information described in the first RFE and the NOID, the Petitioner and the Beneficiary reaffirmed that the Beneficiary had more than two years of qualifying experience with [redacted]; and they asserted that the Beneficiary obtained the required bachelor's degree in business from [redacted] University of Technology in 1998, despite the initial submission of a provisional certificate issued to the Beneficiary in 1998 by [redacted] University.

Third, the misrepresentations of the Petitioner and the Beneficiary were material. The evidence submitted regarding the Beneficiary's prior work experience is directly material to the Beneficiary's eligibility under the statutory requirement that she have at least two years of experience or training for the skilled worker classification. Section 203(b)(3)(A)(i) of the Act. Further, the labor certification requires 24 months of experience as an assistant manager and a bachelor's degree in business. The evidence submitted regarding the Beneficiary's prior work experience and education is directly material to the Beneficiary's eligibility for the offered position as described on the labor certification.

Accordingly, we will confirm the Director's finding of willful misrepresentation of a material fact against the Petitioner and the Beneficiary.

V. INVALIDATION OF THE LABOR CERTIFICATION

The regulation at 20 C.F.R. § 656.30(d) provides, in pertinent part:

> Invalidation of labor certifications. After issuance, a labor certification may be revoked by ETA using the procedures described in Sec. 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application.

Based on the finding of fraud or willful misrepresentation involving the labor certification application, the Director properly invalidated the labor certification.

VI. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K&RI-*, ID# 4005078 (AAO July 5, 2019)