U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12236513

Date: OCT. 1, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, a jewelry store, seeks to employ the Beneficiary as an assistant manager (evenings and weekends). It requests classification of the Beneficiary as a skilled worker under the third preference immigrant category. 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 revoked the approval of the petition, concluding that the record does not demonstrate that a *bona fide* job opportunity exists. The Director determined that the Petitioner willfully concealed a relationship between its owner and the Beneficiary on the labor certification and, therefore, he entered a finding of willful misrepresentation of material fact against the Petitioner.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

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) of the Act, 8 U.S.C. § 1182(a)(5). 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 id*. 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.

[1] The priority date of a petition is the date the DOL accepted the labor certification for processing, which in this case is December 23, 2016. *See* 8 C.F.R. § 204.5(d).

II. REVOCATION OF A PETITION'S APPROVAL

After granting a petition, USCIS may revoke the petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a director's realization that a petition was erroneously approved may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Good and sufficient cause exists to issue a notice of intent to revoke (NOIR) where the record at the time of the notice's issuance, if unexplained or unrebutted, would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Similarly, revocation is proper if the record at the time of the decision, including any explanation or rebuttal evidence provided by a petitioner, warranted a petition's denial. *Id.* at 452.

III. BONA FIDES OF THE JOB OPPORTUNITY

The Director revoked the approval of the petition because the record does establish the *bona fides* of the job opportunity. A labor certification employer must attest that "[t]he job opportunity has been and is clearly open to any U.S. worker." 20 C.F.R. § 656.10(c)(8). This attestation "infuses the recruitment process with the requirement of a *bona fide* job opportunity: not merely a test of the job market." *Matter of Modular Container Sys., Inc.,* 89-INA-228, 1991 WL 223955, at *7 (BALCA 1991) *(en banc)*;[2] *see* 20 C.F.R. § 656.17(l). A relationship between a petitioner and a beneficiary triggering concerns about the *bona fides* of a job opportunity "is not only of the blood; it may also be financial, by marriage, or through friendship." *Matter of Sunmart 374,* 2000-INA-93, 2000 WL 707942, at *3 (BALCA May 15, 2000); *see Matter of Chamdal Food Mart*, 2000-INA-92 (BALCA May 15, 2000). Here, the Petitioner answered "No" at part C.9 of the labor certification application which asks whether there is "a familial relationship between the owners, stockholders, partners, corporate officers, or incorporators [of the Petitioner], and the alien." By signing the labor certification application, the Petitioner attested to the *bona fides* of the job opportunity. However, the Beneficiary disclosed in a consular interview in 2018 that he is the nephew of the Petitioner's owner and that the family relationship was a main factor in his selection for the position. Because the Beneficiary is the nephew of Petitioner's owner, their relationship casts doubt on the *bona fides* of the job opportunity.[3]

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[2] BALCA stands for Board of Alien Labor Certification Appeals, a DOL administrative tribunal. BALCA decisions do not bind USCIS. *See* 8 C.F.R. § 103.10(b) (stating that USCIS officers must follow the precedent decisions of the Board of Immigration Appeals and the Attorney General in all proceedings involving the same issues). As previously indicated, however, Congress charged DOL with administering labor certifications. USCIS therefore defers to DOL's reasonable interpretations of its regulations under the labor certification program. *See Martin v. Occupational Safety & Health Review Comm'n*, 499 U.S. 144, 157-58 (1991) (holding that an administrative agency must defer to another's reasonable interpretation under a statute that Congress authorized the other agency to administer).

[3] The Act and the regulations authorize USCIS to further examine the availability of an offered position to U.S. workers. USCIS must "investigat[e] . . . the facts in each case" and determine "whether the facts stated in the petition are true." Section 204(b) of the Act, 8 U.S.C. § 1154(b). In addition, we may deny petitions accompanied by labor certifications that violate DOL regulations. *See Matter of Sunoco Energy Dev. Co.*, 17 I&N Dec. 283, 284 (Reg'l Comm'r 1979) (affirming a petition's denial under the DOL regulation at 20 C.F.R. § 656.30(c)(2) where the labor certification did not remain valid for the intended geographic area of employment).

In the NOIR, the Director notified the Petitioner of its potential misrepresentation on the labor certification regarding the position's availability to U.S. workers. It detailed the relevant factors for determining the *bona fides* of the job opportunity, including whether the Beneficiary: is in a position to influence hiring for the offered position; is related to the company's directors, officers, or employees; incorporated or founded the company; has an ownership interest in it; is involved in its management; sits on its board of directors; is one of a small group of employees; has qualifications matching specialized or unusual job requirements or duties; whether the Petitioner would likely cease operations in his absence; and whether the Petitioner complied with the regulations and otherwise acted good faith in filing its labor certification application. *See Matter of Modular Container*, 1991 WL 223955, at *8-10. The DOL adopted the holding in *Matter of Modular Container* at 20 C.F.R. § 656.17(l), which states that if there is a familial relationship between the stockholders, corporate officers, incorporators, or partners, and the beneficiary, the petitioner in the event of an audit must be able to demonstrate the existence of a *bona fide* job opportunity (i.e., that the job is available to all U.S. workers).[4]

In response to the NOIR, the Petitioner provided a statement from the Petitioner's owner.[5] He stated that the Beneficiary is his "nephew-in-law" and that he "overlooked and misread this question to mean only direct relationships by blood." He asserted that there were no applicants for the offered job and that "till today there is no one employed at my business which makes it difficult to manage resulting in slower growth." He did not address all of the factors listed in the NOIR for determining the *bona fides* of the job opportunity.[6] The Petitioner submitted the recruitment documentation from the labor certification proceedings, including copies of the job order it placed with a state workforce agency and newspaper advertisements of the offered position, and the posted notice of posting.

In his notice of revocation, the Director concluded that the record does not demonstrate that a *bona fide* job opportunity exists. The Director determined that the Petitioner willfully concealed a

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[4] If a petitioner answers "yes" to Part C.9 of the ETA Form 9089, DOL may audit the labor certification and request the following documentation from the petitioner:

> (1) A copy of the articles of incorporation, partnership agreement, business license or similar documents that establish the business entity;
> (2) A list of all corporate/company officers and shareholders/partners of the corporation/firm/business, their titles and positions in the business' structure, and a description of the relationships to each other and to the alien beneficiary;
> (3) The financial history of the corporation/company/partnership, including the total investment in the business entity and the amount of investment of each officer, incorporator/partner and the alien beneficiary; and
> (4) The name of the business' official with primary responsibility for interviewing and hiring applicants for positions within the organization and the name(s) of the business' official(s) having control or influence over hiring decisions involving the position for which labor certification is sought.
> (5) If the alien is one of 10 or fewer employees, the employer must document any family relationship between the employees and the alien.

20 C.F.R. § 656.17(l).

[5] We note that the record contains the Petitioner's 2015 IRS Form 1120S, U.S. Income Tax Return for an S corporation. On page one, the Form 1120S indicates that the Petitioner has four shareholders. However, the Petitioner did not submit the corresponding Forms K-1 which would have identified the shareholders and their respective ownership interests.

[6] Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

relationship between its owner and the Beneficiary on the labor certification and, therefore, he entered a finding of willful misrepresentation of material fact against the Petitioner. On appeal, the Petitioner asserts that its failure to disclose the familial relationship on the labor certification was "accidental and inadvertent, not willful" and that the Petitioner "misunderstood the language" on the labor certification application. It asserts that it conducted its recruitment in compliance with DOL's regulations and that no U.S. workers applied for the position.

Upon review of the totality of the circumstances in this case and consideration of the *Modular Container* factors, we conclude that the record does not establish the existence of a *bona fide* job opportunity. Although the Petitioner states on appeal that the Beneficiary "is not employed or involved in [the Petitioner] at the time the [labor certification] was filed and he did not exercise and control, or even discretion, in hiring decisions," the record does not identify the name of the business official with primary responsibility for interviewing and hiring applicants for the offered position. A petitioner's unsupported statements are of limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner further states on appeal that the Beneficiary is married to the owner's niece, but that the Beneficiary was not involved in incorporating or founding the company and does not have an ownership interest in it. However, the record does not contain copies of the Petitioner's Articles of Incorporation and its share certificates to support its assertion. *Id.* Further, as noted herein, the Petitioner's 2015 tax return indicates that the Petitioner has four shareholders, but it did not submit the corresponding Forms K-1 which would have identified the shareholders and their respective ownership interests.[7]

The Petitioner further asserts on appeal that the Beneficiary is not involved in its management and does not sit on its board of directors, and that that the Beneficiary is not currently an employee. However, the record does not contain the Petitioner's Bylaws or other corporate records identifying the members of the board of directors, nor does it contain its employment tax returns or payroll records identifying the names of its employees. *Id.* Although the Beneficiary has qualifications matching the job requirements, the Petitioner asserts that the requirement of an associate's degree in business administration is typical of similar jobs in the industry and the requirement is not specialized or unique. However, the record does not contain any evidence relating to the industry requirements for an assistant manager of a jewelry store. *Id.* Finally, the Petitioner asserts on appeal that it has been in business since 2001 and has operated, and will continue to operate, without the Beneficiary. However, the record contains no evidence of its continuous operations since 2001. *Id.* It is the Petitioner's burden to establish 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). The Petitioner has not met its burden to establish the *bona fides* of the job opportunity.

[7] The Petitioner's tax return was prepared pursuant to the cash method of accounting, in which revenue is recognized when it is received, and expenses are recognized when they are paid. *See* Internal Revenue Service (IRS) Publication 538, https://www.irs.gov/publications/p538/ar02.html (last visited Sept. 10, 2020). There should generally be no accounts payable to record on the balance sheet, since they are not recognized until they are paid. However, the Petitioner listed accounts payable in the liabilities section of its balance sheet in Schedule L. In any future proceedings, the Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

IV. WILLFUL MISREPRESENTATION OF A MATERIAL FACT

The Director also determined that the Petitioner willfully made a misrepresentation on the labor certification. A finding of willful misrepresentation of material fact against a petitioner requires the following elements:

- The petitioner procured, or sought to procure, a benefit under U.S. immigration laws;[8]
- The petitioner made a false representation;[9]
- The false representation was willfully made;[10]
- The false representation was material;[11] and
- The false representation was made to a U.S. government official.[12]

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

Based on the record before us, we conclude that the Petitioner willfully misrepresented material facts. First, the Petitioner made a false representation to the DOL at section C.9 of the labor certification application by failing to acknowledge a familial relationship between the Petitioner's owner and the Beneficiary. On appeal, the Petitioner reiterates its contention that it did not consider its owner to have a "familial relationship" with the Beneficiary within the context of question C.9 of the labor certification. We are not persuaded that the Petitioner, assisted throughout this proceeding by legal counsel, failed to realize that the term "familial relationship" in the context of the question at C.9 of the labor certification would encompass a close family tie like the one the Petitioner's owner has with the Beneficiary. We note the DOL's answer in its website section on frequently asked questions (FAQs) to the question "When should an employer mark 'yes' when responding to the Question C.9?" DOL's answer states that "[a] familial relationship includes any relationship established by blood, marriage, or adoption, even if distant... It also includes relationships established through marriage, such as in-laws and step-families." OFLC Frequently Asked Questions & Answers, Familial Relationships, at http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm (last visited Sept. 10, 2020). This DOL interpretation encompasses the relationship in this case between the Petitioner's owner and the Beneficiary. The FAQ further states that "failure to disclose familial relationships… when responding to Question C.9 is a material misrepresentation" and may be grounds for revocation or invalidation.

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

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

[10] *See* 8 *USCIS Policy Manual*, *supra*, at J.3(D). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA (1979).

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

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

Several decisions from BALCA have indicated that in-law relationships between foreign nationals and their prospective employers constitute familial relationships that trigger concerns about the *bona fides* of the job opportunities. *See, e.g., Matter of Sunmart 374,* 2000 WL 707942, at *3; *Matter of Topco USA, Inc.,* 93-INA-00516, 1996 WL 86214 *4 (BALCA Feb. 23, 1996) (upholding a certification denial based solely on a "family relationship... between a foreign national and his sister-in-law, an officer and director of the employer"); *Matter of Altobelli's Fine Italian Cuisine,* 90-INA-130, 1991 WL 239636 *3-4 (BALCA Oct. 16, 1991) (finding that a foreign national's relationship to his sister-in-law, the employer's corporate secretary, constituted a "family relationship"). The Petitioner should have responded "Yes" to the question at Part C.9, as it was clearly applicable to the relationship between the Petitioner's owner and the Beneficiary.

Second, we conclude that the misrepresentation was willfully made by the Petitioner without a persuasive rationale for believing that the nephew/uncle relationship between the Petitioner's owner and the Beneficiary did not constitute a "familial relationship" as contemplated in the question at C.9 of the labor certification. Although, the Petitioner claims that it was unreasonable for the Director to find that the Petitioner willfully misrepresented a material fact because the Petitioner had no intent to deceive, the Petitioner signed the form attesting to the truthfulness of the information provided. The signature on the petition by the Petitioner's owner established a strong presumption that he knew its contents and accepted them. *See Matter of A. J. Valdez*, 27 I&N Dec. 496, 502 (BIA 2018). The Petitioner's misrepresentation on the labor certification application therefore also appears to be willful.

Third, we conclude that the misrepresentation of fact was material because it cut off a line of inquiry the DOL may have pursued, had it known of the nephew/uncle relationship between the Petitioner's owner and the Beneficiary, to determine whether the offered position was a *bona fide* job offer open to U.S. workers. On appeal, the Petitioner states that even if there was a familial relationship between the Petitioner's owner and the Beneficiary, it was not a material misrepresentation because it did not influence the recruitment process and therefore did not undermine the *bona fides* of the job opportunity for U.S. workers. The efficacy of the recruitment process, however, is not the only factor to consider in determining whether the misrepresentation of a familial relationship is material in the labor certification process. As referenced earlier in this decision, a willful misrepresentation of a material fact is one which tends to shut off a line of inquiry which is relevant to the Beneficiary's eligibility. *Matter of Ng,* 17 I&N Dec. at 537. While the Petitioner states that its recruitment process did not yield any qualified applicants for the assistant manager position, its failure to acknowledge the close ties between the Petitioner's owner and the Beneficiary as a "familial relationship" cut off a line of inquiry the DOL may have pursued, had it known about that relationship, to determine whether the assistant manager position was a *bona fide* job offer open to U.S. workers. A beneficiary's familial relationship is an important factor in determining the *bona fides* of a job opportunity. *See* 20 C.F.R. § 656.17(l)(5).

Based on the foregoing analysis, we conclude that by answering "No" to the question at C.9 of the labor certification, the Petitioner willfully misrepresented a material fact concerning the familial relationship between its owner and the Beneficiary, and it has not established that the offered position is a *bona fide* job opportunity open to U.S. workers.

V. THE BENEFICIARY'S EDUCATION

Although not addressed by the Director in his decision, the record does not establish that the Beneficiary possessed the required education for the offered job. 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 an associate's degree in business administration. No training or experience is required. No alternate field of study is acceptable, and a foreign educational equivalent is acceptable.

On the labor certification, the Beneficiary indicated that he received an associate's degree in business administration from [redacted] Institute of Science and Technology in [redacted] Pakistan in 2015. With the petition, the Petitioner submitted a copy of a document, written in English, indicating that [redacted] Institute of Science and Technology in [redacted] Pakistan conferred upon the Beneficiary a bachelor of business administration degree in June 8, 2015. However, it is not clear if the document is an English translation of the Beneficiary's diploma,[13] a copy of his actual diploma issued in English, or some other document. The record does not contain his transcripts from [redacted] Institute of Science and Technology.

With the petition, the Petitioner also submitted an academic evaluation from Park Evaluations. The evaluation equates the Beneficiary's bachelor of business administration degree to a U.S.-awarded associate's degree in business administration. However, the evaluation does not indicate the courses taken by the Beneficiary, how many years the Beneficiary attended [redacted] Institute of Science and Technology, how many credit hours he earned, or whether the Beneficiary earned a "pass" degree or an "honors" degree."[14] It also does not indicate what documents the evaluator reviewed in making his determination. USCIS may treat a credentials evaluation as an advisory opinion. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). If an evaluation is inconsistent with other evidence or "is in any way questionable," however, USCIS may reject it or give it lesser evidentiary weight. *Id.* For the reasons discussed above, we do not find the Park evaluation to be credible evidence of the Beneficiary's education.

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[13] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* The record does not contain a foreign language diploma or a certified translation.

[14] The Electronic Database for Global Education (EDGE), an online database created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), states that a Bachelor of Business Administration "is awarded upon completion of two years of tertiary study beyond the Higher Secondary Certificate and represents attainment of a level of education comparable to two years of university study in the United States. Credit may be awarded on a course-by-course basis." *AACRAO EDGE*, https://www.aacrao.org/edge/country/credentials/credential/pakistan/bachelor-of-business-administration-(bba)-bba-(pass) (last visited Sept. 10, 2020). In the "Credential Author Notes," EDGE states that

> It is important to carefully examine the transcript to determine the number of years of study required to receive the degree. If the degree is 2 years in duration, it is noted as a "pass" degree, and if it is a 3-year degree it is noted as an "honors" degree.

Id. Because the record does not contain the Beneficiary's transcript, we cannot determine how many years of study the Beneficiary completed or whether he earned a "pass" degree or an "honors" degree.

Based on the above-referenced deficiencies in the evidence related to the Beneficiary's education, we cannot determine whether the Beneficiary has the education required for the offered job. In any future proceedings, the Petitioner must establish that the Beneficiary possesses the required education for the offered job.

VI. ABILITY TO PAY

Although not addressed by the Director in his decision, the record does not contain regulatory required evidence of the Petitioner's ability to pay the proffered wage from the priority date on December 23, 2016, and continuing until the Beneficiary obtains lawful permanent residence.[15] The regulation at 8 C.F.R. § 204.5(g)(2) requires that "[e]vidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The record does not contain regulatory-prescribed evidence of the Petitioner's ability to pay for 2016. Without this regulatory-required evidence, we cannot affirmatively find that the Petitioner has the continuing ability to pay the proffered wage from the priority date.

Further, USCIS records show that the Petitioner has filed multiple Form I-140 petitions for other beneficiaries. Where a petitioner has filed Form I-140 petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. *See* 8 C.F.R. § 204.5(g)(2); *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). Thus, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiaries of the other Form I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition.[16] We do not consider the other beneficiaries for any year that the Petitioner has paid the Beneficiary a salary equal to or greater than the proffered wage.

The Petitioner must document the receipt numbers, names of beneficiaries, priority dates, and proffered wages of these other petitions, and indicate the status of each petition and the date of any status change (i.e., pending, approved, withdrawn, revoked, denied, on appeal or motion, beneficiary obtained lawful permanent residence). To offset the total wage burden, the Petitioner may submit documentation showing that it paid wages to other beneficiaries. To demonstrate that it has the ability to pay the Beneficiary and the other beneficiaries, the Petitioner must, for each year at issue (a) calculate any shortfall between the proffered wages and any actual wages paid to the primary Beneficiary and its other beneficiaries, (b) add these amounts together to calculate the total wage deficiency, and (c) demonstrate that its net income or net current assets exceed the total wage deficiency. Without this information, we cannot determine the Petitioner's ability to pay the combined proffered wages of all of its applicable beneficiaries.

[15] The annual proffered wage is $41,500.

[16] The Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;
- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion; or
- Before the priority date of the I-140 petition filed on behalf of the other beneficiary.

In any future proceedings, the Petitioner must establish its continuing ability to pay the combined proffered wages of all of its applicable beneficiaries.

VII. CONCLUSION

In sum, the Petitioner has not established that the offered position is a *bona fide* job opportunity open to U.S. workers. The Petitioner willfully misrepresented a material fact concerning the familial relationship between its owner and the Beneficiary. Additionally, in any future proceedings, the Petitioner must establish that the Beneficiary possesses the required education for the offered job, and it must establish its continuing ability to pay the combined proffered wages of all of its applicable beneficiaries.

ORDER: The appeal is dismissed.