



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 02 2014**

Office: TEXAS SERVICE CENTER

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner subsequently appealed this matter to the Administrative Appeals Office (AAO). After careful review of the record, it is determined that the petition was timely withdrawn on August 8, 2011, prior to the director's issuance of a final decision. Therefore, the record will reflect that the petition was withdrawn. The director's decision will be withdrawn and the appeal will be dismissed as moot based on the withdrawal of the petition.

The petitioner is a limited liability company that was organized in the State of Florida. It previously sought to employ the beneficiary as its chief financial officer. Accordingly, the petitioner endeavored to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

After issuing the second of two notices of derogatory information, the director ultimately denied the petition with a finding of fraud on August 16, 2013. The petitioner filed a timely appeal seeking foremost to enforce the petitioner's withdrawal of the Form I-140, Immigrant Petition for Alien Worker, as of August 8, 2011.

The issues to be addressed in this matter are: (1) whether the director erred by adjudicating the petition on its merits following receipt of the petitioner's request that the petition be withdrawn; and (2) whether the petitioner's withdrawal of the petition constituted a timely retraction of the alleged misrepresentation that formed the basis of the director's finding of fraud.

I. Withdrawal

As an initial matter, in view of the petitioner's request that the petition be withdrawn, the director issued the August 16, 2013 decision on the merits in error. Therefore, the AAO will withdraw the director's decision. The record will reflect that the petition was withdrawn by the petitioner. *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976). The AAO will not address the petitioner's claims of eligibility for the requested classification as such claims are now moot based on the withdrawal of the petition.

A petitioner may withdraw a petition at any time up to the point that a decision is rendered by USCIS or, if the petition is approved, until the beneficiary is admitted, adjusts status, or changes status based on the approved petition. 8 C.F.R. § 103.2(b)(6). A withdrawal may not be retracted. *Id.* Once a petition is withdrawn, USCIS may not refuse the withdrawal and may not deny the petition on the merits, but the facts and circumstances surrounding the withdrawn petition shall be considered material to any new petition. *See Matter of Cintron*, 16 I&N at 9; 8 C.F.R. § 103.2(b)(15).

II. Timely Retraction

Although the record will reflect that the petition was withdrawn, only a timely and voluntary retraction of a misrepresentation can serve as a defense to inadmissibility; the simple withdrawal of a

visa petition will not absolve a petitioner or beneficiary from the attempted misrepresentation. A withdrawal will not preclude USCIS from entering a finding of fact on the record, separate and apart from a decision on the merits, based on an attempt to procure a visa, other documentation, admission, any other immigration benefit by fraud or the willful misrepresentation of a material fact.

Accordingly, the second issue in this matter is whether the withdrawal constitutes a timely retraction of the alleged "falsified evidence" which resulted in the director's finding of fraud. A timely retraction of a misrepresentation can serve as a defense to inadmissibility under section 212(a)(6)(C)(i) of the Act. *See Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). For the retraction to be effective, it must be done "voluntarily and without prior exposure of [the] false testimony." *Matter of R-R-*, 3 I&N Dec. at 827; *see also Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that recantation of false testimony one year after the event, and only after it became apparent that the disclosure of the falsity of the statements was imminent, was not voluntary or timely).

Here, the record shows that the director issued two notices of intent to deny (NOIDs) prior to denying the petition. The first NOID was issued on November 9, 2010 and exclusively addressed issues pertaining to the petitioner's eligibility, including the lack of sufficient evidence establishing the petitioner's qualifying relationship with the beneficiary's former employer abroad as well as evidence establishing the beneficiary's qualifying employment in his former and proposed positions. Although the petitioner submitted a response to the NOID on December 13, 2010, the petitioner ultimately chose to withdraw the petition pursuant to the August 8, 2011 letter referenced above.

Notwithstanding the withdrawal of the petition, the director proceeded with the adjudication of the petition by issuing a second NOID. The second NOID listed perceived anomalies in the evidence that gave rise to questions pertaining to its reliability and credibility. If the petitioner had submitted the withdrawal statement after having received the second NOID alleging the submission of "false evidence," there would have been no timely and voluntary correction of misrepresentation as the NOID would have placed the petitioner on notice that the director was prepared to expose the alleged false testimony. *See Matter of M-*, 9 I&N Dec. at 119. However, the petitioner withdrew the petition on August 8, 2011, which is more than thirteen months prior to the date the director notified the petitioner of derogatory information which put the petitioner's and the beneficiary's credibility in question. The petitioner's request to withdraw the petition had the effect of a timely retraction. Accordingly, the director's finding of fraud will be withdrawn.

ORDER: The petition is withdrawn. The director's decision dated August 16, 2013 is withdrawn and the appeal is dismissed as moot based on the withdrawal of the petition.

FURTHER ORDER: The director's finding of fraud or misrepresentation is withdrawn.