U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27831147

Date: AUG. 18, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, the operator of a martial arts instruction facility, seeks to employ the Beneficiary as hapkido instructor under the third-preference, immigrant visa category for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary's possession of the minimum employment experience required for the offered position or requested visa category. The Director also found that the Petitioner and Beneficiary willfully misrepresented the Beneficiary's experience on the accompanying certification from the U.S. Department of Labor (DOL). We dismissed the subsequent appeal. The matter is now before us again on combined motions to reopen and reconsider our most recent decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss both motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was 1) based on an incorrect application of law or policy, and 2) incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). The scope of any motion is limited to review of "the prior decision," which in this case is our January 2023 decision to dismiss the appeal *See* 8 C.F.R. § 103.5(a)(1)(i). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion to reconsider and new evidence submitted in support of his motion to reopen.[1]

Because the scope of our review on motion is limited to our prior decision, our analysis for these combined motions is limited to the following: (1) whether the Petitioner presents a new fact, supported by evidence, that shows proper cause to reopen our decision to dismiss the appeal; or (2) whether the Petitioner establishes that we incorrectly applied law or policy in dismissing the appeal, based on the evidence of record at the time that we made the decision. We may grant motions that satisfy these

[1] Our previous decision in this matter was ID# 23099370 (AAO JAN. 6, 2023).

requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

I. DETERMINATIONS ON APPEAL

A skilled worker must be able to perform "skilled labor (requiring at least 2 years training or experience)." Section 203(b)(3)(A)(i) of the Act. A petitioner must also demonstrate a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date, which in this case is August 13, 2019, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

In our previous decision dismissing the Petitioner's appeal, we affirmed the Director's determination that the Petitioner did not establish that the Beneficiary possessed the requisite qualifying work experience at the time of filing the petition. We also agreed with the Director that the evidence submitted to establish the Beneficiary's qualifications was inconsistent with information previously provided by the Beneficiary in the nonimmigrant student visa application he submitted in July 2018 to the U.S. Department of State (DOS). We concluded the statements provided by the Petitioner in response to the Director's notice of intent to deny (NOID) and on appeal to address the inconsistencies in the record about the Beneficiary's qualifying work experience were insufficient, as the record lacked independent, objective corroborative evidence to support the assertions made therein. A petitioner must resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

To support claimed qualifying experience, a petitioner must submit a letter from a beneficiary's former employer. 8 C.F.R. § 204.5(l)(3)(ii)(A). The Petitioner submitted a December 2019 letter from J-S-, owner of a Hapkido Training Center [training center] located in South Korea, in which J-S- indicated that the Beneficiary had been employed full-time as a hapkido instructor from January 2016 to August 2018. The accompanying labor certification stated the minimum requirements of the offered position are two years of work experience "in the job offered," and requires neither education nor training. The Petitioner further stated that it will not accept experience in an alternate occupation. On the labor certification, the Beneficiary attested under penalty of perjury that, by the petition's priority date, he gained more than two years of full-time, qualifying experience at the training center through employment from January 2016 until August 2018. The Beneficiary did not list any other experience on the certification.

The Beneficiary's answers on his July 2018 student visa application conflicted with his claimed, qualifying experience submitted in support of the petition, which is material to the benefit sought in the petition. When applying for a U.S. student visa abroad with DOS, the Beneficiary described himself as a student, indicating that from March 2017 through the date of the visa application he attended [Y-S-] university, and that he previously attended [Y-G-] university from March 2010 through mid-February 2016. During his visa interview he explained to the consular officer that he intended to study English as a second language for one to two years, then pursue graduate school education thereafter. Asked on the application "Were you previously employed?" he indicated "No," but disclosed that he had "worked as a soldier for two years in the [navy] to fulfill my military duties" when asked in another section of the application (from August 2011 through July 2013.) In contrast,

the Beneficiary claimed in the labor certification and J-S- stated in his letter that the Beneficiary was employed at the training center at the time of filing his visa application.

On appeal, the Petitioner referenced, among other things, the previously submitted letters from the Beneficiary and J-S- (who is the Beneficiary's uncle), in which they assert that the Beneficiary worked for J-S- as a hapkido instructor during the time period specified in the labor certification, but that he was paid cash wages so the business could avoid paying payroll taxes required by the South Korean government. They insisted that the Beneficiary used the cash earned through this employment to fund the college tuition, books and other expenses associated with his on-going studies.

The Petitioner, however, did not provide independent objective evidence of the Beneficiary's receipt of cash proceeds from the business during his asserted period of employment, such as bank statements reflecting ongoing cash deposits into the Beneficiary's account, or other evidence of his receipt of the claimed cash wages to substantiate the statements presented by the Petitioner on appeal and in the NOID response. While the Beneficiary and J-S- alluded to the Beneficiary's payment of his college expenses through his employment at the training center, the Petitioner did not submit copies of the Beneficiary's college tuition bills and payment receipts, college course transcripts, and the diplomas, if any, that he obtained through his university studies. The Beneficiary also alleged that he attended a master's degree program part-time from March 2017 to August 2018 while employed fulltime at the training center, but the submitted evidence did not substantiate his allegations. *See Matter of Ho*, 19 I&N Dec. at 591 (requiring a petitioner to resolve inconsistencies of record "by independent objective evidence").

As a result, we dismissed the appeal concluding the record did not demonstrate the Beneficiary's possession of the minimum experience required for the offered position or the requested EB-3 "skilled worker" visa category. On appeal, we also affirmed the Director's determination in the denial that the Beneficiary willfully misrepresented material facts in the pursuit of obtaining U.S. immigration benefits, explaining in detail our reasons for making this determination in our appellate decision.

II. MOTION TO REOPEN

As discussed above, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Resubmitting previously provided evidence or reasserting previously stated facts do not meet the requirements of a motion to reopen. The new facts must also be relevant to the grounds of the unfavorable decision, which in this case is the Petitioner's appeal, which we dismissed, and must demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. at 464.

A. The Required Experience

On motion, the Petitioner submits a copy of the Beneficiary's university course transcripts and certificate of graduation from Y-G- which shows that he concluded his coursework there during the 2015 Fall semester. It also provides a copy of the Beneficiary's university course transcript for four courses taken during the 2017 spring semester at Y-S- university, and a "Certificate of Leave of Absence" from Y-S- that states that the Beneficiary was admitted to an advance degree program there in March 2017 and that he has "been on a leave of absence [from the university] since August 2017."

The Petitioner asserts on motion that this new evidence substantiates the Beneficiary's employment with the training center, as follows:

> The Beneficiary began this period of employment [with the training center] shortly after he completed his finals and just before he was officially awarded [his degree from Y-G-] in February 2016. In other words, the [B]eneficiary was able to work full-time from January 2016 until March 1, 2017 because he had already completed his undergraduate studies at [Y-G-] .
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> On March 1, 2017, the Beneficiary matriculated into [Y-S-] to begin his graduate coursework in Food and Nutrition. As the documents confirm, [he] attended classes at [Y-S-] on a part-time basis during the Spring Semester of 2017 which lasted from March 1, 2017 until mid-June 2017. . . . [T]he Beneficiary was granted a leave of absence where he had more than sufficient time to work as a Hapkido Instructor on a full-time basis but also to work full-time at this uncle's training center to save sufficient funds to focus on his graduate course of studies.
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> Therefore, the Beneficiary would have had more than sufficient time to be employed as a full-time Hapkido Instructor at his maternal uncle's training center from January 17, 2016 until August 2, 2018 during this period of employment.

This new evidence indicates that the Beneficiary only attended Y-S- from March 2017 to June 2017, which is inconsistent with the Beneficiary's previous assertions in his July 2021 statement that he continued to attend a master's degree program as a part-time student while employed fulltime by the training center as a hapkido instructor. The Beneficiary stated in July 2021 that "[o]ne of the primary reasons why I worked full-time at [the training center] during my graduate studies was in order to financially support myself while attending [Y-S-] which is a private university in South Korea requiring graduate students to pay the equivalent of over $5,000 U.S. dollars per term for tuition, books, and other expenses." Similarly, J-S- notes in his July 2021 statement that:

> [The Beneficiary] was admitted to [Y-G-] for his undergraduate degree and was subsequently admitted to [Y-S-] for his graduate studies. Both universities are highly regarded but because both universities are private institutions, the cost of attending these universities are expensive. As a means to help [the Beneficiary] earn sufficient funds to continue his studies without hindrance, I employed [the Beneficiary] to serve as a Hapkido instructor at [the training center].
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> In South Korea, it is common practice for small businesses to hire family members and pay them in case rather than placing them on the company's official payroll . . . [the Beneficiary] was compensated in the same manner as I paid my wife and my sister, I had paid him in cash approximately between $1,000 and $1,200 U.S. dollars per months while he worked as a Hapkido Instructor for our training center.

J-S- contends in his letter that the Beneficiary continued to attend university while in his employ and that his cash payments were a means to compensate the Beneficiary so he could continue his studies. Prior to this motion, the submitted evidence suggested that the Beneficiary was concurrently employed

by the training center while attending university throughout his employment there, while on motion the Petitioner provides evidence that from June 2017 through August 2018, the Beneficiary worked at the training center but did not attend school at all. The Petitioner has not provided adequate evidence or explanation on motion to resolve these inconsistencies in the record. *Matter of Ho*, 19 I&N Dec. at 591-92.

Turning to the statements that the Beneficiary made to DOS in his July 2018 student visa application, we note again that the Beneficiary described himself as a student during his visa interview and indicated on his visa application that from March 2017 through the date of the application he attended [Y-S-] university. Because DOS applications are signed "under penalty of perjury," an applicant, by signing and submitting the application or materials submitted with the application, is attesting that their claims are truthful.[2] On motion, the Petitioner submits new evidence and contends the Beneficiary ended his academic career in June 2017, which conflicts with the information that the Beneficiary provided to DOS in order to obtain a U.S. student visa and gain admission to the United States.

The Petitioner does not sufficiently address the inconsistencies between and amongst the information previously provided in support of this petition, on the Beneficiary's visa application, and the new evidence submitted on motion. In general, a few errors or minor discrepancies are not reason to question the credibility of a [beneficiary] or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003)(upholding the AAO's finding that evidence in that matter was not credible). However, as in this case, 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 facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. at 591.

We acknowledge the Petitioner has supplemented the record with new evidence on motion to show the specifics of the Beneficiary's academic studies and asserts that he had "sufficient time" to gain the requisite employment at the training center, but the record is devoid of evidence to show that J-S- paid him cash to compensate him for his employment at the training center.

In our appellate decision we indicated that the record lacked evidence of the Beneficiary's receipt of cash proceeds from the training center during his asserted period of employment, such as bank statements reflecting ongoing cash deposits into the Beneficiary's account, or other evidence of his receipt of the claimed cash wages. We also noted that the Beneficiary and J-S- alluded to the Beneficiary's payment of his on-going college expenses through his employment at the training center, but the Petitioner had not submitted the Beneficiary's college tuition bills and payment receipts, college course transcripts, and the diplomas, if any, that he obtained through his university studies.

On motion, the Petitioner acknowledges that it was a "logical inquiry" for us to question whether the Beneficiary "even attended university during the times he was employed at his uncle's school and

[2] The DOS regulation at 22 C.F.R. § 41.103 states in pertinent part: Every alien seeking a nonimmigrant visa must make an electronic application on Form DS-160 or, as directed by a consular officer, an application on Form DS-156. The Form DS-160 must be signed electronically by clicking the box designated "Sign Application" in the certification section of the application. . . . This electronic signature attests to the applicant's familiarity with and intent to be bound by all statements in the NIV application under penalty of perjury.

used those cash wages to pay for his educational expenses." But the Petitioner has not sufficiently addressed this aspect. While it indicates that due to the passage of time, "copies of the Beneficiary's tuition bills and payment history from [Y-G- and Y-S]" are no longer available, it has not offered documentary evidence of the payment of cash wages to the Beneficiary by the training center. Here, the Petitioner has not met its evidentiary burden to demonstrate that the Beneficiary was employed full-time as a cash-based hapkido instructor at the training center to show that he is eligible for the offered position or the requested visa category, which both require the Beneficiary's possession of at least two years of experience. *See* section 203(b)(3)(i) of the Act (describing the immigrant visa category for skilled workers). *See also* section 291 of the Act, 8 U.S.C. § 1361. The evidence provided on motion does not sufficiently address or overcomes this issue. For these reasons, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(2).

B. Willful Misrepresentation

In our prior decision we affirmed the Director's determination in the denial that the Beneficiary willfully misrepresented material facts in pursuit of obtaining U.S. immigration benefits, which we summarize in part above. On motion, the Petitioner provides new evidence which indicates that in addition to the willful material misrepresentations in the record that we addressed in our previous decision, the Beneficiary falsely claimed on his July 2018 student visa application that he was a graduate student at Y-S- in pursuit of a student visa from DOS. The Petitioner provides evidence on motion that the Beneficiary ended his graduate studies at Y-S- in June 2017, eleven months prior to filing the visa application. However, in his application with DOS he claimed that he started his studies with Y-S- in March 2017, and was still attending the university as of the date of filing the visa application.

Misrepresentation of a material fact may lead to multiple consequences in immigration proceedings. Under Board of Immigration Appeals precedent, a misrepresentation is material when it tends to shut off a line of inquiry that is relevant to a foreign national's admissibility and that would predictably have disclosed other facts relevant to his or her eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017). It appears that the Beneficiary willfully misrepresented his academic achievements and student status in his student visa application filed with DOS in order to procure a student visa and admission to the United States.

A finding of willful misrepresentation in a visa petition may be considered in any future proceeding to determine that the Beneficiary is inadmissible to the United States. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). A material misrepresentation requires that a (Beneficiary) willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. 8 *USCIS Policy Manual* J.2, https://www.uscis.gov/policy-manual. *See also Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

III. MOTION TO RECONSIDER

As discussed, a motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to

reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

A. The Required Experience

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner avers "the Beneficiary did not conceal his familial relationship to his former employer," J-S-, noting that "at no time did the Beneficiary fail to disclose his familial relationship because neither the PERM Labor Certification, I-140 petition and I-485 application had any questions related to the Beneficiary's familial relationship to his former employer." The Petitioner contends on motion that we discounted "the reliability of the Beneficiary's former employer based on the mere assertion without any basis of evidence that the Beneficiary did not disclose his familial relationship his previous employer is both arbitrary and invalid." We disagree.

In dismissing the appeal, we did not determine that the evidence provided to substantiate the Beneficiary's employment at the training center was incredible "based on a mere assertion" that the Beneficiary did not initially disclose his familial relationship with J-S-. Rather, we reviewed the evidence submitted in support of the petition and on appeal, as well as the information contained in the Beneficiary's visa application. We provided a detailed discussion about various inconsistencies and other aspects in the evidence submitted to establish the Beneficiary's qualifications and noted that the Director had asked the Petitioner to provide documentary evidence which would explain these conflicts in the record, as well as independent and objective evidence to establish the Beneficiary's qualifying employment at the training center for the entire duration of time listed in the labor certification. *Matter of Ho*, *supra*.

We agreed with the Director that since the training center is owned and operated by the Beneficiary's uncle, J-S-, the letters and other materials from J-S- might be biased in favor of the Beneficiary and wouldn't constitute independent, objective evidence of his qualifying experience. A petitioner may submit a letter or affidavit containing biased information, but its subjectivity will affect the weight accorded the evidence in an administrative proceeding. *See Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) (citations omitted). As in this case, probative evidence beyond a letter or affidavit may be considered when submitted to resolve inconsistencies or discrepancies in the record. *Matter of Ho*, *supra*.

Ultimately, to determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*, 25 I&N Dec. at 376. We determined that the assertions provided by the Petitioner in the NOID response and on appeal to address the inconsistencies in the record about the Beneficiary's qualifying work experience were not credible, as the record lacked sufficient corroborating evidence to support them.

In our appellate decision we noted that in the NOID response and on appeal the Beneficiary and J-S- asserted that the Beneficiary was employed fulltime as an instructor at the training center for cash wages from August 2013 to September 2014 - while he pursued undergraduate degree studies, but they did not indicate whether he attended the university on a full-time or part-time basis during this

time period. We also took note that the Beneficiary did not include this period of employment in the labor certification that he signed under penalty of perjury, even though the labor certification required him in Part K to "list any other experience that qualifies [him] for the job opportunity for which the employer is seeking certification." The Petitioner did not address this inconsistency in the record in the NOID response or on appeal. *Matter of Ho*, *supra*.

The Petitioner suggests on motion that the Beneficiary's omission in the labor certification of his claimed employment at the training center from August 2013 to September 2014 was an inadvertent mistake on his part because "he misunderstood the meaning of the question under [section K of the labor certification] due to his limited English abilities." The Beneficiary is responsible for the information contained in section K of the labor certification, regardless of his newly claimed lack of English language skills. His signature on the application presumes knowledge of and assent to its contents. *Matter of Valdez*, 27 I&N Dec. 496 (BIA 2018). At the time the Beneficiary signed the labor certification he was an adult, over 27 years old. There is insufficient evidence to suggest the Beneficiary lacks the ability to make decisions or exercise independent judgment. It was his responsibility to ensure the form was translated to him and was accurate before he signed it.

We are not persuaded by the Petitioner's assertion on motion that the Beneficiary's failure to include his claimed work experience at the training center in 2013 and 2014 on the labor certification was simply a mistake because of his "limited English abilities." We concluded in our prior decision that the Petitioner had not established that the Beneficiary gained qualifying hapkido instructor employment at the training center during the 2013 to 2014 timeframe. The Petitioner has not demonstrated in the motion to reconsider that we erred in in making this prior determination, based on the evidence in the record at the time the decision was made.

Again, the Petitioner acknowledges on motion that it was a "logical inquiry" for us to question whether the Beneficiary "even attended university during the times he was employed at his uncle's school and used those cash wages to pay for his educational expenses." While it indicates that due to the passage of time, "copies of the Beneficiary's tuition bills and payment history from [Y-G- and Y-S-]" are no longer available, it does not sufficiently address the determination in our previous decision that the record contained insufficient independent objective evidence to substantiate the Petitioner assertion that the Beneficiary gained qualifying work experience at the training center through a cash-based employment arrangement with this uncle, J-S-.

J-S- asserted in his July 2021 letter that in "South Korea, it is a common practice for small businesses to hire family members and pay them in cash rather than placing them on the company's payroll…" Likewise, the Beneficiary stated in his letter that he did not disclose his employment at the training center on his visa application because he "was concerned that if I had disclosed my previous employment history on my DOS nonimmigrant application, this information would have been made available to the South Korean tax authorities which could have potentially created tax issues for my family's business." J-S- may elect to pay his employees in cash to avoid "placing them on the company's payroll" in order to circumvent South Korea's payroll tax requirements (as claimed by the Beneficiary). However, the Petitioner in this matter must satisfy the burden of proof and absent the submission of probative, documentary evidence to substantiate its assertions regarding the Beneficiary's qualifying employment, it runs the risk of a denial. *Cf Matter of Marques,* 16 I&N Dec. 314 (BIA 1977) (holding the "respondent had every right to assert his claim under the Fifth

Amendment[; however], in so doing he runs the risk that he may fail to carry his burden of persuasion with respect to his application."

Here, the Petitioner has not established on motion that our previous decision in which we determined the record did not demonstrate the Beneficiary's possession of the minimum experience required for the offered position or the requested EB-3 "skilled worker" visa category was based on an incorrect application of law or policy at the time we issued our decision.

The purpose of a motion to reconsider is to show error in the most recent prior decision. The Petitioner's latest motion to reconsider does not meet this standard. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

B. Willful Misrepresentation

In our prior decision we affirmed the Director's determination in the denial that the Beneficiary willfully misrepresented material facts in pursuit of obtaining U.S. immigration benefits, which we summarize in large part above. Specifically, we concluded that the record at that time supported the Director's conclusion that the Beneficiary willfully misrepresented material facts when seeking immigration benefits, and the Petitioner's evidence and arguments on appeal regarding these issues were insufficient to address the inconsistencies in the record. For the sake of brevity, we incorporate our previous analysis of these issues in our prior decision and in this decision.

On motion, the Petitioner contends that the Beneficiary's misrepresentations in his student visa application were not material. In support of this proposition, it cites to *Maslenjak v. United States*, 582 U.S. 335, 347-351 (2017), a case that determined which set of facts can lead the government to convict under a federal criminal statute prohibiting an individual from knowingly procuring, contrary to law, her naturalization. In *Maslenjak*, the Supreme Court determined that the government had not established that the defendant's answers to two questions on USCIS's naturalization form contributed to her obtaining citizenship. According to the Supreme Court, the causal link between the lie (or omission) must be sufficiently relevant to a naturalization criterion such that the government can undertake further investigation, and upon taking further investigation, the government should be able to find "disqualifying fruit." The Supreme Court also determined that it is a complete defense to prosecution under the statute (or denaturalization by the government) if a defendant demonstrates they are eligible for naturalization.

We do not find the facts and circumstances in *Maslenjak* to be sufficiently similar to those of the Beneficiary's circumstances to be relevant to our materiality analysis here. *Maslenjak* concerned a criminal prosecution, whereas here, the test for materiality that we use is the "natural tendency" test found in *Kungys v. United States*, 485 U.S. 759 (1988). In *Matter of D-R-*, 27 I&N Dec. 105 (BIA 2017), the Board reviewed the question of what constitutes materiality in the context of an inadmissibility finding, and it determined that we must apply the "natural tendency" definition of materiality from *Kungys v. United States*, but not the "fair inference" test, in the inadmissibility context. *Matter of D-R-* at 108-09. The Board also found misrepresentation is material when it shuts

off a line of inquiry relevant to admissibility, which probably would have disclosed other facts relevant to eligibility for a visa. *Id.* at 113.

The Petitioner contends that the Beneficiary's failure to include any period of employment at the training center in his visa application was not material to obtaining his student visa. It argues that "if the consular officer adjudicating the Beneficiary's F-1 application had known that [he] did not list his previous employment history, [] a reasonable consular official would not have taken additional investigatory steps." Given the severe consequences, both consular officials and USCIS adjudicators are expected to "closely scrutinize" the factual basis for a possible finding of fraud or material misrepresentation. *See Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994). But the Petitioner has not shown on motion that a government official is required to "take [the] additional investigatory steps" contemplated in *Maslenjak* when making a finding of willful material misrepresentation in visa applications adjudicated by DOS, or in visa petitions adjudicated by USCIS.

Noncitizens render themselves inadmissible to the United States if they seek to obtain U.S. visas, other documents, U.S. admission, or other benefits under the Act by fraudulently or willfully misrepresenting material facts. Section 212(a)(6)(C)(i) of the Act. Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matter of Valdez*, 27 I&N Dec. at 596 (citations omitted). A misrepresentation is material if it has a "natural tendency to influence, or [be] capable of influencing, the decision of the decision-making body to which it was addressed." *Id.*

DOS and USCIS each rely on the information in immigration-related forms and in documentary evidence provided by individuals seeking immigration benefits to carry out our respective missions of granting immigration benefits to eligible individuals. If individuals, like the Beneficiary, knowingly provide us with inauthentic information and documentation, the integrity of our immigration system is undermined. Furthermore, we conclude that the Beneficiary's lack of candor about his academic achievements and his work history are misrepresentations that shut off a line of questioning relating to the *bona fide* nature of his qualifications for the immigration benefits sought. As such, we find the Beneficiary's failure to truthfully disclose his employment and academic history in the visa application (and in the evidence submitted in support of this petition) to be material to the issue of his eligibility for immigration benefits, which is central to all immigration proceedings.[3] As such, his failure to do so supports a finding of willful misrepresentation of a material fact in seeking to procure (1) a nonimmigrant visa with DOS and (2) classification as an EB-3 "skilled worker" in this petition.

We reaffirm our previous determination that the Beneficiary's multiple misrepresentations in his visa application with DOS and in the instant petition were material within the meaning of section 212(a)(6)(C)(i) of the Act. Visa petition proceedings are inappropriate fora for determining beneficiaries' admissibility. *Matter of O-*, 8 I&N Dec. 295, 296-97 (BIA 1959). Thus, our review of the Beneficiary's alleged misrepresentations is a "finding of fact," not an admissibility determination.

[3] We observe that beyond the scope of the evidence that was in the record at the time of our previous decision, the Petitioner submitted evidence in support of its motion to reopen that the Beneficiary ended his graduate studies at Y-S- in June 2017, eleven months prior to filing the visa application. However, in his application with DOS he claimed that he started his studies with Y-S- in March 2017, and was still attending the university as of the date of filing the visa application. The Petitioner and Beneficiary should be prepared to resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies in future immigration proceedings. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

All USCIS decisions should include specific findings on material issues of law or fact that arise, including determinations of fraud or material misrepresentation. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also* 5 U.S.C. § 557(c). After we enter a finding here, USCIS or another agency may consider the Beneficiary's admissibility in separate proceedings.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.