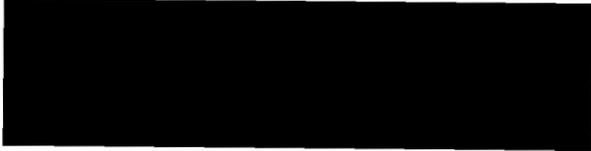




U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **OCT 02 2006**
WAC 05 208 51299

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a finding of fraud.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On June 1, 2006, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he submitted falsified material in support of his petition.

The AAO's June 1, 2006 notice stated:

You signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct."

* * *

8 C.F.R. § 204.5(h)(3)(iii) calls for the submission of published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. At the time of filing of your petition and again on appeal, you submitted an article entitled "Art, Mobile style" dated February 25th. This article misspells the word "Kuala Lumpur" and contains various grammatical errors. We further note that the city listed in the dateline, Kuala Lumpur, differs from [the] city where your art exhibition was allegedly being promoted, Mobile, Alabama. After further investigation, it was determined that this article was a fraudulent submission. The AAO was able to obtain the original article at <http://www.wpmi.com>. In an attempt to gain an immigration benefit, you altered the original article that discussed the work of artists Kim McKeand and Jennifer Menser (rather than your own work). By falsely substituting your name into this article, you have attempted to obtain a visa by fraud and the willful misrepresentation of a material fact.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The above derogatory information indicates that you have misrepresented the artistic accomplishments of others as your own. For this reason, we cannot accord any of your other claims any weight.

If you choose to contest the AAO's finding, you must offer independent and objective evidence from credible sources addressing, explaining, and rebutting the discrepancies described above.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was also requested to submit the original versions of several photocopied documents submitted with the petition. In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded 12 weeks in which to respond to the AAO's notice.

The petitioner failed to respond to the AAO's notice. Regarding the petitioner's failure to submit the requested original documents, the regulation at 8 C.F.R. § 103.2(b)(5) provides: "If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked." Accordingly, this petition cannot be approved.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By filing the instant petition and submitting a falsified article, the petitioner has sought to procure a benefit provided under the Act using a fraudulent document. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the "Art, Mobile style" article was a fraudulent submission, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. As stated above, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho* at 582, 591-92. The remaining documentation and the director's bases of denial will be discussed below.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has earned sustained national or international acclaim at the very top level.

This petition, filed on July 13, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an artist.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted the following:

1. Photocopy of a certificate stating that the petitioner received an “Excellent Art Project” award “at the 2002 Art Exhibition sponsored [sic] by CHIP Malaysia”
2. Photocopy of an honor certificate bearing the names of “Sijil Penghargaan” and “Naib Johan” rather than the name of the petitioner
3. Illegible photocopy of a “Trade & Industry '95 Golden Award” certificate
4. Photocopy of a trophy (inscription illegible) which the petitioner claims is a “Golden Award in ‘Internaitional [sic] 3D Awards’” for his “artwork of Painting with Straw”
5. Illegible photocopy of a certificate allegedly naming the petitioner a “Silver Video Awards Winner”
6. Photocopy of a seal for an “Erotic Art Award” (the petitioner's name does not appear on this award)
7. Photocopy of a seal for a “Featured Artist” award for “Electro Web Animation” (the petitioner's name does not appear on this award)
8. Photocopy of an “Artist of the Month” certificate allegedly issued by the “Association of Featured Artist” (the petitioner's name does not appear on this award)

In regard to item 1, we note the misspelling of the words “exhibition” and “sponsored.” It is unlikely that a nationally recognized award for artistic excellence would have such obvious errors.

Items 2, 3, 4, 5, 6, 7, and 8 are deficient in that they include illegible wording or fail to specifically name the petitioner. Astonishingly, item 2 bears the names of individuals other than the petitioner. We further note

that item 2 was unaccompanied by a certified English language translation in accordance with the regulation at 8 C.F.R. § 103.2(b)(3).

In regard to item 7, we note the petitioner claims that his artistic medium is “straw painting” rather than “web animation.”

Based on the aforementioned discrepancies, we cannot conclude that the petitioner meets this criterion. As stated previously, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

There is no evidence of publicity surrounding the petitioner’s awards or evidence showing that they command a substantial level of recognition. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence showing that the awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or print media to establish that the petitioner’s awards are nationally or internationally recognized awards. The petitioner has not established that he meets this criterion.

On June 1, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original versions of the eight items listed above. The petitioner’s failure to comply with the AAO’s request constitutes grounds for denial of the petition.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

On appeal, the petitioner claims that items 7 and 8 from the preceding criterion reflect evidence of his membership in the “Association of Featured Artist.” As noted previously, the petitioner’s name does not appear on either of these certificates. Without evidence of a membership credential bearing the petitioner’s

name, we cannot conclude that he holds membership in this association. Further, the record includes no evidence of the membership bylaws or the official admission requirements for the "Association of Featured Artist." There is no indication that admission to membership in this organization required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. The petitioner has not established that he meets this criterion.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted what is alleged to be an article about himself entitled "Art, Mobile style." The name and circulation of the publication in which this article allegedly appeared have not been provided. Further, the author of the article has not been identified as required by the plain wording of this criterion.

The article states:

FKUALA [sic] LUMPUR, Feb. 25 (Bernama) – Why not welcome the weekend with art! Lee previews two collections that make Friday night an arts double header in midtown Mobile.

You may not know [the petitioner] but you have seen his work. He is one of the straw artists, and you can see some of his work Friday night at the Shadow Box on South Street at 6:00 p.m.

In the dateline, we note the misspelling of "Kuala Lumpur." We further note that the city listed in the dateline, Kuala Lumpur, differs from the city where the petitioner's art exhibition is allegedly being promoted, Mobile, Alabama.² After further investigation, the AAO obtained a copy of the original article on the internet at <http://www.wpmi.com>. The AAO determined that the article provided by the petitioner was a fraudulent submission. On June 1, 2006, the AAO provided the petitioner with a copy of the original article, and requested the petitioner to submit independent and objective evidence to overcome the AAO's finding that the article submitted by the petitioner was fraudulent. The petitioner failed to respond to the AAO's notice. There is no evidence showing that the petitioner has been the primary subject of published material in major media. The petitioner has not established that he meets this criterion.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

² The Shadow Box is located at 100 South Florida Street in Mobile, Alabama rather than Kuala Lumpur, Malaysia.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted seven photocopies of what are alleged to be his artistic creations. Without further evidence, it cannot be determined if the works shown are those of the petitioner. Further, there is no evidence (such as an event program or art brochure) identifying the specific venues where the petitioner's works were featured. It must be stressed that an artist does not satisfy this criterion simply by arranging for his or her work to be displayed or sold. We find no evidence demonstrating that the petitioner's creations have been displayed at significant national venues. Nor is there any indication that the petitioner's works have been featured along side those of artists who enjoy national or international reputations. Further, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his work alone. For these reasons, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

The petitioner's appeal was filed on November 14, 2005. The appellate submission was accompanied by a letter discussing his accomplishments and supporting evidence (which have been addressed in this decision). On the Form I-290B, Notice of Appeal to the AAO, however, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than ten months later, the AAO has received nothing further.

Review of the record does not establish that the petitioner has distinguished himself as an artist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record includes no such evidence. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit

sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed with a finding of fraud.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted a fraudulent document in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States.