



U.S. Citizenship  
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FILE:

[REDACTED]  
EAC 05 152 52437

Office: VERMONT SERVICE CENTER

Date: OCT 02 2006

IN RE:

Petitioner:  
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.

Σ Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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. 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 7, 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 she submitted falsified documents in support her petition.

The AAO's June 7, 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)(vi) calls for evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. In support of your petition, you submitted articles entitled "The Personal Touch," "Where to purchase soil," and "Checking for Moisture." Under the title of each of these articles, it states: "By Ok Ja Lee." After further investigation, it was determined these articles were authored by another individual. The AAO was able to obtain the original articles at <http://plants.articleinsider.com>. In an attempt to gain an immigration benefit, you altered original material written by Nicholas Sayaan and misrepresented it as your own work. By falsely substituting your name into his articles and plagiarizing his work, 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 accomplishments of another individual as your own. For this reason, we cannot accord any of your other claims any weight.

If you choose to contest the AAO's findings, 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 the aforementioned falsified articles, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of material facts. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that her articles were falsifications, 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on April 29, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a bonsai art specialist. The statute and regulations require the petitioner’s acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since April 25, 1998. Given the length of time between the petitioner’s arrival in the United States and the petition’s filing date (more than seven years), it is reasonable to expect her to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation in this country.

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. Certificate issued by the Science and Technology Association of China and the New Publishing House of China in August 1997 stating that the petitioner’s book *Techniques on Bonsai Art* won First Place in the Reader’s Choice Awards
2. Certificate issued by the “Light Industry of the People’s Republic of China” on January 26, 1998 naming the petitioner a Master Bonsai Artist
3. Certificate issued by the Human Resources Department of Jilin Province in February 1996 naming the petitioner an “outstanding young artist.”
4. Certificate issued by the Government of Jilin Province in December 1997 stating that the petitioner won an Individual Achievement Award
5. Certificate issued by the Government of Jilin Province in January 1996 stating that the petitioner’s work *Tropical Plants* won first place at the 11<sup>th</sup> Annual Culture Art Festival of Jilin
6. Certificate of Honor issued by the Government of Jilin Province in August 1995 naming the petitioner a “top notch young artist in Jilin.”
7. Certificate of Recognition from the National Bonsai Foundation (1997)

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate

from the foreign language into English. The translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In regard to items 3, 4, 5, and 6, we find that these awards reflect provincial recognition rather than national or international recognition.

Regarding items 1 through 7, 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.

In addition to the above deficiencies, the record includes no evidence showing that the petitioner has received any awards subsequent to January 1998. The absence of awards in recent years indicates that the petitioner's acclaim has not been sustained. The petitioner has not established that he meets this criterion.

On June 7, 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 seven certificates 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.

The petitioner submitted membership certificates for the Jilin Culture Art Association, the Bonsai Art Association of China, and the Chinese Folk Literature and Art Association.

In response to the director's notice of intent to deny, the petitioner submitted documents entitled "Jilin Province Artist Association" and "Chinese Bonsai Association" which include general information about these organizations. We cannot accept this evidence, however, because the English language translations accompanying the documents were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The evidence submitted by the petitioner fails to show that admission to membership in the aforementioned associations required outstanding achievement or that she was evaluated by national or international experts in consideration of his admission to membership. Therefore, the petitioner has not established that she meets this criterion.

On June 7, 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 three membership certificates listed above. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted articles entitled "The Personal Touch," "Where to purchase soil," and "Checking for Moisture." After further investigation, the AAO determined that these articles were fraudulent submissions. On June 7, 2006, the AAO requested the petitioner to submit to submit independent and objective evidence to overcome the AAO's findings. The petitioner failed to respond to AAO's notice.

The petitioner also submitted what she alleges is evidence of her authorship of a book entitled *Techniques on Bonsai Art* (a photocopy of the book cover). We find that the three fraudulent articles submitted by the petitioner cast doubt on the reliability and sufficiency of this evidence. See *Matter of Ho* at 582, 591-92. Pursuant to *Matter of Ho*, the AAO has the discretion not to accord any weight to this evidence. The petitioner has not submitted independent and objecting evidence confirming her authorship of this book or showing the number of copies in print. On June 7, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original version of this book. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

The petitioner has not established that she meets this criterion.

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

The petitioner submitted several images of what are alleged to be her bonsai designs. Without further evidence, it cannot be determined if the petitioner's works are among those shown. The images of the petitioner's creations were not accompanied by contemporaneous evidence (such as an event program or art brochure) indicating the specific exhibition or showcase in which they appeared. There is no evidence demonstrating that the petitioner's works 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 her regular participation in shows or exhibitions at exclusive venues devoted largely to the display of her work alone. Thus, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate that she 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.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a 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 fraudulent documents in an effort to mislead CIS and the AAO on elements material to her eligibility for a benefit sought under the immigration laws of the United States.