



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted]  
EAC 05 131 50992

Office: VERMONT SERVICE CENTER

Date: APR 17 2007

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:

[Redacted]

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.

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. On January 30, 2007, the petitioner requested that his appeal be withdrawn. The appeal will be dismissed based on its withdrawal by counsel. The AAO will also enter a separate administrative finding of fraud and material misrepresentation.

The petitioner sought 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 sciences. Part 5 of the Form I-140 petition listed the petitioner's occupation as a researcher of plant physiology.<sup>1</sup> The director determined the petitioner had not established that he qualifies for classification as an alien of extraordinary ability.

On November 29, 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 notice specifically observed that the petitioner 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."

Regarding the altered documents and their materiality to these proceedings, the AAO's notice stated:

8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In support of your petition, you submitted a photocopy of what is alleged to be a "Certificate of Prize of National Progress of Science and Technology" presented to you in 2004. The AAO is in receipt of another version of this document, alleged to be the original, which we shall refer to as the "altered template." This altered template was created by gluing strips of paper bearing new text over existing text on the document. The new text superimposed on the altered template included your name, the name of a paper that you allegedly authored entitled "A Study of  $\alpha$ -amylase During Development of Apple Fruit,"<sup>2</sup> and a different serial number. For example, the altered template had an underlying serial number of [REDACTED]. A thin strip of paper was then placed over this underlying serial number and glued to the document. This thin strip of paper bears a new serial number of [REDACTED].

The altered template contained in the record (when photocopied) is identical to the photocopy of the "Certificate of Prize of National Progress of Science and Technology" that you submitted to CIS. Thus, you have submitted what appears to be an altered prize certificate in support of your petition.

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<sup>1</sup> The petitioner submitted evidence showing that he holds a bachelor's degree in agricultural studies ("fruit tree specialty") from the Laiyang Agricultural Institute in China.

<sup>2</sup> The record reflects that the petitioner is not the author of this study and that he plagiarized this article from an original paper entitled "Activities, Quantitative Changes and Subcellular Localization of  $\alpha$ -amylase During Development of Apple Fruit" by [REDACTED] and [REDACTED] which was published in *Acta Botanica Sinica*.

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 what are alleged to be articles written by you appearing in *Acta Botanica Sinica*, *Acta Horticulturae Sinica*, and *Journal of Fruit Science*. After further investigation, it has been determined that you altered material written by other individuals and misrepresented their scholarly articles as your own work:

1. The article in *Acta Botanica Sinica* of which you claim authorship was originally written by [REDACTED] and [REDACTED]. The AAO was able to access the original article at <http://www.wanfang.data.com.cn> on November 22, 2006.
2. The article in *Acta Horticulturae Sinica* of which you claim authorship was originally written by [REDACTED] and [REDACTED]. The AAO was able to access the original article at <http://www.engine.cqvip.com> on November 22, 2006.
3. The article in *Journal of Fruit Science* of which you claim authorship was originally written by [REDACTED] and [REDACTED]. The AAO was able to access the original article at <http://www.wanfang.data.com.cn> on November 22, 2006.

You fraudulently inserted your name into the above articles and plagiarized the work of the preceding authors.

By misrepresenting your past accomplishments and submitting falsified documents, you have attempted to obtain a visa by fraud and 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). Because you have submitted fraudulent documents in support of your petition, 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. If you do not submit such evidence within the allotted twelve-week period, the AAO will dismiss your appeal.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was also requested to "submit the *original* (not a photocopy) of the 'Certificate of Prize of National Progress of Science and Technology'" which he had submitted on appeal. 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.

In response, the petitioner submitted a January 30, 2007 letter from counsel requesting that his appeal be withdrawn. The petitioner's response does not challenge the AAO's findings that falsified materials were submitted in support of his petition and that his past accomplishments had been misrepresented. Further, the

petitioner failed to submit the original Certificate of Prize of National Progress of Science and Technology as requested by the AAO.

The January 30, 2007 letter from counsel states:

[The petitioner] confessed to us that he has sought help from some so-called translation service agencies with regard to his application and appeal, and paid a fee to them. These agencies are illegal because they have engaged in unauthorized practice of law. In recent years, the government has shut down some of these agencies, but there are still many active ones today. [The petitioner] has provided certain documents, evidences in support of his applications to the agencies, however, it appeared that the agencies have added, subtracted altered, forged something, exactly as you suspected in your letter.

Based on the foregoing, this firm advised [the petitioner] that since now he has knowledge of the forged documents which were submitted in this case by the agencies, he is obligated to inform the US CIS and he must withdraw his appeal and applications.

The petitioner's withdrawal of the appeal does not overcome or nullify the fact that the petitioner has sought to procure immigration benefits by fraud. We cannot ignore that the petitioner 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." Further, the petitioner submitted a March 19, 2005 letter accompanying the petition that also bears his signature. In this letter signed by the petitioner, he claims, for example, that he "took part in the statistical analysis of inheritance trends of hybrid apple."<sup>3</sup> A December 1, 2005 letter submitted in response to the director's request for evidence and bearing the petitioner's signature cites the paper he falsely claims to have authored entitled "A Study of  $\alpha$ -amylase During Development of Apple Fruit."<sup>4</sup> Finally, the petitioner's Form I-290B, Notice of Appeal to the AAO, filed on March 28, 2006, and a letter accompanying this form both bear the petitioner's signature.<sup>5</sup>

Counsel offers no evidence to support his assertions that the petitioner paid a fee to "translation service agencies with regard to his application and appeal" or that the agencies he paid "have added, subtracted altered, forged something." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further states:

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<sup>3</sup> See paper entitled "Studies on the Fruit Internal Characteristics Inheritance Trends of Fuji Apple Variety Crossed Progenies" published in *Journal of Fruit Science*. This plagiarized paper, which falsely identifies the petitioner as its author, was submitted along with the Form I-140 petition.

<sup>4</sup> This plagiarized paper, which falsely identifies the petitioner as its author, was submitted in response to the director's request for evidence and again on appeal.

<sup>5</sup> The petitioner's appeal was accompanied by a plagiarized scientific paper and a falsified prize certificate.

As for whether the responsibilities of filing fraudulent documents shall be imputed against [the petitioner], it is really the jurisdiction of the judiciary branch, instead of the Department of Homeland Security. [The petitioner] might be partially liable for the agencies' act, might not be, it should be determined after a fair hearing, right to confront witnesses and opportunity to defend himself. Department of Homeland Security has investigative power, even the prosecutory power, however, cannot be both the prosecutor and the adjudicator, which would have been a due process violation under the U.S. Constitution and Federal laws.

A finding of fraud is a serious matter, will unavoidably involving [the petitioner's] credibility, character, and whether it is his intentional act or merely ignorant. An entering of such a finding and conclusion in record by your office will deprive him the right of a fair hearing and opportunity of defending himself in a court. A legal conclusion of committing fraud by a government entity in the executive branch is improper. [The petitioner] may seek judicial intervention as this finding will carry dire consequences to his future and his reputation, which will unnecessarily incur expenses of himself and the government.

Counsel has cited no statute, regulation, standing precedent, or other legal authority to support his assertion that it is not within the jurisdiction of the Department of Homeland Security to make a finding of fraud for an employment-based immigrant petition.

As immigration officers, Citizenship and Immigration Services (CIS) Immigration Appeals Officers and Center Adjudications Officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the Secretary of Homeland Security's delegation of authority. *See* sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003).

With regard to immigration fraud, the Act provides immigration officers with the authority to administer oaths, consider evidence, and further provides that any person who knowingly or willfully gives false evidence or swears to any false statement shall be guilty of perjury. Section 287(b) of the Act, 8 U.S.C. § 1357(b). Additionally, the Secretary of Homeland Security has delegated to CIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, make recommendations for prosecution, and take other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I).

In the course of performing their duties under the immigration laws and the Administrative Procedure Act (APA), immigration officers are charged with reviewing evidence and making factual determinations or "findings" related to the adjudication of immigration benefits. Under section 557 of the APA, immigration officers are obligated to ensure that all decisions are a part of the administrative record and that the decisions include "a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. § 557(c).

As an issue of fact that is material to an alien's eligibility for the requested immigration benefit or that alien's subsequent admissibility to the United States, the administrative findings in an immigration proceeding must include specific findings of fraud or material misrepresentation. Within the adjudication of the visa petition, a

finding of fraud or material misrepresentation will undermine the probative value of the evidence and lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Outside of the basic adjudication of visa eligibility, there are many critical functions of the Department of Homeland Security that hinge on a finding of fraud or material misrepresentation. For example, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182. Additionally, the regulations state that the willful failure to provide full and truthful information requested by CIS constitutes a failure to maintain nonimmigrant status. 8 C.F.R. § 214.1(f). For these provisions to be effective, CIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.<sup>6</sup>

If CIS were to be barred from entering a finding of fraud after a petitioner withdraws the visa petition or appeal, the agency would be unable to subsequently enforce the law and find an alien inadmissible for having “sought to procure” an immigrant visa by fraud or willful misrepresentation of a material fact. *See* section 212(a)(6)(C) of the Act.

With regards to the current proceeding, section 204(b) of the Act states, in pertinent part, that:

After an investigation of the facts in each case . . . the [Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien . . . in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition . . . .

Pursuant to Section 204(b) of the Act, CIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In the present matter, we find that much of the petitioner’s documentation has been falsified, a finding that the petitioner does not challenge in his response to the AAO’s November 29, 2006 notice.

Counsel further states:

[The petitioner’s] assertion of the agencies involvement is credible to us, because even the address used in this case is of the agencies’ address. It is typical for agencies to do, because they want to keep control of the cases: His actual address should be [REDACTED]. We have attached a change address form.

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<sup>6</sup> It is important to note that while it may present the opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).

Based on the foregoing, the undersigned would plead not to enter a determination of fraud against [the petitioner], as it is premature, not supported by sufficient evidences, not a result of judicial proceeding.

Attached to counsel's January 30, 2007 letter are photocopies of what counsel claims are the "Business Cards of two Immigration Service Agencies that have 'helped' [the petitioner]." The first business card bears an address of [redacted] Flushing, NY 11354 and the second bears an address of [redacted] Flushing, NY 11354. Neither of these addresses matches the petitioner's previous address of record, [redacted] Elmhurst, NY 11373. Therefore, the business cards fail to support counsel's claim that these agencies had "control" of the petitioner's case and that "the address used in this case is of the agencies' address." As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 533, 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. The petitioner has not presented evidence of a financial transaction with either agency or documentation showing that they "helped" prepare any of his fraudulent submissions received on April 4, 2005, December 6, 2005, or March 28, 2006.

Even if the petitioner had established that another attorney or a "translation service agency" had prepared the documents, this fact would not relieve the petitioner from the obligation of ensuring that all of the representations and evidence were true and correct. As previously noted, the petitioner 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." *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also*, 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

In this case, we find that there is substantial and probative evidence to establish that the petitioner knowingly and willfully submitted fraudulent documentation in support of his petition for classification as an alien of extraordinary ability. The petitioner filed the instant petition supported by fraudulent documentation on April 4, 2005, submitted additional fraudulent documentation in response to the director's request for additional documentation on December 6, 2005, and filed the instant appeal on March 28, 2006 affirming his initial claims and submitting further fraudulent documentation. Given the petitioner's educational background specializing in agricultural studies, the fact that his fraudulent documents were prepared in Chinese (his first language), and the fact that his signature appears on the Form I-140 petition and on the three letters accompanying the fraudulent documents, we find it implausible for counsel to question "whether the responsibilities of filing fraudulent documents shall be imputed against [the petitioner]."

In our November 29, 2006 notice, the AAO advised the petitioner that the withdrawal of his appeal would not prevent a finding of fraud. The regulation at 8 C.F.R. § 103.2(b)(15) provides: "Withdrawal or denial due to abandonment shall not itself affect the new proceeding; *but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.*" (Emphasis added.)

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 falsified documents, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue. While the petitioner has chosen to withdraw his appeal, this does not negate our finding that he has sought to procure immigration benefits through fraud.

**ORDER:** The appeal is dismissed based on its withdrawal by the petitioner with a finding of fraud and willfull misrepresentation of a material fact.

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