

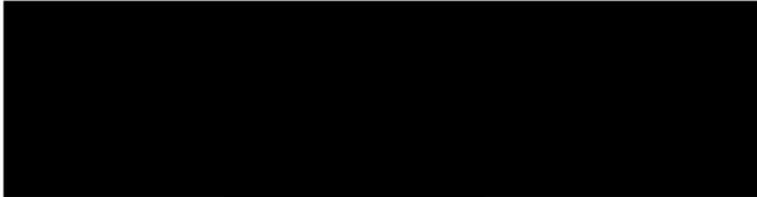


U.S. Citizenship  
and Immigration  
Services

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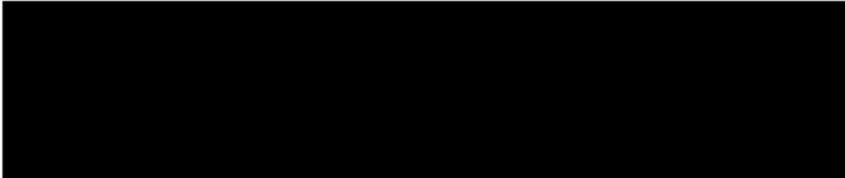


FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 08 2007  
EAC 06 011 50611

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:



**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.

*Naura Deadrick*  
for 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 and material misrepresentation.

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 appeal, counsel argues that the petitioner “is one of that small percentage who have risen to the very top of the field of endeavor,” and therefore qualifies as an alien of ‘extraordinary ability’ under Section 203(b)(1)(A) of the Act.”

On April 20, 2007, 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 material in support of her 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 fraudulent documentation and its 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 response to the director’s January 5, 2006 notice of intent to deny, you submitted a photocopy of what is alleged to be a Certificate of Honor from China Central Television.<sup>1</sup> This certificate bears an issuance date of “May 11, 1998” and states that you won the first prize in the “1999 National Traditional Hand Craft Paper Cutting Art Contest.” The accompanying English language translation you submitted for this document states:

Certificate of Honor

This is to certify that [REDACTED] has won the First Prize in year 1999 National Traditional Hand Craft Paper Cutting Art Contest.

Issued by: China Central Television Artists and Television

(Seal): China Central Television Artists and Television

Issuing Date: May 11, 1998

The Certificate of Honor bears an issuance date prior to the year in which the contest allegedly occurred. Therefore, we find that this document is a falsification. Further, the accompanying English language translation contains an error. The text over the certificate seal translates as “China Central Television Station” rather than “China Central Television Artists and Television.” By submitting a falsified award certificate, you have sought to obtain a visa by fraud and willful misrepresentation of a

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<sup>1</sup> The darkness and clarity of the surrounding border and seal on this photocopied certificate is significantly different from the darkness and clarity of the text appearing in the center of the certificate.

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 a falsified document, 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 discrepancy described above.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner was afforded fifteen days (plus 3 days for mailing) in which to submit evidence to overcome the derogatory information cited above. The petitioner failed to respond to the AAO's notice.

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.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant petition and submitting the evidence described above, 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 she submitted falsified documentation in support of the petition, 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*, 19 I&N Dec. at 591. 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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 sustained national or international acclaim at the very top level.

This petition, filed on September 30, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a paper-cut artist. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that her national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since September 1, 2001. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than four 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 as an artist 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 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. "Honor Certificate" stating that the petitioner won a first place award at "the national paper-cut big match . . . of Ministry of Culture" (August 15, 1999)
2. "Certificate of Award" stating that the petitioner was "granted the first grade award of category of 'Paper cut' in 1998 National Folk Art Exhibition Contest" (August 1998)
3. Certificate stating that the petitioner was "granted the first grade award of 'Paper cut' in 5<sup>th</sup> National Folk Art Exhibition Contest" (July 1997)
4. Certificate stating that the petitioner was granted a "first grade of excellent youth" award for her "Paper Cut works in 1996 National Exchange Show" sponsored by the Ministry of Culture (September 1996)
5. "Certificate of Honor" stating that the petitioner was granted a "Paper Cut Performance Award in 5<sup>th</sup> Circle Performance of Culture and Art in Shandong" (December 1995)
6. "Certificate of Honor" stating that the petitioner "won the Paper Cut Performance Award in 4<sup>th</sup> Shenyang Art Festival" (September 1994)
7. "Certificate of Honor" stating that the petitioner "won the Gold Medal Prize in the Eleventh National Young Artist Paper Cutting Art Contest" (March 1996)
8. "Certificate of Honor" stating that the petitioner won the first prize in the "1997 Chinese National Hand Craft Paper Cutting Art Contest"
9. "Certificate of Honor" stating that the petitioner was awarded "the title of 'Outstanding Chinese Traditional Hand Craft Artist' in 1998"

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to 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 4 and 7, we find that such awards offer no meaningful comparison between the petitioner and the most experienced and practiced artists. There is no evidence showing that the petitioner faced competition from throughout her entire field, rather than her approximate age group within that field. We find that the petitioner's receipt of a "youth" or "young artist" award is not an indication that she has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

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

In response to the director's January 5, 2006 notice of intent to deny, the petitioner submitted a "Certificate of Honor" bearing an issuance date of "May 11, 1998" and stating that she won the first prize in the "1999 National Traditional Hand Craft Paper Cutting Art Contest." As stated previously, this certificate bears an issuance date prior to the year in which the contest allegedly occurred. On April 20, 2007, in accordance with the regulation

at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner that this document was found to be fraudulent. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO's finding. We find that the preceding falsified award certificate submitted by the petitioner casts doubt on the reliability and sufficiency of the remaining evidence submitted for this criterion. *See Matter of Ho*, 19 I&N Dec. at 591.

The petitioner also submitted a fill-in-the blank "Certificate of Award" dated August 14, 2005 from the Asia Culture Exchange Center stating that her paper cutting artwork received first prize "in the Chinese Culture Works Competition of 2005." We find that this award reflects institutional recognition rather than national or international recognition. Further, we note that this certificate bears a corporate seal from the "Asia Chinese Opera Troupe" of New York rather than the "Asia Culture Exchange Center." 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.

The petitioner's response also included a "Certificate of Award" dated January 16, 2005 from the "East-China Culture Exchange Center of U.S.A." stating that the petitioner demonstrated outstanding achievement in its "Chinese Culture and Art Contest of 2005." The petitioner also submitted a "Certificate of Award" dated December 21, 2005 from the Huaxia Culture Exchange Center stating that her paper cutting artwork received first prize "in the 17<sup>th</sup> Annual Traditional Chinese Folk Art Works Contest of 2005." The latter certificate dated December 21, 2005 was issued to the petitioner subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the AAO will not consider the December 21, 2005 award certificate in this proceeding. Nevertheless, we find that the award certificates from the East-China Culture Exchange Center of U.S.A. and the Huaxia Culture Exchange Center reflect institutional recognition rather than national or international recognition.

In regard to items 1 through 9 and the award certificates submitted in response to the director's notice of intent to deny, there is no evidence such as media coverage surrounding these awards, evidence of the number of recipients, the criteria for granting the awards, the level of expertise of those considered, or the number of individuals eligible to compete or other evidence showing that the awards 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 and regulations, 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.

In light of the above, the petitioner has not established that she meets this criterion.

*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. Further, 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 what are alleged to be her certificates of membership for the Hunan Artist Association and the World Association of Beauty Culture. The record, however, does not include the membership bylaws or the official admission requirements for these associations. As such, there is no evidence that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

The petitioner also submitted what is alleged to be her membership card for the China Artists Association (CAA). We note that this membership card lists the petitioner's age as "24" and an issue date of January 4, 1998. The petitioner, however, was born on January 6, 1974. As of January 4, 1998, the issue date of this membership card, the petitioner would have been age 23 not age 24. 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.

The petitioner also submitted a document entitled "Chinese Artist Association Membership Requirement." The English language translation accompanying this document, however, was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, this document includes no address, telephone number, or any other information through which the CAA may be contacted.

In light of the above, the petitioner has not established that she 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 general, 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. 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.<sup>2</sup>

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<sup>2</sup> 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, for instance, cannot serve to spread an individual's reputation outside of that county.

The petitioner submitted a November 1999 "Notification" informing her that an entry about her would appear in *World Famous Persons Book*. The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires the submission of the published material about petitioner rather than a "notification" letter informing her of her entry in the book. Further, the author of the material was not identified as required by this criterion. Nor has the petitioner submitted evidence showing that the publication in which the entry would purportedly appear qualifies as major media. Thus, the petitioner has not established that she meets this criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

On appeal, counsel argues that the petitioner's evidence shows that she has made original contributions in the field of paper cutting art. Counsel states: "The references submitted by [redacted] and [redacted] are best evidences [sic] of [the petitioner's] originality and creativity as well as her significant contributions to the art of paper cutting."

The English language translation accompanying the January 10, 2006 letter from [redacted] who identifies himself as "Vice President of the Chinese Artist Association," was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). [redacted] letter states that the petitioner has "made significant contributions by publishing many books and articles on paper cutting art." The January 12, 2006 letter from Jie Feng, who identifies himself as "President" of the Fei Tian Traditional Art Performing Company, repeats the preceding observation. Neither of these letters specifically names any of the petitioner's publications. Nevertheless, the petitioner's publications relate to the criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship and original contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's publications under the next criterion.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an artist who has sustained national or international acclaim. In this case, the record does not indicate the extent of the petitioner's influence on other artists, nor does it show that any specific works by the petitioner are particularly renowned as works of modern contemporary art. Without extensive documentation showing that the petitioner's work has been unusually influential or highly

acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance in her field. Thus, the petitioner has not established that she meets this criterion.

*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 what is alleged to be an article she wrote entitled "Hunan Folk Paper Cut." The English language translation accompanying this article, however, was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that this article was published in "professional or major trade publications or other major media."

The petitioner also submitted photocopies of pages from four books that she alleges to have authored entitled:

1. *Collection of Paper Cutting Art*
2. *Chinese Folk Art – Astrology Paper Cutting Art*
3. *Paper Cut in China: The Twelve Symbol Animals*
4. *Paper Cut in China: Facial Makeup of Peking Opera.*

On December 20, 2006, the AAO issued a notice requesting the petitioner to submit the original editions of these books. The regulation at 8 C.F.R. § 103.2(b)(5) provides:

*Request for an original document.* Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. 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. There shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the Service to substantiate a previously submitted copy. Further, an applicant or petitioner may not move to reopen or reconsider the proceeding based on the subsequent availability of the document. An original document submitted pursuant to a Service request shall be returned to the petitioner or applicant when no longer required.

In accordance with the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was afforded twelve weeks in which to respond to the AAO's notice. The petitioner, however, failed to respond to the AAO's request for the original documents. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition. Accordingly, this petition cannot be approved. Aside from the petitioner's failure to submit the requested originals, there is no evidence showing the number of copies of the petitioner's books in print or that her books qualify as "professional or major trade publications or other major media."

In light of the above, 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 pieces of paper artwork and photocopied images that she alleges are her artistic creations. Without further corroborative evidence, it has not been established that the petitioner's works were

among those submitted. In this case, there is no evidence demonstrating that the petitioner's artwork has been displayed at significant national or international venues. Nor is there any indication that the petitioner's works have been featured along side those of artists who have 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 artwork alone.

In light of the above, the petitioner has not established that she meets this criterion.

In conclusion, we find that the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that she meets at least three of the criteria that must be satisfied to establish the sustained 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.

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 and willful misrepresentation of a material fact.

**FURTHER ORDER:** The AAO finds that the petitioner knowingly submitted fraudulent documentation 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.