



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 05 181 52722

Office: VERMONT SERVICE CENTER

Date: MAR 09 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:

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.

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 November 16, 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 misrepresented the artistic achievements of other individuals as her own.

The AAO's November 16, 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."

\* \* \*

In support of your petition, you submitted a 19 page document entitled "BIOGRAPHY: [the petitioner]" which allegedly describes your performing arts achievements. After further investigation, it has been determined that you misrepresented the artistic achievements of other individuals as your own in this biography. Your alleged biography consists of plagiarized text relating to dancers and choreographers such as Yong Yao, Wu Haiyan, Shen Wei, and Wang Qimin. The text you plagiarized originated from the following sources:

1. "YAO Yong" biography accessed at <http://www.melodyofchina.com> on November 8, 2006
2. Article entitled "China, U.S. Dancers Strike Gold in Int'l Ballet Competition" accessed at <http://english.people.com.cn> on November 8, 2006
3. Article entitled "Movement Meets Canvas, Leaving a Lasting Impression" accessed at <http://www.shenweidancearts.org> on November 8, 2006
4. Article entitled "Chinese Ballet Dancer Wins Top Woman Award in Moscow" accessed at <http://english.people.com.cn> on November 8, 2006
5. Article entitled "The Art of Chinese Dance" accessed at <http://www.houstoncul.org> on November 8, 2006

By plagiarizing material relating to other artists and misrepresenting their accomplishments as your own in the biography you submitted to CIS, 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 submitted a falsified biography, 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.

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.

By filing the instant petition and misrepresenting the history and accomplishments of Yong Yao, Wu Haiyan, Shen Wei, and Wang Qimin as her own, 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 misrepresented the accomplishments of other dancers and choreographers as her own, 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 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.

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):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This petition, filed on June 8, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a dancer, choreographer, and dance instructor. 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 May 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.

In support of the petition, the petitioner submitted the aforementioned 19-page falsified biography. The petitioner also submitted two photographic images of a female dancer, but it has not been established that the individual pictured is the petitioner. The director found that the preceding documentation was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that her achievements have been recognized in her field of expertise. On July 18, 2005, the director issued a notice of intent to deny informing the petitioner of the deficiencies in the record and requesting that she submit evidence pertaining to the criteria at 8 C.F.R. § 204.5(h)(3).

The petitioner failed to respond to the director's notice of intent to deny. Therefore, on January 30, 2006, the director denied the petition, finding that the petitioner had not established eligibility for the benefit sought.

On appeal, the petitioner states: "Since I need time to collect my professional evidence for my application, please reactivate my case. I will submit the evidence as soon as I obtain it. Thanks very much."

The appellate submission was unaccompanied by arguments specifically challenging the director's findings or evidence pertaining to the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner indicated that a brief and/or evidence would be submitted to the AAO within 180 days. The appeal was filed on February 17, 2006. As of this date, more than one year later, the AAO has received nothing further.

In this case, we concur with the director's finding that the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act.

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.

**FURTHER ORDER:** The AAO finds that the petitioner knowingly submitted a document containing false statements 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.