



U.S. Citizenship  
and Immigration  
Services

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FILE:



EAC 05 079 53046

Office: VERMONT SERVICE CENTER

Date: MAR 29 2007

IN RE:

Petitioner:

Beneficiary:



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.

A handwritten signature in cursive script that reads "Mai pluson".

3 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed an appeal, which the director deemed untimely and treated as a motion to reopen. After granting the motion, the director issued a decision affirming the denial of the petition. The matter 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. 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 December 14, 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 articles authored by other individuals as her own work.

The AAO's December 14, 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 what are alleged to be articles written by you appearing in *Modern Advertising* magazine's volumes 1 and 5 of 2002. After further investigation, it has been determined that you have misrepresented the published articles of other individuals as your own work:

1. The article in *Modern Advertising* magazine's volume 1, 2002 issue entitled "The Situation of the Chinese TV Advertising Business in 2002 is Severe" of which you claim authorship was originally written by [REDACTED] and [REDACTED]. The AAO was able to access the original article at [http://engine.cqvip.com/content/f/90376x/2002/000/001/jj01\\_f7\\_5855624.pdf](http://engine.cqvip.com/content/f/90376x/2002/000/001/jj01_f7_5855624.pdf) on November 28, 2006.
2. The article in *Modern Advertising* magazine's volume 5, 2002 issue entitled "Post-modern Anxiety – A Comment on Advertising Culture in the Eyes of Critics" of which you claim authorship was originally written by [REDACTED]. The AAO was able to access the original article at [http://engine.cqvip.com/content/f/90376x/2002/000/005/jj40\\_f7\\_9693635.pdf](http://engine.cqvip.com/content/f/90376x/2002/000/005/jj40_f7_9693635.pdf) on November 28, 2006.

You fraudulently substituted your name as the author of the above articles and plagiarized the work of [REDACTED], and [REDACTED]

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 documentation 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.

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. Originals of the following documents were requested:

1. The book entitled *China Advertising Studies in the 20<sup>th</sup> Century*
2. The book entitled *Mass Media in Transformation Period*
3. The book entitled *Modern Public Relations Practice and Case Studies*
4. Shandong Educational Committee Philosophical and Social Science Work of Excellence Certificate dated October 2003
5. Shandong Social Science Union Certificate of Social Science Work of Excellence dated September 2002
6. Complete issues of *Modern Mass Media* in which the petitioner's articles allegedly appeared in 1997
7. Complete issues of *International Advertising* in which the petitioner's articles allegedly appeared in 2000
8. Complete issue of *Advertising Pointer* in which the petitioner's article allegedly appeared in 1999
9. Complete issues of *Modern Advertising* in which the petitioner's articles allegedly appeared in 2000 and 2002
10. Complete issues of *China Advertising* in which the petitioner's articles allegedly appeared in 2000

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 responded by submitting the requested originals for items 1 through 6 above and a February 28, 2007 letter addressing the derogatory information outlined in the AAO's December 14, 2006 notice. The petitioner failed to submit the requested original documents for items 7, 8, 9, and 10 above. 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.

The petitioner's response included further falsified material relating to her authorship of scholarly articles in the field. The petitioner submitted what she claims to be an original copy of the 1997, Number 1 (84<sup>th</sup> issue)

of a journal, the title of which she translates as *Modern Mass Media* (corresponding to item 6 above as requested by the AAO). The title of this journal may also be translated as *Modern Communication*. The publication is an academic journal of the Beijing Broadcasting Institute. The petitioner claims to have written the article which appears on page 19 of this journal. She translates the title of the article as "On Mass Media Studies – Correlative Relations of Culture." The petitioner's name is listed as the author of this article in the Chinese language table of contents and in the Chinese text of the article on page 19. However, the cover of the journal (in Chinese) lists the author of this article as "[REDACTED]." [REDACTED] is also listed as the author of the article in the "Main Contents" section printed in English on the fourth unnumbered page of the journal. Thus, the evidence of record clearly shows that the petitioner altered the Chinese language table of contents and the Chinese text of the article on page 19 by falsely inserting her name in place of the true author, [REDACTED]. 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.

In addressing the AAO's findings that she submitted falsified material relating to her authorship of articles in *Modern Advertising* magazine's volume 1, 2002 and volume 5, 2002 issues, the petitioner states:

As you can see I used my pen name [REDACTED] in *Modern Advertising* magazine's volume 1, 2002 issue entitled "The Situation of the Chinese TV Advertising Business in 2002 is Severe." Since it is very misleading and takes time to explain, I asked the publisher to change to my name for my petition. As in article in *Modern Advertising* magazine's volume 5, 2002 entitled "Post-modern Anxiety – A Comment on Advertising Culture in the Eyes of Critics," the author is [REDACTED] but actually the article was a joint work of us. I didn't use my name when published as I wanted to give my partner more weight as he needed more individually completed works for evaluation of professor, so I waived my name. But the article had my brain and my blood in it.

In regard to the *Modern Advertising* volume 1, 2002 article entitled "The Situation of the Chinese TV Advertising Business in 2002 is Severe," the petitioner now states that she used the pen name "[REDACTED]." The petitioner submits nothing from the publisher or editor of this journal to support her assertions, nor has she submitted the original issue of this publication as requested by the AAO pursuant to 8 C.F.R. § 103.2(b)(5). Further, the petitioner's explanation regarding use of the [REDACTED] pen name contradicts the material she submitted with the petition in which her name "[REDACTED]" rather than her alleged pen name [REDACTED] appears as author in both the magazine issue's table of contents and the text of the article. If the petitioner had indeed used a pen name, as she now claims, then it would have appeared in the article she submitted with the petition. We find that the petitioner's explanation regarding her use of a pen name, conceived only upon being confronted with derogatory evidence that she plagiarized an article authored by [REDACTED] and [REDACTED] is not credible. A complete review of the evidence submitted by the petitioner at the time of filing the petition, in response to the director's request for evidence, in support of the motion to reopen, and in support of the appeal finds no evidence to support the petitioner's assertion that she used the pen name "[REDACTED]" in her published articles. Further, the petitioner's explanation ignores the existence of the article's coauthor, [REDACTED] and the absence of this individual's name as an author in the table of contents and the text of the article submitted by the petitioner. The petitioner's above statements contradict the bogus evidence that she initially submitted with her petition. The petitioner has failed to submit independent and objective evidence to support her assertions regarding the pen name or to overcome the

discrepancies in the record. 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. *See Matter of Ho*, 19 I&N Dec. at 582, 591-92. We find that Tianxi Wu and Shuzhen Yang are the true authors of this article, not the petitioner. Therefore, the petitioner has not overcome the AAO's finding that she submitted falsified material misrepresenting herself as the author of this article.

In regard to the *Modern Advertising* volume 5, 2002 article entitled "Post-modern Anxiety – A Comment on Advertising Culture in the Eyes of Critics," the petitioner states, "the author is [REDACTED] but actually the article was a joint work of us. I didn't use my name when published as I wanted to give my partner more weight as he needed more individually completed works for evaluation of professor, so I waived my name." The petitioner submits nothing from the publisher or editor of this journal to support her assertions, nor has she submitted the original issue of this publication as requested by the AAO pursuant to 8 C.F.R. § 103.2(b)(5). Further, the petitioner's explanation regarding the authorship credit going to [REDACTED] contradicts the material she submitted with the petition in which her name "[REDACTED]" rather than "[REDACTED]" appears as author in both the magazine issue's table of contents and the text of the article. If Shangjiang [REDACTED] had indeed been given credit for authoring this article, as the petitioner now claims, then his name would have appeared in the article she submitted with the petition. We find that the petitioner's explanation regarding her joint authorship of this article, conceived only upon being confronted with derogatory evidence that she plagiarized [REDACTED]'s article, is not credible. The petitioner's statements contradict the bogus evidence that she initially submitted with her petition. The petitioner has failed to submit independent and objective evidence to support her assertions regarding her joint authorship of this article or to overcome the discrepancies in the record. As stated previously, 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. *See Matter of Ho*, 19 I&N Dec. at 582, 591-92. We find that [REDACTED] is the true author of this article, not the petitioner. Therefore, the petitioner has not overcome the AAO's finding that she submitted falsified material misrepresenting herself as the author of this article.

The petitioner's response further states: "When I submitted these articles, I made them my own name only in order to have more weight to my works as it is I that need the petition for immigration, not them, as they are in China." Thus, the petitioner admits to altering material submitted in support of her petition in order to procure an immigration benefit, albeit for purposes of receiving credit for two articles she alleges to have authored. The record, however, includes no independent and objective evidence to establish that these articles in *Modern Advertising* magazine's volume 1, 2002 and volume 5, 2002 issues were the petitioner's works rather than those of the aforementioned authors who she plagiarized.

In this case, we find substantial and probative evidence that the petitioner submitted falsified material in support of her petition. The record clearly establishes that the petitioner plagiarized articles authored by [REDACTED] and [REDACTED] and misrepresented their material as her own work.

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 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).

The record reflects 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.”

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 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 documents, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9<sup>th</sup> Cir., 2003). However, any time a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner’s assertions. In this case, the derogatory information catalogued above leads the AAO to conclude that the evidence of the petitioner’s eligibility is not credible.

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). 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 January 13, 2005, seeks to classify the petitioner as an alien with extraordinary ability in the fields of "communication studies and advertising studies." 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 August 1993. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than eleven 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 Shandong Social Science Work of Excellence Committee stating that the petitioner received an "Award for Excellent Social Science Works" (September 2000)
2. Certificate issued by Shandong Educational Committee stating that the petitioner received a "Shandong Educational Committee Philosophical and Social Science Work of Excellence" award (October 2003)
3. Certificate issued by the Shandong Social Science Union stating that the petitioner received a "Second Class Award in Shandong Social Science Work" (September 2002)

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. Further, we find that these awards reflect provincial recognition rather than national or international recognition. We further note that these certificates were allegedly issued to the petitioner in China in 2000, 2002, and 2003. The petitioner, however, has been present in the United States since 1993. The petitioner has not resolved this discrepancy. 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. at 582, 591-92.

In light of the above, 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.*

In response to the director's request for evidence, the petitioner submitted three letters of support, but these letters cannot be accepted because the English language translations accompanying them were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). The evidence submitted by the petitioner is not adequate to demonstrate that she is recognized throughout her field for original contributions of major significance. The petitioner has not shown how the fields of communication studies and advertising studies have changed as a result of her work. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude 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 articles entitled "On Mass Media Studies – Correlative Relations of Culture," "The Situation of the Chinese TV Advertising Business in 2002 is Severe," and "Post-modern Anxiety – A Comment on Advertising Culture in the Eyes of Critics." As stated previously, we find that these articles were fraudulent submissions. 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. Because the petitioner submitted the preceding falsified articles, we cannot accord her other scholarly articles any weight. Nevertheless, there is no evidence of numerous citations or other objective evidence showing that the greater field regards the petitioner's published articles as particularly significant.

On December 14, 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 issues of *International Advertising* in which her articles allegedly appeared in 2000, the issue of *Advertising Pointer* in which her article allegedly appeared in 1999, the issues of *Modern Advertising* in which her articles allegedly appeared in 2000 and 2002, and the issues of *China*

*Advertising* in which her articles allegedly appeared in 2000. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

The petitioner also submitted what she alleges is evidence of her authorship of three books entitled *China Advertising Studies in the 20<sup>th</sup> Century*, *Mass Media in Transformation Period*, and *Modern Public Relations Practice and Case Studies*. The petitioner, however, has not submitted independent and objecting evidence showing the number of copies of these books in print or establishing that these publications had significant national or international readership.

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

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

In order to establish that she performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted a May 28, 2003 "Appointment Certificate" allegedly issued by the China High Education Public Relations Profession Committee stating: "[The petitioner] is engaged as a member of the Board of Directors of our committee." This document includes no address, telephone number, or any other information through which this committee may be contacted. Nevertheless, it has not been shown that this organization has a distinguished reputation at the national or international level. Nor has the petitioner submitted evidence showing her length of service, her specific responsibilities on the committee, and her individual importance to its mission. Thus, it has not been demonstrated that the role she fulfilled was leading or critical. Finally, we note that the petitioner has been present in the United States since 1993. There is no evidence indicating that she served on this committee in China. 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. at 582, 591-92.

The petitioner submitted a February 9, 2002 "Appointment Certificate" allegedly issued by President [REDACTED] of Shandong University stating: "This is to certify that [the petitioner] is invited as a part-time professor in School of Literature and Mass Media from February, 1999 to February, 2002." This document includes no address, telephone number, or any other information through which this individual may be contacted. Further, while this certificate indicates that the petitioner was "invited" to the university, there is no evidence showing that she actually worked there from 1999 to 2002. The record reflects that the petitioner was present in the United States during that time.

We find that the preceding evidence is not adequate to demonstrate that the petitioner has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim. Thus, the petitioner has not established she meets this criterion.

In this case, 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 national or international acclaim necessary to qualify as an alien of extraordinary ability. Further, the petitioner has not submitted evidence of specific achievements in the United States establishing that she has sustained national acclaim in this country since her arrival in 1993.

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.

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 material misrepresentation.

**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.