



U.S. Citizenship
and Immigration
Services

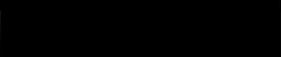
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FILE:



Office: VERMONT SERVICE CENTER

Date: MAY 04 2007

EAC 05 025 52151

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.

Maura Deadrick

for

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 March 7, 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 documentation in support of her petition.

The AAO's March 7, 2007 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)(iii) calls for the submission of 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. In support of your appeal, you submitted an article by [REDACTED] [REDACTED] entitled "Is Milk Healthy?" in which you are allegedly identified as a specialist in child nutrition. After further investigation, it has been determined that you falsely substituted your name into this article. The AAO was able to obtain the original article at <http://kobieta.gazeta.pl/edziecko/1,54930,2361373.html> (accessed on February 13, 2007). Attached to this notice is a copy of the article that you submitted and the original article. By falsely substituting your name in place of [REDACTED]'s name twice in this article and attempting to misrepresent the nutritional advice she provided for this article as your own, we find that you have sought 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).

* * *

If you choose to contest the AAO's finding, 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.

In response, the petitioner submitted a March 13, 2007 letter stating:

I have received your letter and I am in a state of shock. All the documentation that you have provided as attachments to your letter I knew nothing about.

I . . . state as follows: came to the U.S. with my two daughters 02.12.2004 as a tourist to visit my than [sic] boyfriend now husband [redacted]. One month before my visa was to expire I and [redacted] sought legal advice how to extend my and my daughters tourist visas or adjust our status in the U.S. together with [redacted] as permanent residents in the office of [redacted] and [redacted]

Legal advice was given to me in Polish by [redacted] an office employee and I was promised to have 3 visas extentions [sic] first and then status adjustment for myself my daughters and [redacted]. An agreement was written and we paid money because we trusted that law office is the place to seek legal advice. I am beyond words. I knew no details of the legal procedures [redacted] performed and I had no part in them. So please be aware that I feel cheated out of my trust in legal advice, time, money. All that was done against the law was not known to me until now.

The petitioner's response included a photocopy of a business card identifying [redacted] as an employee of the "Law Offices of [redacted]" rather than "[redacted] and [redacted]"

The petitioner also submitted a document entitled "Retainer Agreement of [redacted]" stating:

Date: 8-30-03
CASE TYPE – Green Card through Labor Department
TERMS
-Client Name: [redacted]

Attorney Fee – \$10,000

To start case – \$3,000 – PAID CASH

Upon Labor Approval – \$2,000
UPON WORK AUTHORIZATION \$2,000

INS Filling [sic] Fee – \$135.00 + \$535.00 plus \$1000 per adult payable to U.S. Immigration

¹ The record includes no Form G-28, Notice of Entry of Appearance as Attorney or Representative, reflecting that the petitioner was represented by [redacted] or [redacted] in immigration matters.

* * *

All documentation, information, and other relevant supporting documentation are provided by the client, the client has received a copy of forms filled out by attorney or client and client represents that information on form(s) is complete and accurate.

* * *

Client fully understands and agrees to above terms and conditions and knowingly and voluntarily signs this retainer agreement without and duress, fraud or coercion.

[Redacted]

[Redacted] s signature]

Client

The petitioner's response does not challenge the AAO's finding that falsified material was submitted in support of her petition and that her past accomplishments had been misrepresented. According to the Retainer Agreement, "All documentation, information, and other relevant supporting documentation" were "provided by the client." This statement does not lend credibility to the petitioner's claim that she was unaware of the fraudulent documentation. Nevertheless, even if the petitioner had established that an employee of [Redacted] or the Law Offices of [Redacted] had prepared the falsified article, 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. We cannot ignore that the petitioner submitted Forms I-290B, Notice of Appeal to Administrative Appeals Unit (AAO), on November 16, 2005 and February 7, 2006, bearing the petitioner's signature and accompanied by the falsified article.² According to the two United States Postal Service (USPS) Express Mail envelopes contained in the record, both of the petitioner's Form I-290B submissions to Citizenship and Immigration Services (CIS), which included the falsified article, were postmarked "Staten Island, NY 10304," the petitioner's local post office, rather than "New York, NY 10005" as indicated in the preceding Retainer Agreement. We note here that the petitioner's address of record is [Redacted]. Further, both of the USPS Express Mail envelopes specifically identify the petitioner's name and address in the "From" section. The preceding evidence from the USPS contradicts the petitioner's claim that she "knew nothing about" the falsified article.

Regarding the petitioner's claim that the [Redacted] and [Redacted] law office acted inappropriately, we note that any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned

² The falsified article was printed in Polish, the petitioner's native language, rather than English.

be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The record includes no such documentation.

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 Appeal (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 a falsified document 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 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.

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 has 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 November 2, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a baker and food technologist. 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 membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In response to the director's request for evidence, the petitioner submitted a letter of support stating that she was a member of the Polish Society of Food Technologists. The petitioner also submitted a certificate issued by the Chamber of Craft and Entrepreneurship in Bialystok, Poland stating that she was a member of the "commission for journeymen-master examination procedures in profession of a baker." The record, however, does not include the membership bylaws or the official admission requirements for these organizations. There is no evidence showing that admission to membership required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership. Thus, 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 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 or from a publication in a language that most of the population cannot comprehend. 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.³

On appeal, the petitioner submitted an article by [REDACTED] entitled "Is Milk Healthy?" in which the petitioner is allegedly identified as a specialist in child nutrition. As stated previously, the AAO found that the petitioner fraudulently substituted her name into this article. 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 591-92. Because the petitioner submitted the preceding falsified article, we cannot accord the other article she submitted on appeal any weight. Further, there is no evidence that the other article, entitled "On Present and Future," was published in major media. Thus, the petitioner has not established that she meets this criterion.

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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "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." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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). For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating the work of students.

As stated previously, the petitioner submitted a certificate issued by the Chamber of Craft and Entrepreneurship in Bialystok, Poland stating that she was a member of the "commission for journeymen-master examination procedures in profession of a baker." The plain language of this criterion, however,

³ 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.

requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” The record, however, includes no evidence documenting the petitioner’s activities as a judge. There is no evidence showing the names of the individuals she evaluated or the dates or their evaluations. The absence of contemporaneous evidence of the petitioner’s participation is a significant omission from the record. Without evidence showing that the petitioner’s activities involved evaluating experienced professionals at the national or international level, we cannot conclude she meets this criterion.

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

The petitioner submitted letters of recommendation discussing her work experience, but these letters are not adequate to demonstrate that she is recognized throughout her field for original contributions of major significance. The petitioner has not shown that her work has significantly influenced others in the culinary field or how this field has 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 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 letters of recommendation from her previous employers and affiliated organizations, but the record fails to demonstrate that the petitioner was responsible for their success or standing to a degree consistent with the meaning of “leading or critical role.” Nor is there evidence demonstrating that the organizations for which the petitioner worked had distinguished reputations. Thus, the petitioner has not established that 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.

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.

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 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.