



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAY 09 2007

EAC 04 207 53936

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, 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. 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 February 5, 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 documents in support of her petition.

The AAO's February 5, 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)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In support of your petition, you submitted an April 18, 2003 letter allegedly issued by [REDACTED] Division Chair, Film Division, Columbia University School of the Arts, stating: "This letter is to congratulate you that your film Nowhere to Say Goodbye is selected by Faculty Select and has won the Best Thesis Film of 2002 at Columbia Film Festival. This award will be honored by [REDACTED] [sic] on April 30th. Please make your presence prompt at the festival committee."

According to Columbia University's internet website, [REDACTED] "served as Chair of the Film Division from 1995-2000," not in 2003.¹ Based on this discrepancy and the misspelling of the name [REDACTED] in the April 18, 2003 letter, this document was submitted to the Film Division at Columbia University School of the Arts for confirmation of its authenticity. It was determined that the letter was a falsification. In its response to the AAO, the Film Division noted the following discrepancies regarding the April 18, 2003 letter:

1. [REDACTED] was not the Division Chair on April 18, 2003, the date of the letter. The chair at that time was [REDACTED]
2. You were not presented an award at the 2002 film festival.
3. The Film Division stated that they "had never heard of" your film "Nowhere to Say Goodbye" and that it "did not screen" at the 2002 film festival.
4. The name [REDACTED] was incorrectly misspelled as "[REDACTED]"
5. [REDACTED] "never attended" the Columbia University Film Festival.

¹ See <http://wwwapp.cc.columbia.edu/art/app/arts/film/viewFaculty.jsp> accessed on January 9, 2007.

In response to the director's request for evidence and again on appeal, you submitted what is alleged to be a "Special Jury Award" presented to you at the 7th Shanghai International Film Festival in June 2004. The version of this award you submitted in response to the director's request for evidence was different in appearance (color) from the version you submitted on appeal. The appellate version of the Special Jury Award was accompanied by a February 18, 2006 letter allegedly issued by Shen Qiang, Director of the "Jin Jue" Award International Film Board, Shanghai International Film Festival, stating: "This document is to certify that [the petitioner], director and co-producer of the STIR was the winner of the Special Award at the 7th Shanghai International Film Festival held in June 2004."

The AAO submitted copies of the February 18, 2006 letter and your Special Jury Award to the Shanghai International Film Festival Office for confirmation of their authenticity. It was determined that the February 18, 2006 letter and your Special Jury Award were falsifications. In its response to the AAO, the Shanghai International Film Festival (SIFF) Office stated that it "never heard the name of [redacted] and SIFF did not award the film 'Stir' in 2004." The responding official further stated that "SIFF never issued such kind of certification" and that your documentation was completely "false."

On appeal, you submitted a March 1, 2006 letter allegedly issued by [redacted] Deputy Director of Programming, Bravo TV, stating that your film Stir "was aired at Independent Night three times from October 3rd to December 21st 2003." This letter bears an address of [redacted] Bethpage, New York, 11714 and a telephone number of [redacted]. The AAO attempted to contact the aforementioned individual at this address and telephone number. Dialing the preceding telephone number results in a recording stating that the caller has "reached a non-working number at Cablevision's corporate headquarters." The preceding address and telephone number are for Cablevision Systems Corporation's corporate headquarters rather than the Bravo TV cable television network.² In 2002, Bravo TV was acquired by NBC (a subsidiary of General Electric) and since that time Bravo TV's corporate offices have been located at Rockefeller Center in New York.³ Bravo TV was not located at [redacted] Bethpage, New York as of March 1, 2006, therefore, we find that the March 1, 2006 letter that you submitted from [redacted] is a falsification.

You submitted a March 3, 2006 letter allegedly issued by [redacted], Senior Agent, New York Literary Agency, stating that she has been your agent since July 2005. This letter bears an address of [redacted] Boca Raton, Florida, 33427 and a telephone number of [redacted]. The preceding telephone number is for the "Fellowship of the Woodlands and Kerry Shook Ministries," a religious organization, not the New York Literary Agency.

You also submitted a February 19, 2006 letter allegedly issued by [redacted] Executive Director, Coalition of Asian Pacifics in Entertainment – New York (CAPE NY), stating that her "office number

² See [redacted] accessed on January 30, 2007.

³ See [redacted] and [redacted] accessed on January 30, 2007.

is [REDACTED] The preceding telephone number is for the “Law Offices of Howard Sadowsky,” not [REDACTED] of CAPE NY.

In light of your submission of falsified documents in support of your petition, we find that 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 falsified documents, 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.

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.” On appeal, the petitioner submits a March 8, 2006 affidavit stating that she “personally reviewed” counsel’s brief and fully supports its contents.

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 documents 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.

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 (9th Cir. 2003). However, any time a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after Citizenship and Immigration Services (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 outlined 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 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.

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 July 6, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a filmmaker. 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. According to the petitioner's Form G-325A, Biographic Information, the petitioner has been residing in the United States since May 1999. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than five 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 a filmmaker 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). On appeal, counsel argues that the petitioner's June 2004 "Special Jury Award" from the 7th Shanghai International Film Festival qualifies as a major internationally recognized award. The record, however, establishes that the petitioner's evidence pertaining to this award was fraudulent.

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723 (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy truly international recognition may include the Pulitzer Prize, the Academy Award, and the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields. There is no evidence showing that the petitioner is the recipient of an award comparable in stature to the preceding examples.

Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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 aforementioned falsified June 2004 "Special Jury Award" from the 7th Shanghai International Film Festival. The petitioner also submitted a bogus April 18, 2003 letter allegedly issued by [REDACTED], Division Chair, Film Division, Columbia University School of the Arts, stating: "This letter is to congratulate you that your film Nowhere to Say Goodbye is selected by Faculty Select and has won the Best Thesis Film of 2002 at Columbia Film Festival." On February 5, 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 these documents were found to be fraudulent. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO's findings. We find that the preceding fraudulent documentation 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 photocopied certificate stating that she was the recipient of a First Star Enterprise Management – Prudential Security Award "in the amount of seventy thousand dollars . . . for excellence in independent filmmaking and screenwriting in the year of 2000." There is no evidence of contemporaneous publicity surrounding this award or evidence showing that it commands national recognition. Further, the record includes no evidence that would demonstrate the number of recipients, the geographic area from which

the individuals eligible for consideration for this award were drawn from, the criteria for granting the award, the level of expertise of those considered, and the number of individuals eligible to compete. 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 the regulation, the petitioner must provide adequate evidence showing that an award presented under this criterion has significant national or international stature. In this case, there is no supporting documentation from the awarding entity or print media confirming the petitioner's receipt of this award or establishing that the award is 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. 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 evidence showing that she is a member of IFP (Independent Film Project)/New York. The record, however, does not include evidence of the membership bylaws or the official admission requirements for this organization.

The petitioner also submitted three letters allegedly issued by [REDACTED] Executive Director, Coalition of Asian Pacifics in Entertainment – New York (CAPE NY), dated April 27, 2004, June 23, 2005, and February 19, 2006. All three of these letters bear different letterhead and state that [REDACTED] 'office number is [REDACTED]

As stated previously, the preceding telephone number is for the "Law Offices of Howard Sadowsky," not [REDACTED] of CAPE NY. On February 5, 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 this discrepancy. The petitioner, however, failed to submit independent and objective evidence addressing the AAO's finding. The April 27, 2004 letter states that the petitioner "has been working with CAPE NY as Co-Director of Film Programming. In this capacity, [the petitioner] is responsible for building relationships with organizations and film studios in the New York area, planning educational and business networking events with respect to current issues in the film and television industry, and coordinating film screenings." We do not find that employment constitutes membership in an association in the field requiring outstanding achievement. The June 23, 2005 letter states: "CAPE has been a competitive membership based organization. Our membership in film and music is determined by candidates' degree of excellence in the field." The record does not include evidence of the membership bylaws for this organization. Nevertheless, without evidence overcoming the telephone number discrepancy, we cannot assign any weight to the aforementioned letters allegedly issued by Janis Shen.

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 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.⁴

On appeal, the petitioner submits a September 20, 2005 article printed in *World Journal*, a Chinese-language newspaper published in New York. It has not been shown that an article appearing in this publication constitutes published material in “major media.” The record includes no circulation statistics or other evidence showing that this publication has significant national distribution. Nevertheless, this article was published subsequent to the petitioner’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 this article in this proceeding.

In light of the above, 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.

⁴ 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, cannot serve to spread an individual’s reputation outside of that county.

A May 3, 2004 letter of support from [REDACTED] Film Program Advisor, New School University, New York, states:

I have produced the student film show for over six years and it was in this capacity that I first met [the petitioner]. I was searching for possible candidates to be film judges and discovered her name, from a selected pool of potential instructors. . . . I was overjoyed when she agreed to be a judge and found her to surpass the considerable expectation I had of her. She was a fantastic judge, utilizing her outstanding knowledge of film in her assessment of the student work. Her analyses of the student films were constructive and outstanding.

The preceding letter is not adequate to demonstrate that the petitioner meets this criterion. The plain language of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” The absence of contemporaneous evidence of the petitioner’s participation (such as an event program from the show or paperwork documenting her assessments) is a significant omission from the record. The benefit sought in the present matter, however, is not the type for which documentation is typically unavailable and the statute specifically requires “extensive documentation” to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act. Further, the commentary for the proposed regulations implementing this statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The letter from [REDACTED] fails to specify the names of the individuals evaluated by the petitioner and the date of her participation in the show. Nevertheless, we do not find that that evaluating students (non-professionals) at a local film show is evidence of national or international acclaim in one’s field. Without evidence indicative of national or international acclaim, such as 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 display of the alien’s work in the field at artistic exhibitions or showcases.

As stated previously, the petitioner submitted a bogus award certificate and a falsified February 18, 2006 letter as evidence of her alleged participation in the 7th Shanghai International Film Festival. The petitioner also submitted a falsified letter allegedly issued by [REDACTED] on April 18, 2003 stating that her film *Nowhere to Say Goodbye* received an award at the Columbia Film Festival. On appeal, the petitioner submits another falsified letter dated March 1, 2006 allegedly issued by [REDACTED] Deputy Director of Programming, Bravo TV. This letter states that the petitioner’s film *Stir* “was aired at Independent Night three times from October 3rd to December 21st 2003. Independent Night was one of our one-of-a-kind programs to promote independent films during the period of 1998 – 2004.” On February 5, 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 the preceding documents were found to be fraudulent. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO’s findings.

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.

As stated previously, the petitioner submitted three letters allegedly issued by [REDACTED] describing the petitioner's role for CAPE NY. These letters, however, bear different letterhead and provide an incorrect office telephone number for [REDACTED]. Further, there is no supporting evidence demonstrating that CAPE NY has a distinguished national or international reputation, nor evidence showing the petitioner's individual importance to the organization's overall success. On February 5, 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 the telephone number discrepancy. As the petitioner failed to submit independent and objective evidence addressing the AAO's finding, we cannot assign any weight to the aforementioned letters allegedly issued by [REDACTED]. 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.

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.