



U.S. Citizenship
and Immigration
Services

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BZ

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 16 2007
EAC 05 250 50593

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.

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 in the sciences. 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 20, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he submitted falsified material in support of his petition. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.”

Regarding the fraudulent documentation and its materiality to these proceedings, the AAO’s notice stated:

8 C.F.R. § 204.5(h)(3)(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 is alleged to be an article authored by you entitled “CC-5079, a novel microtubule and TNF- α inhibitor with anti-angiogenic and antimetastasis activity.” After further investigation, it has been determined that you plagiarized this article from an article entitled “A novel technique for quantifying changes in vascular density, endothelial cell proliferation and protein expression in response to modulators of angiogenesis using the chick chorioallantoic membrane (CAM) assay” and misrepresented yourself as the material’s author. The AAO was able to obtain the original article at [REDACTED] accessed on March 14, 2007).

Attached to this notice is a copy of the original article.

On appeal, you submitted what is alleged to be an article written by you entitled “The Synthetic Compound CC-5079 is a Potent Inhibitor of Tubulin Polymerization and Tumor Necrosis Factor- α Production with Antitumor Activity.” After further investigation, it has been determined that you misrepresented yourself as an author of this material. You fraudulently substituted your name in place of an original author named “[REDACTED]” The AAO was able to obtain the original article at [REDACTED] (accessed on March 14, 2007).

Attached to this notice is a copy of the original article.

You also submitted a January 30, 2006 “letter of recommendation” allegedly issued by [REDACTED] President, Cancer Research and Prevention Foundation. Based on irregularities found in the January 30, 2006 letter, it was submitted to the Cancer Research and Prevention Foundation for confirmation of its authenticity. On March 16, 2007, the AAO received a response from [REDACTED], President and Founder, Cancer Research and Prevention Foundation, stating:

I write in response to the inquiry regarding the petition of [REDACTED] and the attached letter, which was purported to have been written by me.

I cannot speak to [REDACTED]'s scientific credentials or abilities, but I can state unequivocally that the conversation he refers to never took place. I am familiar with the conference during which he stated that we spoke, but I have never attended it.

* * *

The letter itself is a complete fabrication. If you compare it to the letterhead on which this response is written, you will see that someone has very carefully cut and pasted the Foundation's logo on a piece of plain stationery and added an address. Moreover, if you compare the signature with mine below, you will see that they are not similar.

* * *

I can only surmise that [REDACTED] drafted the letter himself, created the stationery and signed my name.

I am highly offended by this situation and am copying Dr. [REDACTED] the chief executive officer of Celgene, in the event that the company employs Dr. [REDACTED]

Thank you for bringing this offense to my attention and giving me the opportunity to respond.

By misrepresenting your past accomplishments and submitting falsified documents, 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). Because you have submitted fraudulent documents 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)(16)(i), the petitioner was afforded fifteen days (plus 3 days for mailing) in which to submit evidence to overcome the derogatory information cited above. The petitioner failed to respond to the AAO's notice.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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

By filing the instant petition and submitting the evidence described above, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he 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 discrepancies, and the petitioner fails to resolve those 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 he has sustained national or international acclaim at the very top level.

This petition, filed on September 14, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In response to the director's notice of intent to deny, the petitioner submitted an August 15, 2005 letter confirming his membership in the American Chemical Society (ACS). The record, however, does not include the membership bylaws or the official admission requirements for this society. There is no evidence showing that admission to membership in the ACS required outstanding achievement or that the petitioner was

evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

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

On appeal, the petitioner submitted the aforementioned falsified January 30, 2006 letter of recommendation from [REDACTED] discussing his original research contributions. On March 20, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner that this letter was found to be fraudulent. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO's finding. We find that the preceding fraudulent letter 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. Therefore, we cannot assign any weight to the remaining letters of recommendation submitted by the petitioner. Nevertheless, these recommendation letters, allegedly issued by the petitioner's current and former superiors at Celgene and Mississippi State University and an individual who he met at an ACS conference, are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated organizations. The statutory requirement that an alien have "sustained national or international acclaim," however, necessitates evidence of recognition beyond the alien's immediate acquaintances. *See* section 203(b)(1)(A)(i) of the Act. The opinions of the petitioner's professional contacts alone cannot form the cornerstone of a successful claim of national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of major significance.

In light of the above, the petitioner has not established that he 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.

In response to the director's notice of intent to deny, the petitioner submitted what he alleges is an article he coauthored entitled "CC-5079, a novel microtubule and TNF- α inhibitor with anti-angiogenic and antimetastasis activity." On appeal, the petitioner submits what he alleges is a second article he coauthored entitled "The Synthetic Compound CC-5079 is a Potent Inhibitor of Tubulin Polymerization and Tumor Necrosis Factor- α Production with Antitumor Activity." On March 20, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner that these articles were plagiarized and that he fraudulently substituted his name as their author. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO's findings. Therefore, the petitioner has not established that he meets this criterion.

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

In response to the director's notice of intent to deny, the petitioner submitted a copy of his Form 1040, U.S. Income Tax Return, reflecting compensation of \$55,248.14 in 2004. The petitioner also submitted an October 31, 2005 pay statement from [REDACTED] Corporation reflecting bi-weekly earnings of \$2,584.58 or \$67,199.08

per year. This pay statement was issued 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 (Comm. 1971). Accordingly, the AAO will not consider the October 31, 2005 pay statement in this proceeding.

On appeal, the petitioner submits a copy of his Form 1040 and Form W-2, Wage and Tax Statement, reflecting compensation of \$81,322.86 in 2005. The plain language of this criterion, however, requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no national salary statistics as a basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation placing him among the highest paid biomedical researchers at the national or international level. Therefore, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he 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 himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the 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 willful misrepresentation of a material fact.

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 his eligibility for a benefit sought under the immigration laws of the United States.