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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: OCT 06 2008

EAC 05 169 50595

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed with a finding of fraud and material misrepresentation.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 appeal, counsel submits a brief. For the reasons discussed below, we uphold the director’s ultimate finding of ineligibility for the exclusive classification sought.

Moreover, on May 19, 2008, 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 evidence 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.” Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner was afforded thirty days (plus 3 days for mailing) in which to submit evidence to overcome the derogatory information cited in that notice.

In response, the petitioner has attempted to overcome some of the inconsistencies raised in our May 19, 2008 notice. For the reasons discussed below, the petitioner has not addressed all of our concerns. While counsel and the petitioner both assert that further documentation is not available because Sichuan Province, where the petitioner used to reside, is still recovering from the earthquake. Neither counsel nor the petitioner, however, addresses the serious discrepancies that are unrelated to documentation from Sichuan Province. Thus, we will enter a formal finding of fraud in this matter.

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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a singer. As noted in our May 19, 2008 notice, however, the petitioner indicated on a nonimmigrant visa application in 2004 that he was an assistant manager for the Sichuan Idaho Science and Technology Company, which manufactures electrical meters. This information directly conflicts with the petitioner's alleged employment claim on his Form G-325A, filed in support of his Form I-485 Application to Register Permanent Residence and Adjust Status, filed concurrently with the instant petition. Specifically, on the Form G-325A, the petitioner indicated that he worked as a performing artist for the Literature and Performing Art Center in Chengdu City in China from May 2000 through October 2004. The petitioner makes no attempt to explain this discrepancy in response to our notice. Moreover, 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 (BIA 1988). Thus, the record does not even credibly establish that the petitioner has been employed in his field.

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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 petitioner submitted a job offer letter from \_\_\_\_\_ of New York International Motion Picture & TV, Inc. The letter is on letterhead listing a company address at 32 East Broadway in New York City and a phone number. As stated in our May 19, 2008 notice, we were unable to verify the existence of

this corporation on the website of the New York Department of State's Division of Corporations. This website allows the user to search all corporations, active or inactive, licensed to do business as a corporation in the State of New York. We further noted that the phone number listed on the letterhead actually belongs to a restaurant named American Ting Jiang Chinese, located at 32 Market Street in New York City. In response, the petitioner submitted an advertisement in a Chinese-American newspaper for a 2007 event "produced by New York International TV & Media USA Inc." The petitioner also submitted an internet listing of members of the U.S. Chinese Chamber of Commerce that includes New York International TV & Media USA, Inc. as the last selected group member. The petitioner did not submit any information regarding the requirements for becoming a selected group member. Most significantly, the petitioner did not submit the articles of incorporation or certificate of good standing for New York International Motion Picture & TV, Inc. The petitioner also failed, in the alternative, to document that New York State allows company names to include "Inc." if they are not incorporated. Finally, the petitioner failed to provide a valid telephone number for this company. Thus, the petitioner has not established that he has any job prospects in the United States.

The above discrepancies, unresolved by the petitioner's response, cast serious doubt on the petitioner's claims to have worked for a performing arts company in China and to have a performing artist job offer in the United States. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Moreover, some of the remaining evidence submitted to support the beneficiary's claim of extraordinary ability also contains serious discrepancies, as will be elaborated below.

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 that, he claims, meets the following criteria.<sup>1</sup>

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner claims to meet this criterion. Rather than submit copies of the alleged articles as published, the petitioner submitted copies of unpublished manuscripts. Specifically, the copies bear no indicia of publication, such as journal pagination or headings. As evidence that these manuscripts were published, the petitioner submitted letters purportedly from the publishers affirming that they published the manuscripts. Primary evidence to establish that these manuscripts were published in professional or major trade publications or other major media as required under the regulation at 8 C.F.R. § 204.5(h)(3)(vi) would be copies of the articles as they appeared in the journal. The nonexistence or

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). When relying on secondary evidence, the petitioner must demonstrate that the required document does not exist or cannot be obtained. *Id.* Only when secondary evidence is documented as unavailable may the petitioner rely on affidavits. *Id.* As noted in our May 19, 2008 notice, the record contains no evidence that these journals are unavailable. As further noted in our notice, a search of the Internet reveals that an article nearly identical to one of the petitioner's manuscripts, in that it includes the same text with slightly different paragraph formatting and two additional footnotes, entitled "Christianity and Western Music" appeared in Volume 26 of "OCM" at page 26. The author of that article is not the petitioner.

The petitioner's response to our notice makes no attempt to explain this serious discrepancy and does not include copies of the articles as published. This petitioner's claim to have authored an article actually authored by someone else alone warrants a finding of fraud and casts doubt on the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner submitted a flier for the 2002 Chinese New Year Festival from the Chinese Consulate General in New York. As stated in our May 19, 2008 notice, while all of the singers are pictured in portrait style from the shoulders up, the petitioner is pictured from much further away from the waist up. Moreover, CIS records show that the petitioner first entered the United States in October 2004. The petitioner's response to our notice makes no attempt to address this discrepancy and does not submit any evidence, such as passport pages, to document his presence in the United States in 2002. The submission of this document alone warrants a finding of fraud in this case and casts doubt on the remaining documentation. *Id.*

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner initially submitted a Certificate of Award, Great Contributions for Love and Support in recognition of "Outstanding achievement for Supporting China Flood Relief." The certificate reflects that it was issued in 1998 at the "New York Service Center." The record contains no evidence that the petitioner was in the United States in 1998. While the petitioner was advised in our May 19, 2008 that CIS records do not show the petitioner entering the United States prior to 2004, his response fails to provide evidence of an entry into the United States in 1998 or earlier.

The petitioner also submitted a First Prize Award at the 2002 "The Voice of West" Grand Award Competition, hosted by the Sichuan Province Television Station. The certificate appears on certificate stationary with a large rose in each of the bottom corners. This certificate stationary is the same certificate stationary that purports to document the petitioner's 2004 appointment as a visiting professor by the Qing Dao Musician Association, Beijing Kanglihao Art Center; a similar position with the Chengdu International Summer Camp for Music in 2004, an award from the Chinese Musician

Association in 1995 and two awards from China Central Television Station in 1995 and 1996. In our May 19, 2008 notice, we noted the lack of any explanation as to why these unrelated entities would use the same certificate stationary so many years apart. We also noted that some of the stamps covered the stationary, but not the letters, suggesting the stamps were not added after the final lettering.

In response, the petitioner asserts that the award winning authorities had advised him that they “usually purchased a number of blank awards / honors papers from the stationary stores. After each specific competition, they write the names of the winners on it. Sometime[s] the stamp-keeper will stamp on the award certificates first if he /she is leaving out [sic] of town, so that the award certificates can be issued before his / her return.” Finally, the petitioner asserts that verification is not possible from the award-issuing authorities because the petitioner is from Sichuan Province, which is still recovering from the earthquake. Even if we accepted the petitioner’s explanation as plausible for the Voice of West competition sponsored by the Sichuan Province Television station, it does not explain why the petitioner was unable to obtain confirmation of his claims about certificates and stamps from China Central Television.

The petitioner also submitted a letter from the organization committee of “The Voice of West” Grand Award Competition asserting that the competitors came from several western provinces in China. We note that the letter contains two different fonts and no seal. Regardless, the number of inconsistencies in the evidence of record reduces the credibility of all of the documentation submitted. *Matter of Ho*, 19 I&N Dec. at 591.

In addition, the petitioner submitted a Silver Award, Adult Section, at the First China National Popular Song Competition from the China Musical Association of Minorities, the Organization Committee of National Popular Song Committee and the Beijing Ba Bei Recording Company. A letter from the China Central Television Station asserts that the petitioner won this award in 1997, the first such competition. The competition had participants from 26 Chinese provinces. Only one silver award was issued. The certificate stationary for the award matches the certificate stationary used by the Culture Bureau of Luzhou City to invite the petitioner to serve as a member of its evaluation panel “at 2002 Ambassador for Luzhou Tourism.” Once again, the petitioner’s explanation as to why these two unrelated entities used the same certificate stationary for certificates dated five years apart is not persuasive or supported by the authorities that purportedly issued these documents.

Further, the petitioner submitted a 1995 First Prize Award from the Chinese Musician Association at the World Women Conference, which appears on the certificate stationary with one rose in each bottom corner. Once again, the “stamp” on this certificate was clearly printed with the text rather than stamped on top of it. A letter from the organization committee for the World Women Conference asserts that three first prize awards were issued at this nationwide open competition for songs. Given the discrepancies noted above, we cannot give significant weight to these documents. *Id.*

Finally, the petitioner submitted a First Place (Gold) award from the 11<sup>th</sup> China Central Television International Singing Competition, East Coast Region (USA). The certificate, issued in 2000, does not

contain the Chinese characters for the petitioner's name or the petitioner's name in English. The certificate also bears the name of the New York International TV and Media USA, Inc. Even if we had been able to confirm the existence of this corporation, the absence of the petitioner's name on the certificate, either in English or Chinese, renders this document of little evidentiary value.

In light of the above, the petitioner has not submitted credible documentation to establish that he 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.*

The petitioner submitted a single article dated May 21, 2005 in the *Asian American Times*. The petitioner did not submit any evidence regarding the circulation of this newspaper or other evidence that might be consistent with a major media publication. Despite being advised in the director's denial that the record lacked evidence that this article appeared in major media, the petitioner has not submitted any evidence that this newspaper enjoys a national circulation or other data consistent with a major media publication. We note that, in general, coverage in a newspaper published in a language that the population in the country of distribution does not comprehend is not indicative of or consistent with national or international acclaim.

The petitioner also submitted a letter purporting to invite him for an interview on China Central Television on June 15, 2005. The petition was filed on May 23, 2005, at which time the petitioner had been residing in the United States since October 24, 2004. The petitioner must demonstrate eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The record does not suggest that the petitioner had already been interviewed as of the date of filing. Regardless, the letter is from the Beijing East Sun Rising Cultural and Arts Center, not China Central Television. The center provides no explanation as to their authority to invite the petitioner for an interview on central television. Given the inconsistencies discussed above, this letter has minimal credibility.

In light of the above and given all of the inconsistencies discussed above, the petitioner has not established that he 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.*

As stated above, the petitioner submitted certificates purporting to verify a 2004 appointment as a visiting professor by the Qing Dao Musician Association, Beijing Kanglihao Art Center and a similar position with the Chengdu International Summer Camp for Music in 2004. As also noted above, the certificates appear on the same stationary as each other that also matches awards issued years apart from unrelated entities. The petitioner's assertion that these unrelated entities all purchased the same

stationary in different locations and in different time periods is not credible, especially in light of the uncontested inconsistencies discussed above. The petitioner also submitted a certificate from the Culture Bureau of Luzhou City inviting the petitioner to serve as a member of an evaluation panel in the “2002 Ambassador for Luzhou Tourism.” The record contains no evidence as to the duties of this position or confirmation that the petitioner actually served on this panel.

Given the limited value of the evidence submitted to meet this criterion and the uncontested inconsistencies discussed above, the petitioner has not submitted credible evidence to establish that he meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a singer 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. In fact, given the uncontested inconsistencies raised above regarding the petitioner’s entry into the United States, prior employment in China and submission of a manuscript that the petitioner did not author, it is questionable whether the petitioner has even worked in the field for which he claims extraordinary ability. 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 upholding the director’s decision, we are also making a formal finding of fraud. As stated above, 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. *See Matter of Ho*, 19 I&N Dec. at 591-92. In this case, we find substantial and probative evidence that the petitioner submitted falsified material in support of the petition. The petitioner signed the Form I-140 under penalty of perjury and attested that he is solely responsible for submission of evidence with this petition.

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).

Finally, by filing the instant petition and submitting (1) a letter purporting to verify the petitioner's authorship of a manuscript found to have been published with similar text under a different author's name and (2) the U.S. award predating the petitioner's arrival in the United States and (3) the U.S. performance flier predating the petitioner's arrival in the United States, the petitioner has sought to procure a benefit provided under the Act using fraudulent documents. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that the above documents are all fraudulent, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed based with a finding of fraud and willful **misrepresentation** of a material fact on the part of the petitioner,

**FURTHER ORDER:** The AAO finds that the petitioner, [REDACTED], knowingly submitted documentation in an effort to mislead CIS and the AAO on elements material to the petitioner's eligibility for a benefit sought under the immigration laws of the United States.