

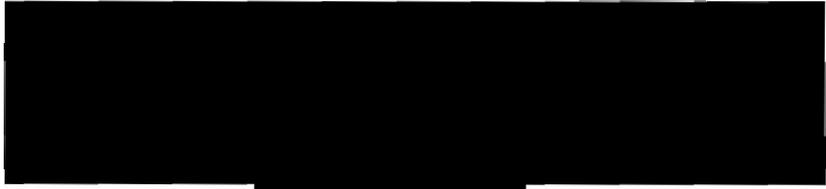


U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



FILE: [REDACTED]  
EAC 05 088 50333

Office: VERMONT SERVICE CENTER

Date: APR 19 2007

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. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On December 14, 2006, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that that he misrepresented the biographical history and achievements of another individual as his own.

The AAO's December 14, 2006 notice stated:

You signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct."

\* \* \*

On appeal, you submitted a February 7, 2006 letter (bearing your signature) stating:

I am a self-taught folk artist; I have been passionate about Chinese art since childhood. Unlike most Chinese folk artists who either have a strong family tradition or have sought apprenticeship from certain folk art masters, I mainly learnt [sic] the trade from fellow folk artists when I set up a Chinese arts and crafts workshop in 1992 in my hometown. In order to fully understand Chinese ancient article style, in the late 80s, I spent about seven months on the Chinese section of the Silk Road, visiting many cities, historic sites, taking photos and making sketches. In the process I made friends with hundreds of folk artists from different parts of China, folk art researchers and professors from Beijing, Shanghai, Hangzhou, and Xi'an.. [sic]. After years of preparation, he [sic] was able to visualize the form and broad theme the jade carving would take under the invaluable help of my "academic advisors" who provide vital historic materials and making corrections to the details of my hand drawings of my jade sculpture. My works not only express the gorgeous Chinese History, but also express my hope of unified world in terms of arts.

The above statements contained in your February 7, 2006 letter are identical in content to those found in letters submitted by two other self-petitioning aliens whose appeals have previously been adjudicated by this office. In your duplicative letter, you misrepresent the biographical history and achievements of [REDACTED], a folk artist from Xianju, China, as your own. The above text was plagiarized from a March 19, 2003 article entitled "Sculpture Carves out a Bit of History" appearing in *China Daily* (accessed at <http://www.china.org.cn/english/culture/58758.htm> on December 7, 2006). This article, which discusses the jade carving experience of [REDACTED], rather than your own experience, contains the following original statements which you have plagiarized:

A self-taught folk artist, Wang said he has been passionate about Chinese art since childhood, but it was not until 1992 that he was able to devote all his attention to it.

\* \* \*

“Unlike most Chinese folk artists who either have a strong family tradition or have sought apprenticeship from certain folk art masters, I mainly learnt the trade from fellow folk artists when I set up a Chinese arts and crafts workshop in 1992 in my home town,” explained Wang.

In 1984, after leaving the army, he spent about seven months on the Chinese section of the Silk Road, visiting many cities, historic sites, taking photos and making sketches.

\* \* \*

In the process made friends with hundreds of folk artists from different parts of China, folk art researchers and professors from Beijing, Shanghai, Hangzhou and Xi’an.

\* \* \*

After years of preparation, in 1997, Wang set in motion the actual creation of the huge, carved jade screen. Having secured adequate funding . . . he was able to visualize the form and broad theme the jade carving would take.

Throughout Wang maintained frequent contact with his “academic advisors” who lent invaluable help to his production team, by providing vital historic materials and making corrections to the details of his hand drawings . . . .

\* \* \*

Wang said that his work was created . . . to express his hopes for a unified and peaceful world.

By misrepresenting Wang’s biographical history and accomplishments as your own, 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 misrepresented the artistic achievements of another individual as your own, we cannot accord any of your other claims any weight.

If you choose to contest the AAO's findings, you must offer independent and objective evidence from credible sources addressing, explaining, and rebutting the discrepancies described above.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the petitioner was also requested to submit the original versions of the following photocopied documents submitted with the petition:

1. Certificate stating that the petitioner's jade sculpture work "Buddha of Thousand Hand" won the "Golden Award in the Fifty Fifth Anniversary of Chinese National Day Fine Arts Exhibition of Shanxi Province" (September 1990).
2. "Honor Certificate" stating that the petitioner's jade sculpture artwork "The Night of the Moon and Flower" won the Second Prize in the "Artwork Exhibition of Chinese National Day" (October 7, 1994).
3. Certificate stating that the petitioner's jade sculpture work "Chinese New Year" won the "First Prize in the Second Session of Industrial Art Festival of Anhui Province" (September 1993).
4. "Certificate of Honor" stating that the petitioner's artwork "██████████" won the "Outstanding Award" at the "Kaifeng Folk Art Outstanding Arts Exhibition" (November 1990).
5. "Certificate of Award" for "Improvement of Science and Technology in Henan Province" (May 11, 2001).
6. Certificate stating that the petitioner's jade sculpture products were "awarded 'The Excellent Jade Products' of Nanyang City" (January 18, 2000).
7. Certificate stating the petitioner's artwork "██████████" was awarded "The Excellent New Art Works" (January 18, 2000).
8. "Certificate of Honor" stating that the petitioner was awarded "the Title of the Art Expert of the Century" (August 1, 1998).
9. "Honor Certificate" stating that the petitioner's essay "China History and Jade Sculpture" received the Third Place Award at the "First Annual Leadership Outstanding Art Books Judgment Contest" (October 1998).
10. "Certificate of Honor" stating that the petitioner was awarded the title "One of the Famous Modern Artists of China" (October 23, 1997).
11. "Certificate of Honor" stating that the petitioner was awarded the title "Master Folk Artist of Henan Province" (March 1, 1996).
12. "Certificate of Honor" for the petitioner's contribution to the "Fifth Annual Art Festival of 'Treasure of Art of Henan Market'" (March 28, 1992).
13. Certificate of Honor from the "Kaifeng Folk Art Outstanding Arts Exhibition Association" (undated).
14. Certificate stating that the petitioner received a National Economic and Trade Committee Industrial Art Progress Prize for his jade sculpture work "Cherry" (December 2002).
15. The petitioner's membership certificate for the "Chinese Folk Artist Association" (March 1999)
16. A complete version of the petitioner's book entitled *China History and Jade Sculpture*.
17. The complete March 2000 issue of *Middle Zhou Knowledge* newspaper, which allegedly includes an article written by the petitioner entitled "A Little Discussion about Jade Sculpture."

In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded twelve weeks in which to respond to the AAO's notice.

The petitioner failed to respond to the AAO's notice. Regarding the petitioner's failure to submit the requested original documents, the regulation at 8 C.F.R. § 103.2(b)(5) provides: "If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked." Accordingly, this petition cannot be approved.

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

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

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

The record reflects that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct."

By filing the instant petition and misrepresenting the biographical history and achievements of Wang Yinhua as his own, 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 misrepresented his past accomplishments, 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 seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9<sup>th</sup> Cir., 2003). However, any time a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. In this case, the derogatory information 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 582, 591-92. The remaining documentation and the director's bases of denial will be discussed below.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on February 2, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a jade sculpture artist. 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 his national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since November 5, 2002. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than 26 months), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an artist 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, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submitted photocopies of the following:

1. Certificate stating that the petitioner's jade sculpture work "Buddha of Thousand Hand" won the "Golden Award in the Fifty Fifth Anniversary of Chinese National Day Fine Arts Exhibition of Shanxi Province" (September 1990).
2. "Honor Certificate" issued by the "Cultural Bureau of Chaohu Province" stating that the petitioner's jade sculpture artwork "The Night of the Moon and Flower" won the Second Prize in the "Artwork Exhibition of Chinese National Day" (October 7, 1994).
3. Certificate stating that the petitioner's jade sculpture work "Chinese New Year" won the "First Prize in the Second Session of Industrial Art Festival of Anhui Province" (September 1993).
4. "Certificate of Honor" stating that the petitioner's artwork "[REDACTED]" won the "Outstanding Award" at the "Kaifeng Folk Art Outstanding Arts Exhibition" (November 1990).
5. "Certificate of Award" for "Improvement of Science and Technology in Henan Province" (May 11, 2001).
6. Certificate stating that the petitioner's jade sculpture products were "awarded 'The Excellent Jade Products' of Nanyang City during the year of 1999 – 2000" (January 18, 2000).
7. Certificate issued by the "Government of Nanyang City" stating the petitioner's artwork "Jade Flute" was awarded "The Excellent New Art Works" (January 18, 2000).
8. "Certificate of Honor" stating that the petitioner was awarded "the Title of the Art Expert of the Century" (August 1, 1998).
9. "Honor Certificate" stating that the petitioner's essay "[REDACTED]" received the Third Place Award at the "First Annual Leadership Outstanding Art Books Judgment Contest" (October 1998).
10. "Certificate of Honor" stating that the petitioner was awarded the title "One of the Famous Modern Artists of China" (October 23, 1997).
11. "Certificate of Honor" stating that the petitioner was awarded the title "Master Folk Artist of Henan Province" (March 1, 1996).
12. "Certificate of Honor" for the petitioner's contribution to the "Fifth Annual Art Festival of 'Treasure of Art of Henan Market'" (March 28, 1992).
13. Certificate of Honor from the "Kaifeng Folk Art Outstanding Arts Exhibition Association" (undated).
14. Certificate stating that the petitioner received a National Economic and Trade Committee Industrial Art Progress Prize for his jade sculpture work "Cherry" (December 2002).

Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The English language translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In regard to items 1 through 7 and 11 through 13, we find that these awards reflect local or provincial recognition rather than national or international recognition.

In regard to items 1 through 14, there is no evidence of contemporaneous publicity surrounding the petitioner's awards or evidence showing that they command a substantial level of recognition. The record includes no evidence that would demonstrate the number of awards given, the geographic area from which the

individuals eligible for consideration for these awards were drawn from, the criteria for granting these awards, 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, the petitioner must provide adequate evidence showing that the certificates presented under this criterion have significant national or international stature. In this case, there is no supporting documentation from the awarding entities or the print media to establish that the petitioner's awards are nationally or internationally recognized awards.

In addition to the preceding deficiencies, the record includes no evidence showing that the petitioner has received any awards subsequent to 2002. The absence of awards in recent years indicates that the petitioner's acclaim as an artist has not been sustained.

On December 14, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original versions of the fourteen certificates listed above. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

In light of the above, the petitioner has not established that he 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. 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 what is alleged to be his membership certificate for the "Chinese Folk Artist Association" dated March 1999. The petitioner also submitted a document entitled "The Chinese folk literary arts association." Neither of the preceding documents include an address, telephone number, or any other information through which this association may be contacted in order to verify the validity of the petitioner's individual membership status. Further, we cannot accept these documents as evidence because the English language translations accompanying them were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). There is no evidence showing that admission to membership in the Chinese Folk Artist Association required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership.

On December 14, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original version of his membership certificate for the Chinese Folk Artist Association. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

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.*

The petitioner submitted what is alleged to be an article written by him entitled "A Little Discussion about Jade Sculpture" appearing in the March 2000 issue of *Middle Zhou Knowledge* newspaper. The English language translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Nevertheless, there is no evidence of the field's reaction to this article, nor any indication that it is widely viewed as significantly influential. More importantly, there is no evidence showing that the publication featuring the petitioner's article was a professional or major trade publication or had substantial national or international readership.

The petitioner also submitted what he alleges is evidence of his authorship of a book entitled *China History and Jade Sculpture* (a photocopy of the book cover). The record, however, includes no evidence showing the number of copies of this book in print or that the book had substantial national or international readership.

On December 14, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original versions of the preceding publications. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

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

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

The petitioner submitted several images of what are alleged to be his artistic creations. Without further evidence, it cannot be determined if the petitioner's works are among those shown. The images of the petitioner's creations were not accompanied by contemporaneous evidence (such as an event program or art brochure) indicating the specific exhibition or showcase in which they appeared. There is no evidence demonstrating that the petitioner's works have been displayed at significant national venues. Nor is there any indication that the petitioner's works have been featured along side those of artists who enjoy national or international reputations. Further, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his work alone. Thus, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that 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. Further, the petitioner has not submitted evidence of specific achievements in the United States establishing that he has sustained national acclaim in this country since his arrival in November 2002.

The petitioner's appeal was filed on February 13, 2006. The appellate submission was accompanied by supporting evidence (which has been addressed in this decision). On the Form I-290B, Notice of Appeal to the AAO, however, the petitioner indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than 13 months later, the AAO has received nothing further.

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.

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.

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 misrepresented his past achievements 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.