



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 05 073 51130

Office: VERMONT SERVICE CENTER

Date: **MAY 11 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 20, 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 he misrepresented his past achievements and submitted a falsified award certificate.

The AAO's December 20, 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.

* * *

In response to the director's request for evidence, you submitted a September 13, 2005 letter (bearing your signature) stating:

I have had the advantage of an education and gained knowledge of the modern technical world... Yet, I have found the challenge of the clay equal to my experience in that world. And as I meet the challenge of the clay, there comes peace and satisfaction which is not normally associated with meeting challenges in the modern world.

The above text was plagiarized from a statement by [REDACTED] as quoted in *Art of Clay: Timeless Pottery of the Southwest* by [REDACTED]

[REDACTED] on December 14, 2006). In this publication [REDACTED] is quoted as stating:

I have had the advantage of an education and gained a knowledge of the modern technical world... Yet, I have found the challenge of the clay equal to my experience in that world. And as I meet the challenge of the clay, there comes peace and satisfaction which is not normally associated with meeting challenges in the modern world.

Your September 13, 2005 letter further states: "I want each of my artwork is like people; every one is different and not perfect. I thought about this as an important idea. The traditional form of clay sculptor is not able to challenge with the new technician, so I developed a new way, an unconventional way of looking at form."

The preceding statements were plagiarized from an "Internet Course and Interdisciplinary Resource" entitled *Women Artists of the American West Past and Present* co-developed by Susan Kessler, Purdue University (Concept developer, editor) and [REDACTED] Penn State University (Web developer). This material, which was accessed at [REDACTED] on December 14, 2006, includes an article about an artist named [REDACTED] and contains the following quote from her which you have plagiarized: "Pottery is like people, every one is different and not perfect. I thought about this and decided it was an important idea. So I developed a new way, an unconventional way, of looking at form."

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 a photocopy of what is alleged to be an award certificate stating that your artwork "'Sound of Desolate' won the Outstanding Award in the Fifty Fifth Anniversary of National Day." This certificate is dated September 2000. We note, however, that the People's Republic of China was founded on October 1, 1949 and that Chinese National Day is celebrated on October 1st of each year.¹ Therefore, the "Fifty Fifth Anniversary of National Day" occurred on October 1, 2004, not in September 2000 as indicated on your award certificate. You have not resolved this discrepancy regarding the date of your award certificate.

By misrepresenting the statements, achievements, and experiences of Jacquie Stevens and Al Qöyawayma as your own and submitting the preceding award certificate, 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 statements, achievements, and experiences of the above individuals 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 several photocopied documents submitted with the petition. Originals of the following documents were requested:

1. Certificate stating that the petitioner's artwork "Missing: Chinaware Series" was awarded the title of "Excellent Art Work" (October 22, 1993)
2. "Honor Certificate" stating that the petitioner's artwork "Cowherd" won the "1st Level Award in 1994 Shanxi Culture Festival" (August 1994)

¹ See http://english.people.com.cn/data/China_in_brief/Fast_facts/Fast%20Facts.html, accessed on December 14, 2006.

3. Certificate issued by the League of Culture of Tianjin City for the petitioner's "outstanding achievement in 'Travel in the World'" (January 4, 2001)
4. Certificate issued by the China Artists' Association conferring the petitioner with the title of "Excellent Individual" (May 16, 1996)
5. Certificate stating that the petitioner's artwork "'Sound of Desolate' won the Outstanding Award in the Fifty Fifth Anniversary of National Day" (September 2000)
6. Certificate stating that the petitioner's artwork "'Monkey' won the Golden Award" at the "Chinese Industrial Fine Art Works Competition" (January 2000)
7. "Award Certificate" stating that the petitioner's artwork "'Age of Civilization' won the Golden Award in the First Session of Chinese Clay Sculpture Art Exhibit" (October 3, 2001)
8. Certificate stating that the petitioner's artwork "Sunrise" won the Golden Award at the "National Young Clay Sculptors' Selection Competition" (October 11, 2002)
9. The petitioner's "Association of Chinese Artist Membership Card" dated August 1999
10. The complete issue of the "newspaper" which allegedly includes an article written by the petitioner entitled "Ceramic Knowledge"
11. "Certificate of Appointment" indicating that the petitioner was a judge at the "1st Tianjin Chinaware Great Competition" (March 1996)

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 Board of Immigration Appeals 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).

As previously noted, the petitioner signed the Form I-140, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct." See section 287(b) of the Act, 8 U.S.C. § 1357(b); see also, 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

By filing the instant petition and submitting the aforementioned falsified material, 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 findings that he misrepresented the statements, achievements, and experiences of Jacquie

Stevens and Al Qöyawayma as his own and submitted a falsified award certificate, 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 described 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 January 3, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a “ceramic and clay 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 March 2002. Given the length of time between the petitioner’s arrival in the United States and the petition’s filing date (more than two years and nine 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, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

Documentation of the alien's 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 issued by the Bureau of Culture of Hebei Province stating that the petitioner’s artwork “Missing: Chinaware Series” was awarded the title of “Excellent Art Work” (October 22, 1993)
2. “Honor Certificate” issued by the Bureau of Culture of Shanxi Province stating that the petitioner’s artwork “Cowherd” won the “1st Level Award in 1994 Shanxi Culture Festival” (August 1994)
3. Certificate issued by the League of Culture of Tianjin City for the petitioner’s “outstanding achievement in ‘Travel in the World’” (January 4, 2001)
4. Certificate issued by the China Artists’ Association conferring the petitioner with the title of “Excellent Individual” (May 16, 1996)
5. Certificate stating that the petitioner’s artwork “‘Sound of Desolate’ won the Outstanding Award in the Fifty Fifth Anniversary of National Day” (September 2000)
6. Certificate stating that the petitioner’s artwork “‘Monkey’ won the Golden Award” at the “Chinese Industrial Fine Art Works Competition” (January 2000)
7. “Award Certificate” stating that the petitioner’s artwork “‘Age of Civilization’ won the Golden Award in the First Session of Chinese Clay Sculpture Art Exhibit” (October 3, 2001)
8. Certificate stating that the petitioner’s artwork “Sunrise” won the Golden Award at the “National Young Clay Sculptors’ Selection Competition” (October 11, 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 translations accompanying the petitioner's award certificates were not certified as required by the regulation.

In regard to items 1, 2, and 3, we find that these awards reflect provincial or local recognition rather than national or international recognition.

In regard to item 5, this award certificate states that the petitioner's artwork "'Sound of Desolate' won the Outstanding Award in the Fifty Fifth Anniversary of National Day." This certificate is dated September 2000. We note, however, that the People's Republic of China was founded on October 1, 1949 and that Chinese National Day is celebrated on October 1st of each year. Therefore, the "Fifty Fifth Anniversary of National Day" occurred on October 1, 2004, not in September 2000 as indicated on the petitioner's award certificate. On December 20, 2006, the AAO issued a notice advising the petitioner of this discrepancy. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO's finding that this certificate was a falsification. 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.

In regard to item 8, we find that the petitioner's award from this "Young Clay Sculptor's . . . Competition" offers no meaningful comparison between the petitioner and experienced and practiced artists. There is no evidence showing that the petitioner faced competition from throughout his entire field, rather than his approximate age group within that field. Thus, the petitioner's receipt of a "Young" clay sculptor award is not an indication that he has reached the "very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). Further, we note that this certificate was allegedly issued to the petitioner in China on October 11, 2002. The petitioner, however, has been present in the United States since March 10, 2002. As stated previously, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591.

In regard to items 1 through 8, there is no evidence of contemporaneous media publicity surrounding these awards or evidence showing that they command a substantial level of recognition. Further, the record includes no evidence that would demonstrate the number of recipients, the criteria for granting the 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 and the regulations, the petitioner must provide adequate evidence showing that the awards presented under this criterion enjoy significant national or international stature. In this case, there is no supporting documentation from the awarding entities or print media to establish that the petitioner's awards are nationally or internationally recognized.

On December 20, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the originals of the eight 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. Further, 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 a photocopy of what is alleged to be his membership card for the Association of Chinese Artists (ACA). This document identifies the petitioner's "Position" as an "Engineer" rather than an artist. As stated previously, 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.

On appeal, the petitioner submits documents entitled "The Chinese Artist Association Introduction" and "Chinese Artist Association Regulation." We cannot assign evidentiary weight to these documents, however, because the English language translations accompanying them were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the source of these documents has not been properly identified and they include no address, telephone number, or any other information through which the association may be contacted.

The petitioner has not established that admission to membership in the ACA required outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership.

On December 20, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit his original ACA membership card. 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 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, judging a national competition involving professional artists is of far greater probative value than judging a local competition involving students or amateur artists.

The petitioner submitted a "Certificate of Appointment" allegedly issued by the China Artists' Association in March 1996. This certificate states that the petitioner was "invited and appointed" judge at the "1st Tianjin Chinaware Great Competition." The certificate, however, includes no address, telephone number, or any other information through which the China Artists' Association may be contacted. Further, there is no information regarding the specific nature of the petitioner's duties in this capacity, the names of the artists he evaluated, the works judged, or their level of expertise. Without such information, we are unable to determine that the petitioner participated as judge of the work of others in his field. Accordingly, we cannot conclude that the petitioner meets this criterion.

On December 20, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit his original Certificate of Appointment. 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 a "newspaper" article he wrote entitled "Ceramic Knowledge." The English language translation accompanying this article, however, was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing this article was published in "professional or major trade publications or other major media."

On December 20, 2006, pursuant to the regulation at 8 C.F.R. § 103.2(b)(5), the AAO requested the petitioner to submit the original issue of the newspaper featuring his article. 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 images of what are alleged to be his artistic creations. Without further evidence, the petitioner has not established that his 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. Nor is there any indication that the petitioner's works have been featured along side those of artists who have 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 artwork alone.

In light of the above, 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. 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 2002.

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 a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record includes no such evidence.

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 misrepresented his past achievements and 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.