U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 10 2014 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

A withdrawal may not be retracted. 8 C.F.R. § 103.2(b)(6). If you believe the AAO inappropriately applied the law in reaching its finding of willful misrepresentation of a material fact, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before us on appeal. On April 7, 2014, in accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(b)(16)(i), we issued a notice advising the petitioner of derogatory information indicating that she submitted altered documentation and false information in support of the petition. In response, the petitioner asked to withdraw the petition. We will acknowledge the petitioner's withdrawal of the appeal, and dismiss the appeal accordingly. We will also enter a separate administrative finding of willful misrepresentation of a material fact.

The petitioner sought classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a biomedical research. The petitioner claimed that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States.

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

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner claimed that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The petitioner willfully misrepresented facts in furtherance of that claim, and therefore the misrepresented facts are material to the petition.

Neither the statute nor the pertinent regulations define the term "national interest." *In re New York State Dept. of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver

must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on November 28, 2011. In support of her petition, the petitioner submitted a letter attributed to Professor r of the asserting that the petitioner's "research led to the discovery and development of the current FDA approved vaccine," and that "[t]he vaccine was recently used to prevent and stop further spread of the recent outbreak that occurred in the United States in 2012. The cause of the meningitis was associated with contaminated steroid given at the injection site."

According to the Centers for Disease Control and Prevention, the late 2012 outbreak from contaminated steroids was of noncontagious fungal [1] According to manufacturer, the vaccine "does not protect against . . . caused by . . . fungi."[2] This information contradicts the petitioner's claims regarding The petitioner's submission of the letter attributed to Prof. therefore, amounts to misrepresentation of a material fact regarding the impact of the petitioner's past claimed work.

In a signed, undated statement, entitled "Justification Statement in Support of My Application for Permanent Residency through the National Interest Waiver," the petitioner claimed more than once (on pages 4 and 8) that her "papers were cited," and she identified what she called: "Examples of . . . articles w[h]ere my papers were cited." The evidence that the petitioner submitted to support this claim includes several altered or fabricated documents.

The petitioner submitted copies of what she claimed were two articles she co-wrote. One of the claimed articles, ' ' by the petitioner, , is a "protocol" for a clinical trial, rather than a published article. The protocol outlines the procedures for researchers to follow in conducting studies; it does not report the results of those studies.

As evidence of citation of the protocol identified above, the petitioner submitted complete copies of two articles purportedly containing the following citation:

> USA.

Both citations incorrectly capitalized (the initials of and misspelled the surname of co-author

[1] Source: rd April 3, 2014)
[2] Source: (printout added to record October 29, 2013)

The petitioner's other claimed cited work, " is in the form of a journal article, attributed to the petitioner The petitioner did not identify the journal that purportedly published the article. The last three words of the article's title, " are in a visibly different type font from the rest of the title. The first page of the article, as submitted, shows several blank lines at the bottom of the page. Data tables in the article show disturbances in formatting.

The petitioner submitted complete copies of three articles purportedly including the following citation:

All three printed citations contained the same misspelling of the word "pentavalent," and the same incorrect formatting of name as rather than "

The five articles that purportedly contain the citations identified above are all available online through the following links:

(Relevant excerpts added to record June 25, 2013). None of the authentic articles, obtained online, contain citations to the petitioner's work. The petitioner submitted falsified and altered versions of the articles, in which fictitious citations to her work replaced genuine citations to unrelated articles.

Furthermore, we can find no evidence of the existence of the petitioner's claimed article, ' An online

search for a text string from that article revealed an article by [redacted] published in the [redacted]. The original article is available online at [redacted] (copy added to record June 26, 2013). The body of the article matches that of the article the petitioner claimed as her own. The [redacted] version of the article includes contact information and other details relating to the authors and publisher at the bottom of the first page. The petitioner's version of the article has blank space in that location. Therefore, the evidence indicates that the petitioner submitted an altered and falsified version of the [redacted] article, with a new title and new author names (including the petitioner's name) in place of the real title and the names of the real authors.

The above evidence shows that the petitioner submitted altered documents to create a falsified history of publication and citation where none, in fact, appears to exist.

A purported witness letter also refers to the claimed citations. A letter attributed to Dr. [redacted] associate director of [redacted] contains this passage:

> [The petitioner] wrote a paper on 'Strategies on improving compliance of antiretroviral drugs among youths affected with HIV/AIDS.['] This paper has also been widely cited in [redacted] and organizational newsletters. Of utmost importance is that the strategies are now been [*sic*] implemented by the [redacted] for [redacted] department and [redacted] in the State of Maryland.

With respect to the claim that [redacted] has implemented the petitioner's strategies, Maryland Department of State records show that [redacted], has been dissolved. Its principal office was the petitioner's apartment in [redacted], and the resident agent was her spouse.[3] Thus, the company's adoption of the petitioner's work would not be a sign of its significance or wider acceptance. The petitioner submitted no evidence from the health departments identified above to corroborate the claims in the quoted letter.

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.* at 582, 591-92.

The petitioner had submitted the claimed articles and citations as evidence of her past work in her field, and of the impact and influence of that past work. Therefore, the claimed articles and citations are material to the benefit request at issue in this proceeding. The petitioner submitted those

---

[redacted]

materials in furtherance of an attempt to seek benefits under the Act, specifically classification under section 203(b)(2)(A) of the Act.

In our April 7, 2014 notice, we advised the petitioner of the above information and stated:

> Section 212(a)(6)(C)(i) of the Act states: "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." Your publication and citation histories are material to this proceeding, and the submission of altered and/or falsified documents constitutes willful misrepresentation. Absent independent and objective evidence to overcome, fully and persuasively, the above finding, the AAO will dismiss the appeal and enter a formal finding of material misrepresentation into the record. USCIS can consider this finding of material misrepresentation in future proceedings in which the beneficiary's admissibility is an issue. You may choose to withdraw your appeal, but this will not prevent a finding that the beneficiary has sought to procure immigration benefits through willful misrepresentation of a material fact.

The petitioner's response to the April 7, 2014 notice consisted of three main points. First, the petitioner asserts that her former attorney included "some inaccurate information" on the Form I-140 petition. Specifically, the petition form incorrectly stated that the petitioner had not filed any prior petitions. This inaccuracy, however, was not the principal basis for the finding of misrepresentation.

The petitioner's second point concerns the "[s]ubmission of outdated information as evidence." The petitioner states that she submitted "a draft copy" of one of her claimed articles, rather than "a final version, hence the reason for the various misspellings, incorrect abbreviations and incorrect capitalizations, and also inconsistencies in fonts and formatting." This assertion would explain the errors in the article that the petitioner submitted, but it does not account for the documented substitution of citations in all five citing articles that the petitioner submitted, or for the petitioner's evident plagiarism of the article, which she re-titled and claimed as her own.

Also under the heading of "outdated information," the petitioner acknowledges that she founded , and that the company was subsequently "dissolved due to internal matters," but she maintains that the company "was in full operation during the time of the letter of recommendation." She submits no evidence of the company's operation or activity. It remains that the Gentry letter cited ' adoption of her methods as evidence of the importance of those methods. In that context, her ownership interest in the company is a relevant and material detail that should have been included in the letter. The letter's overall credibility is in doubt, because it repeats the discredited claim about citation of her published work. *See Matter of Ho*, 19 I&N Dec. at 591.

The petitioner's third point concerns "Errors and discrepancies" in the petition. She states:

> [L]ooking closely at the documents I submitted, I realized that I have made some errors and included documents and claims which actually have not been completely proven and contained inaccurate information. I should have scrutinized all documents given to me by a third party before claiming [them] to be real. I honestly did it in ignorance.
>
> I honestly did not intend to mislead or wilfully misrepresent materials in order to seek to procure a U.S. visa. . . .
>
> I therefore recant and retract the information I submitted as evidence to my petition and appeal.

In the above passage, the petitioner generally acknowledges that she submitted "inaccurate information," but she does not address or rebut any of the specific findings outlined in our April 7, 2014 notice. These matters are not minor discrepancies, but major issues that directly affect the credibility of the petitioner's claims. Given the nature of the materials submitted, including an article that the petitioner claimed to have personally co-written, the petitioner's claim that she acted "in ignorance," relying on unspecified materials from an unidentified "third party," is not credible. The petitioner referred specifically to some of these materials in various signed statements, thereby claiming familiarity with their contents.

The petitioner submitted an altered copy of the [redacted] article, claiming it as her own; she has provided no explanation as to how she could have mistaken the article for her own work. She signed a statement in which she claimed personal knowledge that her "papers were cited," and later repeated that claim on appeal, stating: "I submitted several research articles published within and outside the United States which cited my published research." The submitted citations are all fabricated, and several of the claimed citations referred to an article that, as she must have known, she did not write.

An alien's timely and voluntary retraction of her false statement may serve to excuse the misrepresentation, but the retraction may not simply be in response to the actual or imminent exposure of her falsehood. *See Rahman v. Mukasey*, 272 Fed. Appx. 35, 39 (2nd Cir. 2008) (unpublished) (citing *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973); *Matter of Ngan*, 10 I&N Dec. 725, 727 (BIA 1964); *Matter of M*, 9 I&N Dec. 118, 119 (BIA 1960)). Until we confronted the petitioner with the misrepresentations regarding her published accomplishments, it appears that she would have been content to receive an approval of the petition based on these misrepresentations.

The petitioner has failed to provide a substantive response to the issues we raised in our notice dated April 7, 2014, and therefore we will enter a finding that the petitioner willfully misrepresented material facts in seeking to procure benefits under the Act.

We will acknowledge the withdrawal of the appeal, but the withdrawal of the appeal does not prevent a finding of willful misrepresentation of a material fact. That finding is administratively separate from the disposition of the appeal, and will affect any future filing on the petitioner's behalf. The USCIS regulation at 8 C.F.R. § 103.2(b)(15) provides: "Withdrawal [of a prior benefit request] . . . shall not

itself affect the new proceeding; *but the facts and circumstances surrounding the prior benefit request shall otherwise be material to the new benefit request.*" (Emphasis added.)

Section 204(b) of the Act states, in pertinent part, that:

> After an investigation of the facts in each case . . . the [Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien . . . in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition . . . .

Under the above section of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In this case, the record shows that the petitioner submitted false documents, a finding that the petitioner has failed to overcome despite being advised of the derogatory information and allowed an opportunity to respond.

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. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be 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 Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); Matter *of Kai Hing Hui*, 15 I&N Dec. at 288.

First, the petitioner submitted plagiarized and/or falsified articles and citations, as well as witness letters containing false or misleading claims, to USCIS. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the petitioner's submission of the preceding falsified documents in support of the Form I-140 petition constitutes a false representation to a government official.

Second, we find that the petitioner willfully made the misrepresentation. The petitioner signed the Form I-140 petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the Form I-140, at part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." Furthermore, the petitioner cannot have been under the sincere but mistaken impression that she wrote the article (which she called "my published work"). Placing her name and a new title on the article, thereby claiming authorship of an original work, can only have been a willful (rather than a mistaken or accidental) act on her part. The petitioner's attempt to shift responsibility to an unnamed third party lacks both corroboration and credibility. On the basis of the petitioner's actions, including her affirmation made under penalty of perjury and her affirmative claims of authorship, we find that the petitioner willfully and knowingly made the misrepresentations.

Third, the evidence is material to the petitioner's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537.

As the falsified documents relate to the petitioner's past record in her field, as contemplated in *NYSDOT* at 22 I&N Dec. 219, they are material to this proceeding. Accordingly, the AAO concludes that the misrepresentations were material to the petitioner's eligibility.

By filing the instant petition and submitting altered and falsified documents in support of that petition, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.[4]

ORDER: The appeal is dismissed based on the petitioner's withdrawal of the appeal.

FURTHER ORDER: The AAO finds that the petitioner willfully misrepresented material facts by knowingly submitting falsified documents in an effort to mislead USCIS and the AAO on an element material to his eligibility for a benefit sought under the immigration laws of the United States.

---

[4] It is important to note that while it may present the opportunity to enter an administrative finding of willful material misrepresentation, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).