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U.S. Citizenship
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FILE:

[REDACTED]
LIN 05 206 50320

Office: NEBRASKA SERVICE CENTER

Date: **AUG 16 2006**

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a finding of fraud.

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 June 1, 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 she submitted falsified documents in support her petition.

The AAO's June 1, 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."

* * *

8 C.F.R. § 204.5(h)(3)(iii) calls for the submission of 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. In support of your petition, you submitted articles entitled "Ceramic Artist Quan Ming Zi to Discuss Man and Nature at CU," "Chinese artist to teach GMS students," and "First American Museum Exhibition Dedicated to Acclaimed Korean Contemporary Ceramic Artist." After further investigation, it has been determined that these articles are fraudulent submissions.

The article entitled "Ceramic Artist Quan Ming Zi to Discuss Man and Nature at CU" was originally entitled "Visiting artists Dominguez, Salia discusses art, man and nature in lecture series." The AAO was able to obtain the original article at <http://www.colorado.edu>.

The article entitled "Chinese artist to teach GMS students" was originally entitled "Japanese artist to teach GMS students." The AAO was able to obtain the original article at <http://www.dhhs.state.nc.us>.

The article entitled "First American Museum Exhibition Dedicated to Acclaimed Korean Contemporary Ceramic Artist" was originally entitled "Seattle Asian Art Museum is First American Museum Exhibition Dedicated to Acclaimed Korean Contemporary Ceramic Artist." The AAO was able to obtain the original article at <http://www.experiencewashington.com>.

In fact, your name is not mentioned at all in any of the original articles. In an attempt to gain an immigration benefit, you altered the original articles that discussed the work of artists Eddie Dominguez, Yohei Nishimura, and Yoon Kwang-cho (rather than your own work). By falsely substituting your name into articles about these individuals, you have attempted to obtain a visa by fraud and the 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). The above derogatory information indicates that you have misrepresented the accomplishments of others as your own. For this reason, 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.

The petitioner was afforded thirty days in which to submit evidence to overcome the derogatory information cited above. The petitioner failed to respond to the AAO's notice.

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

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

By filing the instant petition and submitting the aforementioned falsified materials, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of material facts. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our findings that she misrepresented her past accomplishments, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

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* 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.

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

This petition, filed on June 27, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an artist. The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1999. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than five years), it is reasonable to expect her 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 director's decision stated:

The petitioner submitted documentation regarding several awards, including a certificate for encouragement from the 11th Annual Culture Art Association; a certificate naming the petitioner as a Talented Young Artist from the Human Resource Department of Jilin Province; a certificate for Best Display Award from the National Press Association of China; a certificate for Outstanding Award at National Contemporary Handcraft Exhibition from the Contemporary Art Association of P.R. China; a Silver Award in Handcraft Series of the Millennium Luxury Architect Design Contest from the Architect Department of P.R. China; a certificate for Outstanding Award at the 4th Art Festival from the Jilin Government of China; certificate for Second Place at the First Annual Art Festival from the Jilin First Annual Art Festival Association; a certificate for Best Reader's Choice Award at the First Annual Book Reading Contest from the National Press Association of P.R. China; a certificate

appointing the petitioner as a Top Ten Young Artist from the Jilin Government of China; and a Certificate of Merit from the Queen Elizabeth II Arts Council of New Zealand.

The petitioner did not submit documentation regarding the criteria for any of these awards. There is nothing regarding the basis of the awards, the exhibitions or competitions in which such awards were given, or any other documentation to show the level or prestige of these awards. Without such documentation, the record does not establish that any of the awards are actually nationally or internationally recognized as awards for excellence. Many of the awards appear to be, at best, provincial level awards. Others appear to be geared specifically to young artists, which would likely exclude the most eminent and established artists already working in the field from consideration. It also appears that several of the awards appeared to be newly established, such as those from the first art festival or book reading contest, which casts doubt as to whether they would actually be nationally or internationally recognized. The record is insufficient to demonstrate that any of these awards is [sic] nationally or internationally recognized as an award for excellence in the field of endeavor.

We concur with the director's findings. On appeal, the petitioner offers no arguments or new evidence specifically addressing these findings. In addition to the above deficiencies, the record includes no evidence showing that the petitioner has received any awards subsequent to 2000. The absence of awards in recent years indicates that the petitioner's acclaim has not been sustained. The petitioner has not established that she 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.

The director's decision stated:

The record indicates that the petitioner was accepted as a board member of the Art Association of Jilin Province. The petitioner submitted no documentation regarding the criteria for selection as a board member and no evidence that membership requires outstanding achievements as judged by recognized national or international experts in the field. Therefore, the record does not indicate that the petitioner meets this criterion.

We concur with the director's finding. On appeal, the petitioner offers no arguments or new evidence addressing the director's observations. Therefore, the petitioner has not established that she 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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not

earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The director's decision stated: "The petitioner submitted three press releases. The record contains no documentation regarding where such press releases were actually published. Further, press releases are not material written by others based on sustained acclaim, but are rather self-publicity for events."

After further investigation, the AAO determined that these three articles were fraudulent submissions. On June 1, 2006, the AAO requested the petitioner to submit independent and objective evidence to overcome the AAO's findings. The petitioner failed to respond to AAO's notice. There is no evidence showing that the petitioner has been the primary subject of published material in major media. The petitioner has not established that she meets this criterion.

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

The director's decision stated:

The record indicates that the petitioner received a patent regarding a jade porcelain sculpture, and has created original works of art. While the record indicates that the petitioner has made original contributions to the field, there is nothing to indicate that such contributions have had major significance in the field. For instance, there is nothing to show that others are adopting the petitioner's artistic methods, or any other documentation of a significant impact on the field as a whole. Therefore, the record does not establish that the petitioner meets this criterion.

We concur with the director's finding. On appeal, the petitioner offers no arguments or new evidence addressing the director's observations. Therefore, the petitioner has not established that she 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 director's decision stated:

The record contains no copies of scholarly articles written by the petitioner. It is noted that one of the awards submitted was for a book titled *New Technique in Porcelain Making*. However, the petitioner did not submit a copy of this publication, and there is nothing to show that the book was scholarly in nature or that it was a major printing. Therefore, the record does not illustrate that the petitioner meets this criterion.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

We concur with the director's finding. On appeal, the petitioner offers no arguments or new evidence addressing the director's observations. Therefore, the petitioner has not established that she 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 her 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.

In this case, 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 her regular participation in shows or exhibitions at exclusive venues devoted largely to the display of her work alone. Thus, the petitioner has not established that she meets this criterion.

We concur with the director's finding that the petitioner has failed to demonstrate that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted fraudulent documents in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to her eligibility for a benefit sought under the immigration laws of the United States.