



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 05 026 53322

Office: VERMONT SERVICE CENTER

Date: SEP 13 2006

IN RE:

Petitioner:

Beneficiary:

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.

2 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.

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 he submitted fraudulent reference letters in support of his 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."

* * *

On appeal, you submitted a letter of support dated October 20, 2005 allegedly issued by Frank Huang, Environmental Protection Specialist, United States Environmental Protection Agency (USEPA), Region 2, New York, New York. The AAO submitted letter to the USEPA's Human Resources Branch at that location and requested confirmation of its authenticity. In response, the AAO received a letter dated May 5, 2006 from the Human Resources Branch, USEPA, Region 2, 290 Broadway, New York, New York, stating:

We have reviewed the letter that you submitted to us regarding where he states that he is one of our regional employees. It was stated that he was employed by us as an Environmental Protection Specialist at the time (2005). A search of our personnel records indicates that Mr. was not employed by our Region at the time as indicated on the letter or by any other component of our Agency.

You also submitted a letter of support dated October 22, 2005 allegedly issued by Guohua Liu, Department of Civil and Environmental Engineering, Polytechnic University, Brooklyn, New York. On February 23, 2006, utilizing the telephone number provided on the letterhead, the AAO was able to contact the Administrative Assistant for the Department of Civil Engineering at Polytechnic University who stated that did not work there in October 2005. The Administrative Assistant also stated that her department had changed its name from the "Department of Civil and Environmental Engineering" to the "Department of Civil Engineering" several years prior to 2005 and therefore that the letterhead on which letter was issued was outdated.

By submitting the aforementioned bogus letters of support on appeal, you have attempted to obtain a visa by fraud and the willful misrepresentation of a material fact. Astonishingly, the letters of support from

[REDACTED] and [REDACTED] that you submitted on appeal were identical in content to those found in the appellate submission of another alien who also resides on [REDACTED] in Flushing, New York. It is further noted that the five “research findings” which you claim represent your “major breakthroughs . . . in the field of environmental engineering and ecology” (as listed on page 2 of your appellate brief) were identical to those claimed by this other alien. Much of the documentation submitted for both cases is duplicative

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 submitted fraudulent documents in support of your appeal. 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.

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. In accordance with the regulations at 8 C.F.R. §§ 103.2(b)(5) and (16)(i), the petitioner was afforded 12 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.

By filing the instant petition and submitting bogus letters from the USEPA and Polytechnic University, the petitioner has sought to procure a benefit provided under the Act using fraudulent documents. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that these letters were falsifications, 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 he has earned sustained national or international acclaim at the very top level.

This petition, filed on November 3, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a research engineer. 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 October 11, 1998. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than six years), 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 a research engineer in this country, but astonishingly, there is no evidence of the petitioner's employment or research activities in the United States subsequent to his entry in 1998.

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 the following:

1. Certificate of Award from the Shanghai Environmental Protection and Research Institute stating that the petitioner “won the First Class Award for the Achievement in Environmental Protection Science in the year of 1990”
2. Certificate of Award from the Beijing Environmental Protection and Projecting Institute stating that the petitioner “won the First Class Award for the Achievement in Environmental Protection Science in the year of 1994”
3. Certificate of Award from the Shanghai Environmental Protection and Projecting Institute stating that the petitioner “won the First Class Award for the Achievement in Environmental Protection Science in the year of 1985”
4. Certificate of Award from the Beijing Environmental Protection and Projecting Institute stating that the petitioner “won the Second Class Award for the Achievement in Environmental Protection Science in the year of 1992”
5. Certificate of Award from the Shanghai Environmental Protection and Projecting Institute stating that the petitioner “won the First Class Award for the Achievement in Environmental Protection Science in the year of 1995”
6. Certificate of Award from the Beijing Environmental Protection and Research Institute stating that the petitioner “won the First Class Award for the Achievement in Environmental Protection Science in the year of 1994”
7. Certificate of Award from Fudan University stating that the petitioner “won the First Class Award for the Achievement in Environmental Protection Science in the year of 1981”

We find that items 1 through 7 reflect local or institutional recognition rather than national or international recognition.

There is no evidence of contemporaneous publicity surrounding the petitioner’s awards or evidence showing that they command a substantial level of recognition. 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 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 recognized awards.

In addition to the above deficiencies, the record includes no evidence showing that the petitioner has received any awards subsequent to 1995. The absence of awards over the last decade indicates that the petitioner’s acclaim has not been sustained. The petitioner has not established that he meets this criterion.

On June 1, 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 seven certificates listed above. The petitioner’s failure to comply with the AAO’s request constitutes grounds for denial of the petition.

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.

The petitioner submitted what is alleged to be his "Certificate of Employment" for the "Shanghai Environmental Protection and Projecting Institute." We do not find, however, that employment is tantamount to membership in an association requiring outstanding achievement. It is noted that the Certificate of Employment lists the petitioner's age as "31" and an issue date of "August 7, 1983." The petitioner, however, was born on September 23, 1953. As of August 7, 1983, the issue date of this certificate, the petitioner would have been age 29 not age 31. The petitioner has not resolved this discrepancy. 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* at 582, 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

In a letter submitted on appeal, the petitioner asserts that he is a member of the National Water Conservancy Society, Water Resources Association, Rainwater Catchments Systems Association, Heilongjiang Meteorological Society, and National Market Economy Research Association. The record, however, includes no evidence from these organizations to support the petitioner's claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the record includes no evidence of the membership bylaws or the official admission requirements for these organizations. There is no indication that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. The petitioner has not established that he meets this criterion.

On April 13, 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 his membership certificates for the aforementioned organizations. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

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 or from a publication in a language that most of the population cannot comprehend. 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 petitioner submitted letters of support from individuals who claim that the petitioner has “been reported by the media.” The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires the submission of published materials about the alien, rather than vague third-party letters attesting to the existence of such published materials. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. The letters of support cannot carry the same weight as the published materials themselves. In this case, there is no evidence of any material about the petitioner appearing in publications having substantial national or international readership. 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.

On appeal, the petitioner submits a “Certificate of Employment” allegedly issued by [REDACTED] stating that he “has been employed as a Judge Member of National Judge Committee for Advanced Professional Qualification in the field of Science and Technology Held by [REDACTED] from September 1995 to September 1999.”

The petitioner also submits a “Certificate of Employment” allegedly issued by “Shanghai Normal University” stating that he “has been employed as a Judge Member of National Judge Committee for Advanced Professional Qualification in the field of Science and Technology from September 1995 to September 1999.”

The preceding certificates have no address, phone number, or any other information through which the issuing employers may be contacted. We further note that the dates of employment cited above contradict the evidence of record indicating that the petitioner has been present in the United States since October 11, 1998.² As stated previously, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho* at 582, 591-92. Without competent objective evidence

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.

² The petitioner’s passport reflects that he entered the United States on October 11, 1998 and has remained in this country since that time.

establishing otherwise, there is no support for the claim that the petitioner was employed by these organizations in the late 1990's. Further, the record includes no information regarding the nature of the petitioner's duties as a member of these two committees, the names of the individuals he evaluated, or their specific field of expertise.

On June 1, 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 aforementioned Certificates of Employment from Shanghai Normal University and Xinghua Press. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

In a letter submitted on appeal, the petitioner asserts that he served as a judge for the Third National Ice Engineering Conference (1997), for the Shanghai Scientific and Technological Advancement Awards (1989 to 1991), and as a member of the "editorial committee for the *Book Guide to Grade Examination in National Computer Application Knowledge and Ability*" (1996). The record, however, includes no evidence to support these assertions. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. Without evidence showing that the petitioner's activities involved evaluating established professionals in his field at the national level, we cannot conclude he meets this criterion.

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

The petitioner submitted several letters of support.

_____ of General Electric Medical Systems, Milwaukee, Wisconsin claims that he is former colleague of the petitioner.³ _____ does not explain how he is qualified to assess contributions related to environmental science and engineering, the petitioner's field of expertise. He states:

[The petitioner] has a solid background in theoretical mathematical fundamentals, strong ability to problem-solving [sic], excellent techniques in the application of computers. As a chief editor, he has accomplished writing and editing four national textbooks, which are now used in most colleges and universities in China. It is important to note that his work is primarily in environmental science utilizing computer application. He creatively applied computing methodology in environmental science and successfully established mathematical models in simulating earth erosion and several other environmental problems.

This same paragraph and other identical passages appear in the letters from _____ of Beijing University, _____ of Fudan University, _____ of the Shanghai Institute of Environment and Research, and _____ of Shanghai Jiaotong University. It is not clear who is the actual author of these common passages, but it is highly improbable that all five individuals independently formulated the exact same

³ General Electric Medical Systems is a leading manufacturer of diagnostic imaging equipment, including conventional and digital x-ray, computed tomography magnetic resonance, ultrasound, positron emission tomography, and nuclear medicine.

wording. It is possible that these individuals have lent their support to this petition, but it remains that at least four of them did not independently choose the wording of their letters. Thus, we find these duplicative letters of support to be of limited probative value.

The petitioner also submitted a May 22, 2005 letter allegedly issued by [REDACTED] of the Heilongjiang Academy of Scientific Construction [REDACTED] letter is completely identical in content (five duplicative paragraphs) to an October 22, 2005 letter allegedly issued by [REDACTED] of the Polytechnic University of Brooklyn, New York. As stated previously, the AAO was able to contact the Administrative Assistant for the Department of Civil Engineering at Polytechnic University who stated that [REDACTED] did not work there in October 2005. Thus, the letter from [REDACTED] is fraudulent and has no probative value.

The petitioner also submitted two letters allegedly issued by an individual named [REDACTED] who identifies himself as an "Environmental Protection Specialist with the U.S. Environmental Protection Agency" specializing in "wastewater treatment." Interestingly, [REDACTED] initial letter dated June 11, 2005 is on letterhead from the Department of Biological Sciences of St. John's University of Jamaica, New York rather than letterhead from the USEPA. Further, although the entire first paragraph of [REDACTED] letter discusses his professional background, it fails to explain his affiliation with the Department of Biological Sciences of St. John's University. On appeal, the petitioner submits a second letter from [REDACTED] dated October 20, 2005, which is identical to his initial letter, except that it now appears on letterhead from the USEPA, [REDACTED] Broadway, New York, New York. As stated previously, the AAO was able to contact the Human Resources Branch for that location which indicated that no individual named [REDACTED] had worked for the USEPA in 2005. Thus, the two letters from Frank Huang are fraudulent and have no probative value.

In this case, we find that the bogus letters of support submitted by the petitioner cast doubt on the reliability and sufficiency of the remaining evidence offered in support of this petition. *See Matter of Ho* at 582, 591-92. Pursuant to *Matter of Ho*, the AAO has the discretion not to accord any weight to the other witnesses' claims. We find no evidence showing that the petitioner's work is widely recognized throughout his field as a contribution of major significance. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed by independent researchers at the national or international level, we cannot conclude 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 are alleged to be his research publications. The petitioner failed to provide full English language translations of these publications as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence of the field's reaction to these publications, nor any indication that they are widely viewed as significantly influential. For example, the record includes no citation indices showing that the petitioner's publications are frequently cited by others in his field.⁴ Nor is there is evidence showing that the

⁴ Frequent citation by independent researchers would demonstrate widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of his work, suggesting that that work has gone largely

petitioner's publications had substantial national or international readership. For these reasons, the petitioner has not established that he meets this criterion.

On June 1, 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 his research publications. The petitioner's failure to comply with the AAO's request constitutes grounds for denial of the petition.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). As noted previously, this regulation and section 203(b)(1)(A) of the Act require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been present in the United States since October 11, 1998, but there is no evidence showing that the petitioner has been involved in any work related to environmental science and engineering in this country from that date through the petition's filing date. Based on the lack of evidence that the petitioner has been working in his area of expertise, he has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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."

In an August 5, 2005 letter submitted in response to the director's request for evidence, the petitioner states:

I will continue to work in the area of environmental science. More specifically, I will continue to work on the research, design and development of more cost-effective technologies related to sludge process applied for nitrogen removal from municipal wastewater, which is of vital importance to big cities like New York, Los Angeles, Chicago and Dallas, etc.

We find that this vague statement lacks sufficient detail regarding how the petitioner intends to continue working in his area of expertise in the United States. There is no "clear evidence" indicating that the petitioner has positioned himself for employment as a research engineer or environmental scientist in this country. For this additional reason, the petition may not be approved.

unnoticed by the greater research community, then it is reasonable to conclude that his publications are not nationally or internationally acclaimed.

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 his eligibility for a benefit sought under the immigration laws of the United States.