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U.S. Citizenship
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Services

B2

FILE:

[REDACTED]
LIN 05 179 52902

Office: NEBRASKA SERVICE CENTER

Date: MAR 09 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.

Maui Johnson

2 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. On January 28, 2007, the petitioner requested that her appeal be withdrawn. The appeal will be dismissed based on its withdrawal with a separate 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 in the arts.¹ 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 November 14, 2006, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that she submitted falsified documents in support her petition.

The AAO's November 14, 2006 notice stated:

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

* * *

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 appeal, you submitted what is alleged to be evidence of your "European trips and performance reviews" consisting of printed media reports. After further investigation, it has been determined that this material is fraudulent. You have misrepresented the achievements of musicians named [REDACTED] and [REDACTED] as your own.

You altered the following material about [REDACTED] by deleting [REDACTED] from her name or by falsely substituting your full name in place of her name:

1. Article entitled "Sensationele Liu Fang beroert Chinese pipa" accessed at <http://www.philmultic.com> on November 7, 2006. You removed "Fang" from the title of this article in the photocopy that you submitted to CIS.
2. Article entitled "Charlie Gillett – The Sound of the World Playlist" accessed at <http://www.liufangmusic.net> on November 7, 2006. You falsely substituted your name in place of Liu Fang's name in this article.

¹ The petitioner was initially represented by attorney [REDACTED] of Salt Lake City, Utah. The record includes a Form G-28, Notice of Entry of Appearance as Attorney, dated May 18, 2005. On December 28, 2006, [REDACTED] submitted a letter stating: "Please be advised that I have withdrawn and am no longer represent [sic] [the petitioner]. I have forwarded your letter of 11/14/06 to [the petitioner]. You should please kindly direct all your correspondences to [the petitioner] directly." In this decision, the term "previous counsel" shall refer to [REDACTED]

3. Article entitled "[REDACTED]g Fragrance de Chine" accessed at <http://www.philmultic.com> on November 7, 2006. You falsely substituted your name into the title and the text of this article. You also used white correction fluid in a failed attempt to conceal [REDACTED] name in a photograph appearing adjacent to this article.
4. Article entitled "Saturday Night on BBC London 94.9 FM – 8 November 2003 – Robert Cray plus [REDACTED]g live" accessed at <http://www.charliegillett.com> on November 7, 2006. You falsely substituted your name into the title and the text of this article.
5. Material entitled "[REDACTED]g, pipa soloist: Critics, Quotations and Press Releases" accessed at <http://www.philmultic.com> on November 7, 2006. You falsely substituted your name into the title and the text of this material.
6. Article entitled "Silk and Steel" accessed at <http://www.thefestival.bc.ca> on November 7, 2006. You falsely substituted your name in place of [REDACTED]'s name in this article.
7. Article entitled "Parfums d'Orient" accessed at <http://www.philmultic.com> on November 7, 2006. You falsely substituted your name in place of [REDACTED]'s name in this article.
8. Article entitled "L'imperatrice du pipa" accessed at <http://www.philmultic.com> on November 7, 2006. You falsely substituted your name in place of Liu Fang's name in this article.
9. Article entitled "Paul Fisher meets a Chinese pipa virtuoso passing through London" accessed at <http://www.liufangmusic.net> on November 7, 2006. You falsely substituted your name in place of Liu Fang's name in this article.

You also altered an article entitled "Music & Performance – Wu Man" (accessed at <http://www.icmtalent.com> on November 7, 2006). You falsely substituted your name in place of Wu Man's name in this article.

8 C.F.R. § 204.5(h)(3)(x) calls for evidence of commercial successes in the performing arts. In support of your appeal, you submitted what is alleged to be evidence of your "solo albums" entitled "Discographies." This material (accessed at <http://www.philmultic.com> on November 7, 2006) is attached to this notice. After further investigation, it has been determined that this documentation relating to your solo albums is fraudulent. You falsely substituted your name in place of Liu Fang's name in this material.

In response to the director's request for evidence and again on appeal, you submitted a June 20, 2005 letter of support allegedly issued by "Diane Rinks, Manager, Entertainment Department, Walt Disney Entertainment" discussing your participation in the "Millennium Celebration at Epcot Culture Center." The AAO has contacted Walt Disney Entertainment. Information provided by Walt Disney Entertainment to the AAO indicates that the June 20, 2005 letter is a falsification.

By altering the preceding documentation and misrepresenting your past accomplishments, 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). The above derogatory information indicates that you have submitted fraudulent documentation in support of your petition. 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 instructed to submit the original versions of several questionable photocopied documents submitted with her petition at the time of filing and in response to the director's request for evidence. The AAO's notice stated: "Please submit the originals (not photocopies) of your award certificates, your Chinese Musicians' Association certificate of membership, and the published news reports about you appearing in *People's Daily*, *Beijing Evening News*, *Chinese Daily News*, and *People's Music Magazine*."

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.

In response, the petitioner submitted a January 28, 2007 letter requesting that her appeal be withdrawn. The petitioner's letter states: "I apologize for the big mistake I made." The petitioner's response does not challenge the AAO's findings that falsified materials were submitted in support of her petition and that her past accomplishments had been misrepresented. Further, the petitioner failed to submit the requested original documents.

The petitioner's letter further states:

Thank you for your requesting letter which remind me very important messages.

This letter is sincerely request your consideration to withdraw my application of appeal.

In Nov. 2005, when I had engagement and performed in New York for several months, and received forwarded case denying letter from my previous mailing address in Utah. I brought the letter and visited a new immigrant consultant service in NY to inquire any thing I can do to save my case. I told the service that I could not provide the international acclaimed records. The service willing to accept my case and will prepare for the appeal materials if I agree the service fee. They requested me to give them my previous contact names of my landlord and attorney's [sic] in Utah. My English is poor and do not know how they would handle that.

After I received your mail dated on Nov. 14, 2006, I urgently contacted to the above service, but they already went out of business. I tried hard to find any person was in that service, but until now still can not find yet.

The petitioner's withdrawal of the appeal only upon being confronted with derogatory evidence conclusively establishing the fraudulent nature of her documentation does not overcome the fact that the petitioner has sought to procure immigration benefits by fraud. We cannot ignore that the petitioner signed the Form I-140,

thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.” The petitioner’s statements that she “could not provide the international acclaimed records” and therefore “visited a new immigrant consultant service in NY” to prepare such materials for a “service fee” do not lend credibility to the claim that she was unaware of the submission of fraudulent documents in this case. More importantly, the petitioner’s explanation does not address the existence in the record of the June 20, 2005 letter allegedly issued by “[REDACTED] Manager, Entertainment Department, Walt Disney Entertainment” discussing the petitioner’s participation in the “Millennium Celebration at Epcot Culture Center.”² The fraudulent [REDACTED] letter was submitted on October 6, 2005 in response to the director’s July 14, 2005 Request for Evidence notice, not on appeal. This falsified letter, along with several other documents, was sent in a United States Postal Service Express Mail envelope (postmarked Salt Lake City, UT 84122) from previous counsel’s law office in Salt Lake City, Utah to the Nebraska Service Center. Based on the petitioner’s above statements and the evidence of record, there is no support for the conclusion that the fraudulent [REDACTED] letter was prepared and submitted by the unidentified immigrant consultant service in New York (which the petitioner claims not to have visited for assistance until after issuance of the director’s October 27, 2005 notice denying the petition). The petitioner’s January 28, 2007 letter offers no explanation for the origin of this fraudulent document.

The petitioner also states that she did “not know how” the immigrant consultant service “would handle” her appeal. The record, however, reflects that previous counsel, rather than the unidentified immigrant consultant service in New York, prepared and submitted her appeal. The petition was denied by the director on October 27, 2005 and a notice of denial was mailed to previous counsel. On November 28, 2005, previous counsel mailed the Form I-290B, Notice of Appeal, to the Nebraska Service Center. The appellate submission included the Form I-290B signed by previous counsel, a November 28, 2005 letter arguing that the petitioner qualifies for classification as an alien of extraordinary ability also signed by previous counsel, the aforementioned fraudulent documents described in the AAO’s November 14, 2006 notice, and the United States Postal Service Express Mail envelope (postmarked Salt Lake City, UT 84122) from previous counsel’s law office in Salt Lake City, Utah to the Nebraska Service Center. The petitioner’s explanation regarding the alleged involvement of an immigrant consultant service from New York is not supported by the record of proceeding, nor has she introduced any independent and objective evidence corroborating her above statements. For example, the petitioner has not submitted evidence of her financial transaction with the immigrant consultant service, evidence of any engagements in which she “performed in New York for several months” in 2005, or documentation showing the immigrant consultant service’s complete address in New York.

Regardless of the specific origin of the falsified documents in this case, we find the record includes substantial and probative evidence that the petitioner has sought to procure immigration benefits through fraud.

In our November 14, 2006 notice, the AAO advised the petitioner that the withdrawal of her appeal would not prevent a finding of fraud. The regulation at 8 C.F.R. § 103.2(b)(15) provides: “Withdrawal or denial due to abandonment shall not itself affect the new proceeding; *but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.*” (Emphasis added.)

² As stated in the AAO’s November 14, 2006 notice, information provided by Walt Disney Entertainment to the AAO indicates that the June 20, 2005 letter from [REDACTED] was a falsification.

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 falsified documents, the petitioner has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that she submitted falsified documents, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue. While the petitioner has chosen to withdraw her appeal, this does not negate our finding that she has sought to procure immigration benefits through fraud.

ORDER: The appeal is dismissed based on its withdrawal by the petitioner 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 on elements material to her eligibility for a benefit sought under the immigration laws of the United States.