



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

B2

[REDACTED]

FILE: [REDACTED]
EAC 05 143 52022

Office: VERMONT SERVICE CENTER

Date: JUN 19 2008

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:

[REDACTED]

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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. On July 20, 2007, the petitioner filed a petition for review with the United States Court of Appeals for the Second Circuit. The Court of Appeals ordered the petition for review withdrawn on January 18, 2008.¹ The matter is now before the AAO on motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied. The AAO will also enter a separate administrative 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 in the arts. The director and the AAO determined the petitioner had not established that he qualifies for classification as an alien of extraordinary ability.

On April 30, 2008, 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 falsified material in support of his petition. The notice specifically observed 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.”

Regarding the falsified documentation and its materiality to these proceedings, the AAO’s notice stated:

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 support of the petition, you submitted a December 15, 2004 letter allegedly issued by the President of the Qi Shu Fang Peking Opera Company discussing your acting background and a job offer extended to you for \$60,000 per year. The letter was submitted to the Qi Shu Fang Peking Opera Company of 80-31 88th Road, Woodhaven, New York for verification. On April 24, 2008, the AAO received a response from the Executive Director of the Qi Shu Fang Peking Opera Company stating:

I received a fax . . . regarding whether our organization submitted a letter in support of [the petitioner’s] immigrant petition on December 15, 2004. Kindly note that the Qi Shu Fang Peking Opera Company has no knowledge of this person and never prepared, signed and issued the attached letter to the referenced individual.

By submitting a falsified letter in support of your petition, it appears you have sought to obtain a visa by fraud and willful misrepresentation of a material fact. With regard to this fraudulent letter, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective

¹ On motion to the AAO, counsel states that the United States Court of Appeals for the Second Circuit “advised us to return this case to [U.S. Citizenship and Immigration Services] jurisdiction.” The record, however, includes no such order from the Court of Appeals. Rather, the record reflects that pursuant to the petitioner’s request, the Court ordered the appeal withdrawn with prejudice on January 18, 2008.

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

If you choose to contest the AAO's finding, you must offer independent and objective evidence from credible sources addressing, explaining, and rebutting the discrepancies described above. . . . If you do not respond within the allotted period, the AAO will render its decision based on the evidence of record.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner was afforded 15 days (plus 3 days for mailing) 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.

Under Board of Immigration Appeals (BIA) 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).

By filing the instant petition and submitting the evidence described above, 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 he submitted falsified letter in support of the petition, 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*, 19 I&N Dec. at 591. The petitioner's arguments on motion will be discussed below.

On motion, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (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, 60898-99 (Nov. 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 April 15, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a Chinese Peking Opera actor. 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). 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 relevant evidence for this regulatory criterion was discussed in the previous decision of the AAO. On motion, counsel argues that the English language translations accompanying the two award certificates from the Chinese Cultural Ministry were in compliance with the regulation at 8 C.F.R. § 103.2(b)(3). 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 English language translations accompanying the petitioner's award certificates from the Chinese Cultural Ministry were notarized by Fang Cheng Chan, Notary Public, State of New York, but the translations included no certification that they were "complete and accurate" or that the translator was "competent to translate from the foreign language into English." As such, we cannot assign any evidentiary weight to the preceding certificates. Nevertheless, there is no evidence demonstrating that these awards constitute nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor. Thus, 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.

The relevant evidence for this regulatory criterion was discussed in the previous decision of the AAO. On motion, counsel asserts that the petitioner meets this criterion, but the petitioner's motion includes no evidence addressing the AAO's prior findings. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). There is no evidence (such as membership bylaws or official admission requirements) showing that the organizations in which the petitioner holds membership require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Thus, the petitioner has not established that he 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.

The relevant evidence for this regulatory criterion was discussed in the previous decision of the AAO. The petitioner's motion does not include evidence addressing the AAO's findings. There is no evidence of published material about the petitioner in professional or major trade publications or some other form of major media. Thus, the petitioner has not established that 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 initially submitted letters of support allegedly issued by the President of the National Peking Opera Society, the President of the Chinese Traditional Opera Association, the President of the American Chinese Peking Opera Society, the President of the Qi Shufang Peking Opera Company, and the President of the Peking Opera House. As discussed in the AAO's previous decision, these letters describe the petitioner as a talented performer, but they fail to establish that the petitioner has made original artistic contributions of major significance in his field. Further, none of these letters includes a telephone number through which their authors may be contacted.

On motion, counsel asserts that the petitioner meets this criterion, but the petitioner's motion includes no evidence addressing the AAO's prior findings. As stated previously, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503.

On April 30, 2008, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner that the December 15, 2004 letter from the Qi Shu Fang Peking Opera Company was found to be fraudulent. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO's finding. As stated previously, 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. Because the petitioner submitted fraudulent documentation in support of the petition, we cannot accord any of his other claims any weight. Without reliable evidence showing that the petitioner has made original artistic contributions of major significance in his field, we cannot conclude that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The relevant evidence for this regulatory criterion was discussed in the previous decision of the AAO. The petitioner's motion does not include evidence addressing the AAO's findings. Nevertheless, this particular criterion is more appropriate for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. Virtually every actor "displays" his work in the sense of performing in front of an audience. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's stage performances are far more relevant to the "commercial successes in the performing arts" criterion.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The relevant evidence for this regulatory criterion was discussed in the previous decision of the AAO. The petitioner's motion does not include evidence addressing the AAO's findings. There is no evidence of the petitioner's commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disc, or video sales. Thus, 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 regulatory criteria at 8 C.F.R. § 204.5(h)(3). Nor has the petitioner submitted evidence showing that his national or international acclaim as a Chinese Peking Opera actor has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record includes no evidence of nationally or internationally acclaimed achievements and recognition subsequent to the petitioner's arrival in the United States in 1999.

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.” As discussed previously, the petitioner submitted a December 15, 2004 letter allegedly issued by the President of the Qi Shu Fang Peking Opera Company discussing a job offer extended to the petitioner for \$60,000 per year.

On April 30, 2008, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner that the December 15, 2004 letter from the Qi Shu Fang Peking Opera Company was found to be fraudulent. The petitioner, however, failed to submit independent and objective evidence to overcome the AAO’s finding. As such, there is no clear evidence that the petitioner is coming to the United States to continue work in his area of expertise.

Review of the record does not establish that the petitioner has distinguished himself as a performer 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. Nor is there clear evidence that the petitioner will continue working in his area of expertise. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 AAO’s June 21, 2007 decision dismissing the appeal is affirmed. The petition will remain denied and a separate administrative finding of fraud and willful misrepresentation of a material shall be entered into the record.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted fraudulent documentation 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.