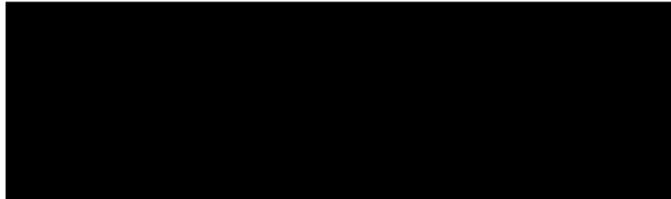


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



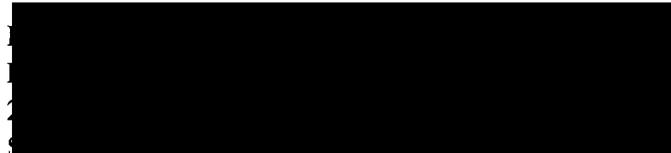
B2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **FEB 16 2011**

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The AAO will also enter a separate administrative finding of material misrepresentation.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A).¹ The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, the petitioner argues that she meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director's decision.

I. Law

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

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on February 28, 2009 as a B-2 nonimmigrant visitor. Her authorized period of stay expired on August 27, 2009.

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) 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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) Published material 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

II. Falsified documents pertaining to the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi)

On December 28, 2010, 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 misrepresented herself as the author of scholarly articles written by others. 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." As the derogatory findings relate to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi), they are material to this proceeding. The AAO's notice of derogatory information stated:

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) calls for evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. In support of your petition, you submitted what are alleged to be scholarly articles written by you. After further investigation, it has been determined that you misrepresented yourself as an author of the following articles:

1. The article entitled [REDACTED] was actually authored by [REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
2. The article entitled [REDACTED] authored by [REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
3. The article entitled [REDACTED] authored by [REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
4. The article entitled [REDACTED] actually authored by [REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.

5. The article entitled [REDACTED]
[REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
6. The article entitled [REDACTED]
[REDACTED] was actually authored by [REDACTED]
[REDACTED] accessed on December 10, 2010, copy incorporated into the record of proceeding and attached to this notice.
7. The article entitled [REDACTED]
[REDACTED] actually authored by [REDACTED]
[REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
8. The article entitled [REDACTED]
[REDACTED] was actually authored by [REDACTED]
[REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
9. The article entitled [REDACTED]
[REDACTED] was actually authored by [REDACTED]
[REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
10. The article entitled [REDACTED]
[REDACTED] was actually authored by [REDACTED]
[REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
11. The article entitled [REDACTED]
[REDACTED] was actually authored by [REDACTED]
[REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.
12. The article entitled [REDACTED] was actually authored by [REDACTED]

[REDACTED] accessed on December 9, 2010, copy incorporated into the record of proceeding and attached to this notice.

13. The article entitled [REDACTED] was actually authored by [REDACTED] accessed on December 10, 2010, copy incorporated into the record of proceeding and attached to this notice.

14. The article entitled [REDACTED] was actually authored by [REDACTED] accessed on December 10, 2010, copy incorporated into the record of proceeding and attached to this notice.

15. The article entitled [REDACTED] accessed on December 10, 2010, copy incorporated into the record of proceeding and attached to this notice.

16. The article entitled [REDACTED] was actually authored by [REDACTED] accessed on December 10, 2010, copy incorporated into the record of proceeding and attached to this notice.

By fraudulently substituting your name in place of the original authors and falsely claiming authorship of their work, it appears you have sought to obtain a visa by willful misrepresentation of a material fact. With regard to the above derogatory information, 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. *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. Because you have misrepresented articles authored by others as your own scholarly work, we cannot accord any of your other claims any weight.

In response, the petitioner submits an affidavit stating:

6. That I met with a man named [REDACTED] in his office, located at [REDACTED] in March 2009, because I was seeking assistance with U.S. immigration and was seeking permission to live in the U.S. permanently.

7. That I had been informed from friends that [REDACTED] could help me get permission to live in the U.S. permanently and thought that he was an immigration lawyer.
8. That when I met with [REDACTED] I signed a contract for him to assist me with getting permission to live in the U.S. permanently. I was told that I only needed to sign the contract and pay a fee and that [REDACTED] would take care of everything.
9. That I had no knowledge and was never told that [REDACTED] would use fraud and/or misrepresentation to get me permission to live in the U.S. permanently. Specifically, I was never told that I would be incorrectly identified as an author of scientific articles.
10. That I thought that the application would be filed in accordance with the law.

It important to note that the petitioner's response does not challenge the AAO's findings that the record contains falsified articles and material misrepresentations regarding her past accomplishments.

The petitioner also submits a letter from counsel stating:

[The petitioner] met with the individual, named [REDACTED] in his office in Flushing, NY. He told her that he could make an application for permanent residence for her for fee and that he would take care of everything. She was not asked to provide any information. She had no information on the qualifying criteria for permanent residence and thought that the application would be filed in accordance with the law.

* * *

The first time that [the petitioner] got any information that something was wrong with her case, was the receipt of the correspondence from the AAO in December 2010. She was never informed that she has been identified incorrectly as the author of scientific articles or that she would be associated with any other fraudulent evidence. She has never seen her I-140 petition.

* * *

[The petitioner] feels deceived and victimized by [REDACTED]. We have provided information . . . to confirm his association with [REDACTED]

[The petitioner] is now working to try to correct her immigration situation and understands that her I-140 petition and I-485 application have both been denied and were based on untrue facts. However, she strongly asserts that she had no knowledge or understanding that [REDACTED] would file a fraudulent application for her. She did not willfully misrepresent any information to him or to the USCIS. She did not prepare or provide any false documents included in her application.

The petitioner's affidavit states that she was told that she "only needed to sign the contract and pay a fee and that [REDACTED] would take care of everything." Further, counsel asserts that the beneficiary "was not asked to provide any information" to [REDACTED]. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The preceding claims by the petitioner and counsel are not supported by the evidence of record. The record reflects that the Form I-140, Immigrant Petition for Alien Worker, was filed concurrently with petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, on June 22, 2009. The submitted documentation indicates that the petitioner provided information such as her date of birth, her parents' names, her husband and daughter's names and dates of birth, her telephone number in Florida of (941) 565-6609, and residence information from China. The petitioner also submitted copies of pages from her Chinese passport; a copy of her Form I-94, Arrival Departure Record; a "Notarial Certificate" regarding her date of birth; her marriage certificate; photographs of the petitioner and her child; and the petitioner's Form I-693, Report of Medical Examination and Vaccination Record. The existence in the record of such personal information, forms, and records contradicts counsel's claim that the petitioner "was not asked to provide any information" and indicates that the petitioner cannot disavow her direct involvement with the filing of the petition.

Only in response to the AAO's December 28, 2010 notice of derogatory information has the petitioner acknowledged that the documents submitted with the petition contain material misrepresentations regarding her authorship of scientific articles. 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 USCIS confronted the petitioner with the sixteen falsified articles, it appears that she would have been content to receive an approval of the Form I-140 petition based on the misrepresentations.

Counsel asserts that the petitioner "had no knowledge or understanding that [REDACTED] would file a fraudulent application for her." The petitioner submits a copy of the March 31, 2009 contract in Chinese that the petitioner signed with [REDACTED]. The contract, however, is not accompanied by a certified English translation. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS 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. Without a certified English language translation, it cannot be determined if the contract corroborates any of the petitioner's claims. The petitioner also submitted copies of the front of two checks she allegedly wrote out to the [REDACTED] in the amount of \$3,175.00 and \$2,500.00. Both checks identify the petitioner's address as "[REDACTED]". The petitioner's response also includes what counsel identifies as two check stubs for payment checks that [the beneficiary] received from [REDACTED]. The check stubs bear the petitioner's name, are dated 11/16/10 and

12/01/10, list "DEPARTMENT" as "Research," and indicate that the petitioner received a "Salary" in the amount of \$1250.00 from [REDACTED]. Further, the December 1, 2010 [REDACTED] paystub lists the petitioner's "GROSS YTD EARNINGS" as \$27,500.00. None of the preceding documents establish that the petitioner had no knowledge of the fraudulent scientific articles.

Moreover, the Form I-140 was signed on June 15, 2009 under penalty of perjury. The regulation at 8 C.F.R. § 102.2(a)(2) provides that "[b]y signing the application or petition, the applicant or petitioner...certifies under penalty of perjury that the application or petition, *and all evidence submitted with, either at the time of filing or thereafter*, is true and correct." (Emphasis added). The actual 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." On that basis alone, the petitioner must be held responsible for any material misrepresentations contained within the record of proceeding.

Even if the petitioner was unaware of the documents and information submitted in support of her own petition, then this failure to apprise herself constitutes deliberate avoidance and does not absolve her of responsibility for the content of her petition or the materials submitted in support. *See Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993). To find otherwise would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

In addition, the Department of Justice and USCIS frequently prosecute employment-based fraud based on a petitioner's forged signature on the employment-based petition. We note prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms for which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. [REDACTED] (E.D. Va. December 11, 2002).

As immigration officers USCIS Citizenship and Immigration Appeals Officers and Immigration Services Officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the Secretary of Homeland Security's delegation of authority. *See* sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003).

With regard to immigration fraud or material misrepresentation, the Act provides immigration officers with the authority to administer oaths, consider evidence, and further provides that any person who knowingly or willfully gives false evidence or swears to any false statement shall be guilty of perjury. Section 287(b) of the Act, 8 U.S.C. § 1357(b). Additionally, the Secretary of Homeland Security has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, make recommendations for prosecution, and take other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I).

In the course of performing their duties under the immigration laws and the Administrative Procedure Act (APA), immigration officers are charged with reviewing evidence and making factual determinations or "findings" related to the adjudication of immigration benefits. Under section 557 of the APA, immigration officers are obligated to ensure that all decisions are a part of the administrative record and that the decisions include "a statement of . . . findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record . . ." 5 U.S.C. § 557(c)(3).

As an issue of fact that is material to an alien's eligibility for the requested immigration benefit or that alien's subsequent admissibility to the United States, the administrative findings in an immigration proceeding must include specific findings of fraud or material misrepresentation. Within the adjudication of the visa petition, a finding of fraud or material misrepresentation will undermine the probative value of the evidence and lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591.

Outside of the basic adjudication of visa eligibility, there are many critical functions of the Department of Homeland Security that hinge on a finding of fraud or material misrepresentation. For example, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182. Additionally, the regulations state that the willful failure to provide full and truthful information requested by USCIS constitutes a failure to maintain nonimmigrant status. 8 C.F.R. § 214.1(f). For these provisions to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.²

With regard to the current proceeding, 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)

² It is important to note that while it may present the opportunity to enter an administrative finding of fraud, 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 or she 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).

or is eligible for preference under subsection (a) or (b) of section 203, approve the petition

Pursuant to section 204(b) 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 the present matter, we find that the record contains falsified articles and material misrepresentations regarding the petitioner's past achievements, findings that the petitioner does not challenge in her response to the AAO's December 28, 2010 notice.

In this case, we find that there is substantial and probative evidence to establish that the petitioner submitted falsified documentation in support of her petition. The petitioner filed the instant petition supported by documentation containing material misrepresentations on June 22, 2009, and continued to make material misrepresentations in response to the director's request for evidence in September 2009 and again on appeal.

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 falsified scholarly articles, 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 documentation, we affirm our finding of fraud. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

III. Analysis of the documentation submitted in support of the petition

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. Moreover, the petitioner's specific acknowledgment that the record contains falsified articles and material misrepresentations regarding her past accomplishments provides a sound basis for upholding the director's denial of the petition and dismissing the appeal. Nevertheless, we will address the petitioner's failure to demonstrate her receipt of a major, internationally recognized

award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.³ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. 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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

A. Evidentiary Criteria at 8 C.F.R. § 204.5(h)(3)

³ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

According to the petitioner's initial statement, this petition, filed on June 22, 2009, seeks to classify the petitioner as an alien with extraordinary ability as "a researcher in sexology and clinical psychology fields." The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).⁴

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 certificates stating that she received the [REDACTED]

her as [REDACTED]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's awards are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Further, as the petitioner specifically acknowledged that she was falsely identified as an author of numerous scientific articles, we find that the authenticity of the preceding awards is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591. Accordingly, 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.

In order to demonstrate that membership in an association meets this criterion, a 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. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

⁴ The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

The petitioner submitted membership certificates for the [REDACTED]

[REDACTED] h. There is no documentary evidence (such as bylaws or rules of admission) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the field. Further, as the petitioner specifically acknowledged that she was falsely identified as an author of numerous scientific articles, we find that the authenticity of the preceding memberships is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591. Accordingly, 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 petitioner submitted six reference letters discussing her authorship of research articles in the areas of sexology and clinical psychology. As the petitioner specifically acknowledged that she was falsely identified as an author of numerous scientific articles, we find that the authenticity of the preceding letters is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591. Further, the AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). Without reliable documentary evidence showing that the petitioner's work equates to original contributions of major significance in the field, we cannot conclude 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 petitioner specifically acknowledged that she was falsely identified as an author of numerous scientific articles. Accordingly, the petitioner has established that she meets this criterion.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120.

In this case, the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (v), and (vi). The petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as a psychology researcher, or being among that small percentage at the very top of the field of endeavor.

IV. Conclusion

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 and 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.

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 at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review 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 and the AAO will enter a separate finding of misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner submitted documents containing false claims in an effort to mislead USCIS on elements material to her eligibility for a benefit sought under the immigration laws of the United States.