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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



DATE: **JAN 05 2012** Office: TEXAS SERVICE CENTER FILE:

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:

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. On July 26, 2010, the petitioner requested that the appeal be withdrawn. The appeal will be dismissed based on its withdrawal by the petitioner. The AAO will also enter a separate administrative finding of willful material misrepresentation.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 for the alien under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On July 19, 2010, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the petitioner of derogatory information indicating that he misrepresented his prospective employment in the United States. 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 pertain to the regulation at 8 C.F.R. § 204.5(h)(5), they are material to this proceeding. The AAO's notice of derogatory information stated:

On February 1, 2008, you filed a Form I-485 Application to Register Permanent Residency or Adjust Status concurrently with the instant Form I-140 petition. In support of the Form I-485, you submitted a Form G-325A, which you signed on January 8, 2008. On that form you indicated that you had worked for [REDACTED] at [REDACTED] in Arcadia, California as of December 2007. You also indicated that you had resided in Flushing, New York as of December 2007. The record contains no evidence of your residence in California.

You submitted a job offer letter for a senior design manager position dated September 18, 2007, from [REDACTED]. The letter, on letterhead with a California address, inexplicably indicates that the job requires Australian citizenship or permission to work in Australia. The letter also predates your entry into the United States on December 5, 2007 with a nonimmigrant visitor's visa by just over two months. As you entered the United States with a job offer and claim to have begun working for that employer upon arrival, it would appear that you misrepresented your nonimmigrant visitor

intentions upon entering the United States. This misrepresentation seriously undermines your credibility in the matter before us.

Moreover, the State of California, according to <http://kepler.sos.ca.gov>, has no record of [REDACTED] operating in the state as a corporation or a limited liability company. A search of the Arcadia address and the phone number listed on the letterhead indicate that both the address and phone number have been associated with [REDACTED] which appears to be a law firm. Attached to the job offer is a business card for you, which lists positions other than the one offered in the letter. Specifically, your business card lists your positions as "Executive Director," "Vice General Manager," "Vice President" and "Editor in Chief." Your card lists the Arcadia, California address and the phone number on the letterhead on the job offer letter and provides the following website address: www.fsgusa.com. This website, however, is the weblog address for a temporary staffing agency and direct hire firm in Houston, Texas, with no apparent relationship to [REDACTED]

On appeal, you now claim to work for [REDACTED] located at [REDACTED] in Azusa, California. You submit a new job offer letter, also from [REDACTED] identifying himself as both the president and Chief Executive Officer of [REDACTED]. The State of California does show that [REDACTED] is an active corporation, but it shows an address at [REDACTED] in Arcadia. [REDACTED] which was associated with the [REDACTED] address, is also associated with the [REDACTED] address, listing the same phone number as that listed on the [REDACTED] job offer letterhead.

[REDACTED] also submits a letter indicating that you oversee the design and creation of the 52-episode [REDACTED] in cooperation with the National Geographic Channel. [REDACTED] indicates that the program will be featured on EETV North America and in China. The record contains no confirmation from the National Geographic Channel regarding the purported joint program. We also reiterate that the record contains no evidence of your residence in California. Moreover, we were unable to verify online the current existence of an existing network known as "EETV North America" or the existence of a 52-episode [REDACTED] program produced in cooperation with National Geographic.

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. 582, 591 (BIA 1988). The job offer letter for a position in the United States referencing Australian citizenship or work permit casts doubt on the reliability of the job offer letter. Moreover, we have been unable to confirm the existence of the initial company offering employment or that the company referenced on appeal operates from the address on the letterhead. The record also fails to verify the project with National Geographic. Finally, the alleged employment in California is not supported by evidence of your residence there.

You signed the petition under penalty of perjury that the petition and the evidence submitted with it are all true and correct. The credibility issues discussed above raise serious concerns regarding the credibility of the remaining evidence. 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. at 586.

* * *

By filing the instant petition and submitting the evidence described above, you appear to have sought to procure a benefit provided under the Act using fraudulent documents. Unless you are able to provide substantial evidence to overcome, fully and persuasively, all of our above findings, the AAO will dismiss your appeal and enter a formal finding of misrepresentation into the 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. In response, the petitioner submitted a July 26, 2010 letter requesting that the appeal be withdrawn.

In the July 19, 2010 notice of derogatory information, the AAO advised the petitioner that the withdrawal of his appeal would not prevent a finding of willful material misrepresentation. 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.)

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

According to section 204(b) of the Act, U.S. Citizenship and Immigration Services (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 this matter, the petitioner’s response does not challenge the AAO’s findings that he submitted falsified job offer letters from [REDACTED] in support of the petition. Accordingly, the AAO affirms its findings that the petitioner willfully misrepresented his prospects for employment in the United States as well as his work history and experience.

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.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term “willfully” means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be 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 Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

First, the petitioner submitted documents pertaining to his prior and prospective employment in the United States which are false. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the petitioner’s submission of false letters from Mr. Qing in support of the Form I-140 petition constitutes a misrepresentation to a government official.

Second, the AAO finds that the petitioner willfully made the misrepresentation. The petitioner signed the Form I-140 petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the 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 the basis of this affirmation, made under penalty of perjury, the AAO finds that the petitioner willfully and knowingly made the misrepresentations.

Third, the evidence is material to the petitioner’s eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant

to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537. In the present matter, the false job offer letters submitted by the petitioner relate to evidence of his intention to continue working in his area of expertise in the United States as required by the regulation a 8 C.F.R. § 204.5(h)(5). Accordingly, the AAO concludes that the misrepresentations were material to the petitioner's eligibility.

By filing the instant petition and submitting false letters regarding his employment history and future employment prospects in the United States, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Because the petitioner has failed to provide competent independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documentation, the AAO affirms its finding that the petitioner has willfully misrepresented a material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.¹

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 based on its withdrawal by the petitioner with a finding of willful misrepresentation of a material fact.

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

¹ It is important to note that while it may present the opportunity to enter an administrative finding of willful material misrepresentation, 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 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).