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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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DATE: **JAN 23 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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which 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 willful material misrepresentation.

I. PROCEDURE AND FACTUAL BACKGROUND

The petitioner seeks classification as an “alien of extraordinary ability” as an “alternative medicine specialist,” 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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); *see also* H.R. 723 101st Cong., 2d Sess. 59 (1990). 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 submitted only his personal statement, offering no additional documentary evidence. On October 11, 2011, this office advised the petitioner of its intent to find material misrepresentations and afforded the petitioner 15 days to respond. As of this date, more than three months later, the AAO has received no response.

II. ISSUES PRESENTED ON APPEAL

A. Misrepresentation

By submitting articles authored by another researcher as his own and by submitting a letter from a purported expert who has never worked where she claimed, the petitioner has willfully misrepresented material facts.

B. Eligibility under Section 203(b)(1)(A) of the Act

The AAO upholds the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

III. 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

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

IV. MISREPRESENTATION

A. Legal Authority

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.

B. Analysis

Beyond upholding the director's decision to deny the petition, the AAO is making a formal finding of willful misrepresentation of a material fact that should be considered in any future proceeding where the petitioner's admissibility is an issue.¹ On October 11, 2011, 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 a false reference letter and two articles that were not authored by the petitioner, which he claimed as his own. 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." In addition to certifying under the penalty of perjury that the evidence supporting the petition was true and correct, the petitioner's initial submission to USCIS included a letter signed by him summarizing his purported accomplishments. The petitioner's letter specifically states:

The following supporting evidence for your review may be self-evident that I am eligible for classification of EB1:...

B. [REDACTED] Peer Expert Opinion on my extraordinary achievements and ability in life science...

O. Scientific Publications: [REDACTED] et al: Reduced Release of Nitric Oxide to Shear Stress...(Journal of Neurophysiology)...

P. Scientific Publications [REDACTED] et al: Tempol, Novel Stable Nitric Oxide, Reduces Brain Damage...(Journal of Neurotrauma).

Pursuant to the foregoing, I believe I may have satisfied the Service's criteria #2, #4, #5, #6, #8, among the criteria 1 through 10.

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 he or she subsequently applies for admission into the United States or applies for adjustment of status to that of a permanent resident. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).

As the derogatory findings relate to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (vi), they are material to this proceeding. The AAO's notice of derogatory information stated:

The initial evidence you submitted in support of the petition includes evidence you characterize as, "[REDACTED] Peer Expert Opinion on my extraordinary achievements and ability in life science," "Scientific Publications: Dong Sun et al: Reduced Release of Nitric Oxide to Shear Stress...(Journal of Neurophysiology.)," and "Scientific Publications: [REDACTED] et al: Tempol, Novel Stable Nitric Oxide, Reduces Brain Damage...(Journal of Neurotrama)."

In the letter purported to be from [REDACTED] she asserts to be employed as an Assistant Research Professor for the University of Florida "School of Medicine" in Gainesville, Florida. The letter is not on the University of Florida letterhead even though the author is using her position to lend credibility to the letter's content. Within her supporting letter, [REDACTED] also claims to have authored "more than 20 papers, treatises published in peer-reviewed, nationally leading professional journals." A search of Google Scholar reveals several works under the name, [REDACTED]. However, the results are related to individuals with a different middle name than [REDACTED] (Qi). As a result, the AAO is not able to verify any scholarly works by a [REDACTED] actually exist. After consulting with the University of Florida, Human Resource Services, the AAO confirms that [REDACTED] has never worked for the university. The university also noted that the department in which the letter alleges [REDACTED] works does not bear the name "School of Medicine" as the proper title is "College of Medicine."

Based on the above, it has been determined that the reference letter purportedly from [REDACTED] contains false information regarding her employment and publication record.

Additionally, the AAO's notice of derogatory information stated:

You submit an article titled *Reduced Release of Nitric Oxide to Shear Stress in Mesenteric Arteries of Aged Rats* in which you assert that you are the first-author. The version submitted to USCIS by you contains only an abstract of the actual article and consequently the article is devoid of any citations. A Google Scholar search for this title reveals the same article you provide as evidence. This search also revealed the article's first-author bears the same name as you, [REDACTED], and that *The American Journal of Physiology - Heart and Circulatory Physiology* published the article on January 29, 2004. However, the article also contains a footnote citation next to [REDACTED] name indicating that at the time the article was published he worked in the Department of Physiology, New York Medical College in Valhalla, New York.² A review of the record lacks any employment on your part within the United States prior to your entry into the country in October 2006. The Form G-325A, Biographic Information (G-325) signed and submitted by you with the initial

² See <http://ajpheart.physiology.org/content/286/6/H2249.short>.

filing reflects that you resided in China from the time of your birth until October 2006. This article appears to relate to an individual who bears the same name, but who is not you.

You also submit a second article titled *Tempol, Novel Stable Nitric Oxide, Reduces Brain Damage and Free Radical Production, after Acute Subdural Hematoma in the Rat* in which you assert that you are a second-author. The version submitted to USCIS by you contains only an abstract of the actual article and consequently the article is devoid of any citations. A Google Scholar search for this title reveals the same article you provide as evidence. This search also revealed one of the article's second-authors bears the same name as you, [REDACTED], and that the *Journal of Neurotrauma* published the article on November 4, 2003. However, the article also contains a footnote citation next to [REDACTED] name indicating that at the time the article was published he worked in the Division of Neurosurgery for Virginia Commonwealth University in Richmond, Virginia.³ As previously stated, a review of the record lacks any employment on your part within the United States prior to your entry into the country in October 2006. The G-325 signed and submitted by you with the initial filing reflects that you resided in China from the time of your birth until October 2006. This article appears to relate to an individual who bears the same name, but who is not you.

Based on the above, it has been determined that the petitioner falsely represented the articles titled *Reduced Release of Nitric Oxide to Shear Stress in Mesenteric Arteries of Aged Rats* and *Tempol, Novel Stable Nitric Oxide, Reduces Brain Damage and Free Radical Production, after Acute Subdural Hematoma in the Rat* as his own work.

By the petitioner submitting a reference letter containing false information about the author's credentials and by falsely representing the scholarly work of others as his own, it appears the petitioner has sought to obtain a visa by willful misrepresentation of a material fact. With regard to this 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 the petitioner submitted false documents misrepresenting his achievements, the AAO cannot accord any of the petitioner's other claims any weight.

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) to submit evidence to overcome the derogatory information cited above. The

³ See <http://www.liebertonline.com/doi/abs/10.1089/089771503765172291>.

petitioner failed to provide a response to the notice advising the petitioner of the derogatory information outlined above.

The petitioner offers no evidence to overcome the AAO's findings that the reference letter from [REDACTED] contains false information and that the petitioner falsely represented the above referenced articles as his own work.

In this case, the record shows that the petitioner submitted false documents, a finding that the petitioner has failed to overcome despite being advised of the derogatory information in the AAO's October 11, 2011 notice. An immigration officer will deny a visa petition if the petitioner submits evidence that contains false information. *See* Section 204(b) of the Act. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003)(upholding the AAO's finding that evidence in that matter was not credible). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. at 591.

First, the petitioner submitted a reference letter containing false information and two scholarly articles he falsely represented as his own. 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 [REDACTED] (April 30, 1991). Here, the petitioner's submission of the preceding documents in support of the Form I-140 petition constitutes a false representation 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." Further, the petitioner submitted a letter bearing his signature to USCIS purporting that all the submitted evidence was truthful and was directly related to him and his accomplishments. On the basis of the petitioner's signed letter and the signed I-140 affirmation, made under penalty of perjury, the AAO finds that the petitioner willfully and knowingly made the misrepresentation.

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 cuts 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.

As the false reference letter relates to the petitioner's eligibility for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v), it is material to this proceeding. Moreover, the two articles falsely represented to be the petitioner's work relates to the petitioner's eligibility for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the AAO concludes that the misrepresentations were material to the petitioner's eligibility.

By filing the instant petition, submitting a reference letter containing false information, and falsely representing two articles to be his own work, 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, the AAO's finding that he submitted falsified documentation, the AAO affirms the 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.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the derogatory information discussed in above seriously compromises the credibility of the petitioner and the remaining documentation. As previously discussed, 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. Nevertheless, the AAO will address the petitioner's failure to demonstrate his receipt of a major, internationally recognized award, or that he 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).

V. ELIGIBILITY UNDER SECTION 203(B)(1)(A) OF THE ACT

A. Legal Authority

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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under 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.

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.⁴ With respect to the criteria

⁴ 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).

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 1119-20.

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* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *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) (recognizing the AAO’s *de novo* authority).

B. Evidentiary Criteria Analysis⁵

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

This criterion contains three evidentiary requirements the petitioner must address. First, the plain regulatory language requires that the alien be the recipient of the prizes or the awards (in the plural). The next requirement is that the evidence establishes that the prizes or the awards are nationally or internationally recognized. The final requirement relates to the criteria required to receive the

⁵ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

award, which would indicate if the issuing entity bases their award selection on excellence in the petitioner's field of endeavor. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner submits a Certificate of Recognition from the Chinese Wushu Association dated March 2005 as evidence under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion. It is important to note that Wushu is a martial art sport and the certificate fails to indicate that it is recognition of accomplishments in the petitioner's claimed area of expertise. Nonetheless, the record contains no evidence to indicate the scope of the certificate indicating if this certificate enjoys national or international recognition. The petitioner also provides no evidence of the selection criteria for the certificate. This certificate will not serve to contribute to the petitioner meeting this criterion.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of "prizes" and "awards" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.⁶

Finally, as the petitioner submitted a reference letter containing false information and falsely represented two articles to be his own work, the AAO finds that the authenticity of the preceding certificate is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591.

As it stands, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

⁶ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 [redacted] at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(1)(2) requires a single degree rather than a combination of academic credentials).

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.

This criterion contains several evidentiary elements the petitioner must address. The first is that there are associations (in the plural) in the petitioner's field that consist of formal membership. The second requirement is that the petitioner is or was a member of these associations. The third element is that the associations require outstanding achievements (in the plural) as a condition of admittance. The final requirement is that admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field who determine if the aforementioned outstanding achievements are sufficient for admission.

The petitioner submits letters and certificates from [redacted] and two letters from [redacted] branch as evidence. The director determined that the petitioner failed to meet the requirements of this criterion.

The first letter from [redacted] February 15, 1995. This letter affirms the petitioner is a member of their association and that he is highly acclaimed in a local district. The second letter from [redacted] is dated March 14, 1995. This letter affirms the petitioner's membership, and lists the petitioner's career accomplishments offering no information related to membership requirements or that admittance is performed by recognized experts in the field.

The petitioner submits a certificate with a [redacted]; however, the translation indicates the certificate is from the International Institute of Medical Qigong. This certificate merely states that the petitioner is seated as a council member. The certificate from the [redacted] invites the petitioner to take the seat as an "Honorarian Council Member" of their committee. The certificate from the China International Acupuncture Association invites the petitioner to be on a panel of the 2003 Annual National Reviewing and Licensing Award Committee for National Qualification Examination for Acupuncture Licenses. The petitioner failed to submit evidence of the membership requirements for any of the preceding associations. The AAO will not presume exclusive membership requirements from the general reputation of a given association, as the association's reputation may derive from its size, the number of symposiums it hosts or other factors independent of the exclusive nature of its membership. As the record does not contain the bylaws or other official documentation of the association's membership criteria, the petitioner cannot establish that his memberships are qualifying under this criterion. The petitioner also fails to provide evidence that nationally or internationally recognized experts in the field determine admittance to any of the preceding associations.

It is also important to note that each of the above letters allegedly originate from different associations or organizations and each is certified with a seal, however, none of the translations contain the name of the association's official who is certifying the accuracy of the information within each letter. The

translations only reflect that the document was officially sealed; apparently by the association or organization.

Finally, as the petitioner submitted a letter containing false information and falsely represented two articles to be his own work, the AAO finds that the authenticity of the preceding memberships is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591.

Thus, the petitioner has not submitted evidence that meets the requirements of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

This criterion requires not only selection as a judge, but also that the petitioner is able to produce evidence that he actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same field in which the petitioner seeks an immigrant classification within the present petition.

The petitioner submits a letter from [REDACTED] as evidence under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion. The evidence the petitioner submits reflecting his *selection* as a judge for [REDACTED] in 2006 falls short of qualifying under this criterion. This criterion requires participation as a judge rather than mere selection, and the petitioner must provide evidence of this participation. More importantly, the regulation requires that the judging duties be either in the petitioner's field or in an allied field in which he seeks immigrant classification. The petitioner has not established that the martial arts (Wushu) is a field of endeavor that is allied with alternative medicine.

Again, as the petitioner submitted a false reference letter and a falsely represented two articles to be his own work, the AAO finds that the authenticity of the preceding selection as a judge is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591.

Based on the foregoing, the petitioner has not submitted evidence that 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 submits a reference letter purportedly from [REDACTED], a letter from [REDACTED] and a letter from [REDACTED]

“Thrology” as evidence. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner’s reference letter from [REDACTED] contains false information. Thus it has no evidentiary value.

The letter from [REDACTED] gives the petitioner many accolades for his experiences in several areas. However, this letter’s author does not provide any examples of how the petitioner has impacted his field of alternative medicine. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his findings are novel and useful, but also that they have already made a demonstrable impact on his field as a whole. This letter falls short of demonstrating that the petitioner’s work equates to original contributions of major significance in the field.

The letter from [REDACTED] states the petitioner has cured patients without using drugs or needles. However, this letter provides no examples to substantiate this claim and the petitioner failed to provide corroborating evidence of this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010).⁷ The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to

⁷ In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

“fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The petitioner also failed to submit sufficient corroborating evidence, which could have bolstered the weight of the referenced letters.

Finally, as the petitioner submitted a reference letter containing false information and falsely represented two articles to be his own work, the AAO finds that the authenticity of the preceding contributions is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591.

In light of the above, the petitioner has not submitted evidence that 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 submits two articles related to this criterion. The first article is titled, [REDACTED] and the second article is titled, [REDACTED], after [REDACTED] published in the Journal of Neurotrauma.” The director determined that the petitioner failed to meet the requirements of this criterion.

As previously discussed, the AAO determined that the petitioner falsely represented both of these articles to be his own work. As the petitioner has not established that he is the author of these articles, they cannot serve to meet this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

A leading role should be apparent by its position in the overall organizational hierarchy and the role’s matching duties. A critical role should be apparent from the petitioner’s impact on the organization or the establishment’s activities. The petitioner’s performance in this role should establish whether the role was critical.

The petitioner provides a letter from the Shanghai Qigong Science Research Institute as evidence. The director determined that the petitioner failed to meet the requirements of this criterion. The sole form of evidence the petitioner relies upon is a letter that indicates the petitioner was invited to serve as the institute's director. The AAO will not infer the nature of the petitioner's role solely from the job title. The letter fails to describe the duties the petitioner performed for the organization. The letter falls short of specifying how the petitioner contributed to the organization in a way that is significant to the organization's outcome or what role he played in the organization's activities. The regulation also requires that the organization have a distinguished reputation. The petitioner offers no evidence related to the reputation of the Shanghai Qigong Science Research Institute. This evidence is insufficient to establish this organization has attained a distinguished reputation as required by the regulation.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of performing in a leading or critical role for "organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.⁸ In light of the above, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Finally, as the petitioner submitted a reference letter containing false information and falsely represented two articles to be his own work, the AAO finds that the authenticity of the preceding evidence relating to the petitioner's leading or critical role is unreliable. 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. *Matter of Ho*, 19 I&N Dec. at 591.

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

C. Final Merits Determination Analysis

In accordance with the *Kazarian* opinion, the next step is 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

at *10 (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

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.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

A certificate of recognition, that garners no national or international recognition and that is not issued based on excellence in the field of endeavor, falls short of rising to the level of sustained acclaim on a national or on an international level. None of the associations in which the petitioner possesses a membership, requires outstanding achievements of its members, nor do recognized experts in the field control admission to the associations. These memberships are not commensurate with national or international acclaim nor do these memberships demonstrate that the petitioner enjoys the status as one of that small percentage who have risen to the very top of their field of endeavor. Selection as a judge can be a notable achievement; however, the field in which this selection occurred is not allied with the petitioner’s. Selection as a judge in an unrelated field is not consistent with national or international acclaim.

Letters praising the petitioner’s skills cannot form the cornerstone of an extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *See Matter of Caron International*, 19 I&N Dec. at 795. USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795.

The petitioner failed to establish that the Shanghai Qigong Science Research Institute enjoys a distinguished reputation. Additionally, the record is lacking evidence which might indicate that the petitioner performed in a leading or critical role for this organization. While an invitation to serve as this institute’s director could be an accomplishment, an invitation to merely serve in a position lacks the leading or critical characteristics to be considered representative of national or international acclaim. It is also not demonstrative that the petitioner enjoys the status as one of that small percentage who have risen to the very top of their field of endeavor.

Ultimately, the evidence in the aggregate, even if valid, does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies on a general certificate of recognition, memberships in associations with undocumented membership requirements, and his mere selection as a judge and selection as the director of an institute of undocumented reputation. The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for those who have an average level of achievement. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that he was among that small percentage at the very top of the field of endeavor.

VI. CONCLUSION

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and 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. 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 documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

By filing the instant petition and submitting demonstrably false evidence, the petitioner has sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact. This finding of material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed and the AAO enters a separate 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.