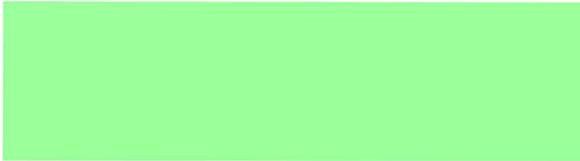




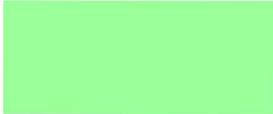
U.S. Citizenship  
and Immigration  
Services

(b)(6)

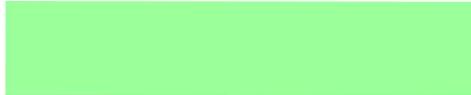


DATE: **MAR 14 2013**

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on April 25, 2012. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on May 17, 2012. The appeal will be dismissed. U.S. Citizenship and Immigration Services (USCIS) will also enter a separate administrative finding of willful material misrepresentation.

## I. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, specifically, as a “marine biologist,” 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). 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 a statement, along with additional evidence in an attempt to bolster his claim of eligibility. On January 22, 2013, this office attempted to advise the petitioner at his address of record of its intent to find material misrepresentations and afforded the petitioner 15 days to respond. As of this date, more than 40 days later, the AAO has received no response, nor has U.S. Citizenship and Immigration Services (USCIS) received an updated address. The petitioner is required to provide USCIS with any address change pursuant to section 265 of the Act, 8 U.S.C. § 1305.

## II. ISSUES PRESENTED ON APPEAL

### A. Misrepresentation

The petitioner has willfully misrepresented multiple accomplishments. The petitioner submitted a purported printed webpage discussing him as the recipient of the Dorothy Hill Award, which directly contradicts the information from the webpage that appears at the website address for the Australian Academy of Science (AAS), which the petitioner provided as the referencing website. The petitioner also submitted a purported letter from the President of the AAS that states that the petitioner is the 2010 recipient of the Dorothy Hill Award and the award is not age restricted, in contrast to the information provided in the official website for the AAS showing the recipient to be a female researcher. In addition, the petitioner submitted a purported letter from the President of the

Marsh Christian Trust (MCT), the sponsoring organization for the Marsh Ecology Award, noting the petitioner as the 2010 recipient, and a purported webpage from the MCT website confirming him as the recipient, in direct contradiction with the information from the official website for the MCT showing another individual as the recipient of the award. Furthermore, the petitioner submitted three articles authored by other researchers as his own, as well as multiple citations for articles that other researchers and scholars authored.

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. 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.<sup>1</sup> On January 22, 2013, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice to the petitioner's address of record advising the petitioner of derogatory information indicating that the petitioner submitted false documentation of awards he claimed he received, as well as articles and citations of work that were not the result of the petitioner's own authorship or findings, but 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."

As the derogatory findings relate to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (vi), they are material to this proceeding. The derogatory findings specifically related to the criterion under 8 C.F.R. § 204.5(h)(3)(i) are discussed in the AAO's January 22 notice as follows:

The initial evidence [the petitioner] submitted in support of the petition includes a purported article in an online publication discussing [the petitioner] as the 2010 recipient of the Dorothy Hill Award. At the bottom of the page is the web address of the article.<sup>2</sup> The web address does not lead to the article [the petitioner] submitted. Furthermore, [the petitioner] submitted a copy of a webpage from the Australian Academy of Science that describes the Dorothy Hill Award and the necessary qualifications. The web address found at the bottom of the page leads to a webpage that provides different contents than the version [the petitioner] submitted.<sup>3</sup> The copy of the webpage [the petitioner] included states: "The award supports research in the Earth sciences including reef science, ocean drilling, marine science and taxonomy in marine systems, by researchers under 40 years at the closing date, except in the case of significant interruptions to a research career." The webpage accessed via the web address states: "The award supports research in the Earth sciences, by **female** researchers no more than 40 years in the nomination year, except in the case of significant interruptions to a research career." (Emphasis added.) The current

<sup>1</sup> 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).

<sup>2</sup> See <http://www.northernstar.com.au/story/2010/08/17/marine-biology-researcher-honoured-with-award/>, accessed on January 8, 2013.

(b)(6)

website provides that the award recognizes female researchers, and as a male, [the petitioner] would be ineligible for the award. Furthermore, the website also provides a list of previous winners and for 2010, the year [the petitioner] claim[s] [he] won the award, the website shows that "N. Webster" was the winner. Finally, a December 2010 online article in the Northern Star titled *Marine Biology Lecturer Honoured*, independently confirms that the Dorothy Hill Award only recognizes female researchers.<sup>4</sup> On appeal, [the petitioner] submit[s] a letter purportedly from Suzanne Cory, President of the Australian Academy of Science, which states in contradiction to the published information on the webpage, that [the petitioner] received the award and that it is not limited by age. The letter, however, does not resolve the obvious discrepancy of a male recipient of an award that recognizes female researchers or the independent information revealing that N. Webster won the award in 2010.

[The petitioner] also submitted a purported copy of a webpage for the Marsh Christian Trust. The page shows a photo of [him] shaking the hand of the 2008 winner of the Marsh Ecology Award and the written content on the page proclaims [him] as the 2009 winner of the Marsh Ecology Award. A Google search for the Marsh Christian Trust website, which leads to a webpage for the Marsh Ecology Award shows the 2009 winner of the Marsh Ecology award as Professor Mike Begon, and includes a photo of two individuals who are different from the individuals photographed in the document [the petitioner] submitted.<sup>5</sup> On appeal, [the petitioner] submit[s] a letter purportedly from Georgina Mace, President of the British Ecological Society, stating that [the petitioner] received the 2009 Marsh Ecology Award, which contradicts the information from the webpage. The purported letter also makes mention of the Dorothy Hill Award, an award for which the British Ecological Society is not the sponsoring organization, and comments that the Dorothy Hill Award is not limited by age.

Based on the above, it has been determined that the awards that the petitioner claimed to have received were awarded to other individuals. More specifically, with respect to the Dorothy Hill Award, it has been determined that the Dorothy Hill Award is age restricted and is only conferred on female researchers.

The derogatory findings specifically related to the criterion under 8 C.F.R. § 204.5(h)(3)(vi) are also included in the AAO's January 22 notice (as follows):

[The petitioner] submitted a 2009 article titled "Oil Spill Impact Modeling: Development and Validation" that purportedly appeared in Volume 28 No. 10, a

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<sup>4</sup> See <http://www.northernstar.com.au/news/marine-biology-lecturer-honoured-with-award/724074/>, accessed on January 8, 2013.

“special issue honoring Dan Mackay” of *Environmental Toxicology and Chemistry*. The article starts on page 2441. The version [the petitioner] submitted to USCIS lists [him] as the first and only author. The journal’s website reveals that Volume 28, No. 10 contained pages 2019 to 2240 and, thus, did not include page 2441.<sup>6</sup> The table of contents also does not list an article by [the petitioner].<sup>7</sup> A Google Scholar search for this title reveals the same article [the petitioner] provided. The search also revealed that the sole author of the article, published in 2004, is Deborah P. French-McCay. In addition, the article appeared on page 2441 of Volume 23 No. 10, also listed as a “special issue honoring Dan Mackay.”<sup>8</sup> [The petitioner] also submitted two additional articles titled “Field Measurements of Fluorescein Dye Dispersion to Inform Dispersed-Oil Plume Sampling and Provide Input for Oil-Transport Modeling,” and “Spread of Composite Pollutants in Shallow Waters of the Niger Delta.”<sup>9</sup> In the references sections for both articles [the petitioner] highlighted citations with [his] name as the author of “Oil Spill Impact Modeling: Development and Validation.” The version of “Field Measurements of Fluorescein Dye Dispersion to Inform Dispersed-Oil Plume Sampling and Provide Input for Oil-Transport Modeling” [the petitioner] submitted purports to cite [his] 2009 article entitled “Oil Spill Impact Modeling: Development and Validation” and a 2004 article by Deborah P. French McCay with the same title. The version that USCIS found as the result of an online search reveals only the 2004 article by Dr. French McCay. The first citation listed, rather than an article by [the petitioner], is a 2002 article by Dr. French McCay. This information is consistent with the previous Google Scholar discovery. The version of “Spread of Composite Pollutants in Shallow Waters of the Niger Delta” that USCIS found as a result from an online search does not include a reference at all to the original article that [the petitioner] allegedly authored. Rather, the fifth citation is an article by J. Dias, J.F. Lopes and I. Dekeyser.

[The petitioner] submitted a second article where [he] claim[s] authorship as the first author, which is titled “Sea Otter Population Dynamics and the Exxon Valdez Oil Spill: Disentangling the Confounding Effects.” An online search indicates that [he is] not an author of the article.<sup>10</sup> An online search indicates that [he is] also not the author of the third article in which you claim authorship, which is titled “Cytochrome P4501A Biomarker Indication of Oil Exposure in Harlequin Ducks Up to 20 Years

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<sup>6</sup> See [http://onlinelibrary.wiley.com/journal/10.1002/\(ISSN\)1552-8618/issues](http://onlinelibrary.wiley.com/journal/10.1002/(ISSN)1552-8618/issues), accessed on January 18, 2013.

<sup>7</sup> See <http://onlinelibrary.wiley.com/doi/10.1002/etc.v28:10/issuetoc>, accessed on January 18, 2013.

<sup>8</sup> See <http://onlinelibrary.wiley.com/doi/10.1897/03-382/full>, accessed on January 8, 2013.

<sup>9</sup> See [http://www.iosc.org/papers\\_posters/2008%20088.pdf](http://www.iosc.org/papers_posters/2008%20088.pdf), and

<http://www.ajol.info/index.php/jasem/article/view/54974/43453>, accessed on January 8, 2013.

<sup>10</sup> See <http://onlinelibrary.wiley.com/doi/10.1046/j.1365-2664.2001.00563.x/full>, accessed on January 8, 2013.

after the Exxon Valdez Oil Spill.”<sup>11</sup> [The petitioner] also submitted to USCIS an article titled “Wildlife Still Exposed to Exxon Valdez Oil 20 Years after Disaster.” The version [he] submitted included a citation that listed [him] as the second author for “Cytochrome P4501A Biomarker Indication of Oil Exposure in Harlequin Ducks Up to 20 Years after the Exxon Valdez Oil Spill.” An online search reveals that [his] name does not appear in the citation for the referencing article.<sup>12</sup>

Based on the above, it has been determined that the petitioner falsely represented the articles titled “Oil Spill Impact Modeling: Development and Validation,” “Sea Otter Population Dynamics and the Exxon Valdez Oil Spill: Disentangling the Confounding Effects,” “Cytochrome P4501A Biomarker Indication of Oil Exposure in Harlequin Ducks Up to 20 Years after the Exxon Valdez Oil Spill,” and “Wildlife Still Exposed to Exxon Valdez Oil 20 Years after Disaster” as his own work. It has further been determined that the petitioner submitted falsified citations.

By submitting multiple documents containing false information about awards and by falsely representing scholarly work of others as his own, the petitioner appears to have 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 regulations at 8 C.F.R. § 103.2(b)(16)(i), USCIS issued a notice to the petitioner’s most recent address of record affording him 15 days (plus 3 days for mailing) to submit evidence to overcome the derogatory information. The petitioner failed to provide a response to the notice advising the petitioner of the derogatory information outlined above. Accordingly, the petitioner offers no evidence to overcome the determination that he submitted documents relating to awards that contained false information and that the petitioner falsely represented the above referenced articles and citations as the products of his own authorship or research.

In this instance, the record shows that the petitioner submitted multiple false documents, a finding that the petitioner failed to overcome, although USCIS provided him an opportunity for rebuttal with the issuance of a notice of derogatory information. 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

<sup>11</sup> See <http://onlinelibrary.wiley.com/doi/10.1002/etc.129/full>, accessed on January 8, 2013.

<sup>12</sup> See <http://www.sciencedaily.com/releases/2010/04/100414111018.htm>, accessed on January 8, 2013.

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 letters and background material relating to awards that contained false information, in addition to multiple scholarly articles and citations 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 WL 1185150 (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." On the basis of the petitioner's 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 letters and the background material relating to awards affect the petitioner's eligibility for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), it is material to this proceeding. Moreover, the articles and citations falsely represented to be the products of 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 letters and background materials including false information, and falsely representing multiple articles and citations as the products of 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 previous 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 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).

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

##### A. Legal Authority

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.

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. 723 101<sup>st</sup> 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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.<sup>13</sup> 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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

#### B. Evidentiary Criteria<sup>14</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

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

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<sup>13</sup> 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).

<sup>14</sup> 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.

As evidence for this criterion, the petitioner submits a purported online article discussing him as the winner of the Dorothy Hill Award, as well as purported webpages from the AAS and a letter from the President of the organization confirming him as the winner of the award. The petitioner also submits a purported webpage from the MCT and a letter from the President of the British Ecological Society indicating that the petitioner was the winner of the Marsh Ecology Award.

The director determined that the petitioner failed to satisfy this criterion. The director determined that the Marsh Ecology Award was limited to graduate students and that the Dorothy Hill Award was age restricted. The director further concluded that the petitioner failed to include evidence establishing that the awards are nationally or internationally recognized. The AAO agrees with the director that the record does not include evidence showing that the awards the petitioner claims he won are nationally or internationally recognized. Therefore, the petitioner failed to meet a plain language requirement under the regulation.

Furthermore, as discussed in the prior section, the AAO has determined that all of the documents that the petitioner submitted in support of this criterion include falsified information. Consequently, the documents that he has submitted under this criterion cannot serve as probative, credible evidence for meeting 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. 8 C.F.R. § 204.5(h)(3)(ii).*

The director determined the petitioner failed to satisfy this criterion. The petitioner, in the response to the director's Request for Evidence (RFE), submitted a certificate of membership from the Society for Underwater Technology (SUT). The certificate is not sufficient to establish the selection criteria for the members of the organization; the certificate also does not include information on whether the selection criteria are judged by recognized national or international experts in the petitioner's field. Thus, the petitioner's evidence of membership for the SUT fails to meet the regulatory requirements for this criterion.

On appeal, the petitioner submits a purported letter from the President of the British Ecological Society. The letter not only confirms the petitioner as the winner of the Marsh Ecology Award, the letter also states that the petitioner is a member of the British Ecological Society and that membership is granted "only to those scientists who have risen to the top of their field and made sustained major ecological contributions to the protection of the environment." However, as noted earlier, the AAO has determined that the letter from the President of the British Ecological Society includes falsified information relating to the Marsh Ecology Award and the Dorothy Hill Award. Therefore, the letter cannot serve as probative, credible evidence.

Accordingly, the petitioner has failed to meet this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The petitioner submits multiple articles relating to this criterion, as well as citations to articles, which he claimed as his own work. Based on the petitioner's submissions, the director concluded that the petitioner met this criterion. However, as previously discussed, the AAO determined that the petitioner falsely represented the articles, citations and associated articles as the products of his own work. As the petitioner has failed to establish that the articles and citations are the results of his own research and authorship, they cannot serve to meet this criterion.

Accordingly, the AAO withdraws the director's determination relating to this criterion and concludes that the petitioner failed to satisfy the regulatory requirements under 8 C.F.R. § 204.5(h)(3)(v).

#### C. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

### VI. CONCLUSION

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.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.<sup>15</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.* at 1122.

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<sup>15</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section

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.