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

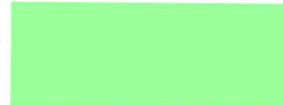


U.S. Citizenship  
and Immigration  
Services

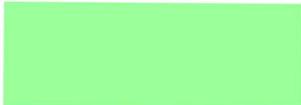


DATE: **MAY 22 2013**

Office: TEXAS SERVICE CENTER FILE:



IN RE:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. On further review of the record, the Director, Texas Service Center, issued a notice of intent to revoke (NOIR) the approval of the petition on November 23, 2009. In a Notice of Revocation (NOR) dated January 28, 2010, the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner appealed the matter to the Administrative Appeals Office (AAO). On October 4, 2011, the AAO withdrew the director's decision and remanded the petition for further action. The director issued a second NOIR dated April 17, 2012. On November 27, 2012, the director issued an NOR ultimately revoking the approval of the Form I-140. The matter is again before the AAO on appeal. The appeal will be dismissed. The AAO will also enter a separate administrative finding of material misrepresentation.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A) as an artist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim. The director also determined that the petitioner had misrepresented material facts by submitting false documents.

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, counsel states: "I respectfully request that the Service's revocation [sic] be withdrawn and the I-140 petition be granted." The petitioner submits various samples of his original artwork. The AAO agrees with counsel that the petitioner did not misrepresent the work of artist [REDACTED] as his own work. As such, the director's statements in that regard are hereby withdrawn. The petitioner, however, has failed to overcome the remaining grounds for revocation discussed in the director's decision.

For the reasons discussed below, the AAO will uphold the director's decision to revoke the approval of the petition with a finding of material misrepresentation.

## I. LAW

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

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*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> 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>1</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 first discuss the material misrepresentations made by the petitioner and then 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.*

## II. MATERIAL MISREPRESENTATION AND DEROGATORY INFORMATION

The AAO's October 4, 2011 decision, the director's April 17, 2012 NOIR, and the director's November 27, 2012 NOR stated that the record contains numerous deficiencies and inconsistencies. The director and the AAO noted the following specific derogatory information:

1. The petitioner submitted what he alleges is a book entitled [REDACTED]. The book includes a "Foreword" by [REDACTED] and pages displaying copies of the petitioner's work. Many of the pages have separated from the binding where they were glued into the book. Moreover, a covering that was pasted to the front and back cover of the book has

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<sup>1</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).

neered away revealing the cover of another book entitled [REDACTED]

[REDACTED] accessed on September 14, 2011, copy incorporated into the record of proceeding. Thus, the petitioner has altered the cover of a book published by another individual to misrepresent it as his own book.

2. The petitioner submitted an April 20, 2005 letter of support allegedly issued by [REDACTED] Director, [REDACTED] New York. A search of the "Corporation and Business Entity Database" of the New York State (NYS) Department of State, Division of Corporations indicates that [REDACTED] is an inactive business that dissolved on June 25, 2003. See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. As the [REDACTED] did not exist in 2005, the April 20, 2005 letter from the [REDACTED] is a falsification.
3. The petitioner submitted a June 18, 2004 letter of support allegedly issued by [REDACTED] Office Manager, [REDACTED] New York. The petitioner also submitted a Certificate of Award "issued on the date of September 26, 2003" to him by the [REDACTED]. The certificate bears a raised seal stating: [REDACTED] A search of the "Corporation and Business Entity Database" of the NYS Department of State, Division of Corporations indicates that [REDACTED] is an inactive business that dissolved on June 26, 2002. See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. As the [REDACTED] did not exist in 2003 and 2004, the September 26, 2003 Certificate of Award and the June 18, 2004 letter of support from the [REDACTED] are falsifications.
4. An August 19, 2004 letter from counsel accompanying the petition states that the petitioner has "established national or international acclaim" through "specific evidence" including being "listed in *Strathmore's Who's Who* International in 2005." The petitioner's evidence included a November 2004 letter from the Executive Director of *Strathmore's Who's Who* congratulating the petitioner on his "acceptance and inclusion in the forthcoming 2005 edition of *Strathmore's Who's Who*" and a blurred color photocopy of plaque commemorating his inclusion. In September 2009, a U.S. Citizenship and Immigration Services (USCIS) officer contacted *Strathmore's Who's Who* to verify the preceding documentation submitted by the petitioner. In its September 11, 2009 response to USCIS, the publication confirmed the petitioner's nomination for inclusion by [REDACTED]. The AAO notes that Part 9, "Signature of person preparing form," of the Form I-140 is signed by [REDACTED] of the [REDACTED] who "prepared this petition" and who certified several English language translations contained in the record. Thus, the petitioner gained acceptance and inclusion in *Strathmore's Who's Who* based on the recommendation of an employee of the law firm that represents him. Accordingly, the petitioner's inclusion in *Strathmore's Who's Who* is not indicative of "national or international acclaim."
5. The petitioner submitted a November 25, 2004 "Certificate of Appointment" from the [REDACTED] New York, U.S.A. A search of the "Corporation and Business Entity Database" of the NYS Department of State, Division of

Corporations indicates that “No business entities were found” for the [REDACTED]. See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. The petitioner failed to submit objective documentary evidence demonstrating the existence of this organization in New York in 2004.

6. The petitioner submitted a March 26, 2003 “Letter of Employment” from the [REDACTED] New York, stating the petitioner “has been employed” there as an “art consultant” beginning in 2003. A search of the “Corporation and Business Entity Database” of the NYS Department of State, Division of Corporations indicates that “No business entities were found” for the [REDACTED]. See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. The petitioner failed to submit objective documentary evidence demonstrating that the petitioner actually worked there and that the organization was a bona fide employer.
7. The petitioner submitted an August 26, 2004 letter of support from the [REDACTED]. A search of the “Corporation and Business Entity Database” of the NYS Department of State, Division of Corporations indicates that “No business entities were found” to have existed in 2004 for the [REDACTED]. See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. The petitioner failed to submit objective documentary evidence demonstrating the association’s operations at the preceding address in 2004.
8. The petitioner submitted a March 1, 2002 “[REDACTED]” from the [REDACTED] stating: “You are one of the award recipients for the [REDACTED]. . . . We have received more than 1000 pieces works [sic] from all over the world, such as the United States, Canada, France, Italy, China, Japan, etc.” In addition, the petitioner submitted an “Outstanding Award” certificate dated May 7, 2002, and program material reflecting that the exhibition and award ceremony occurred in May 2002. The petitioner's evidence also included a March 26, 2005 letter from [REDACTED] Co-Chairman of the [REDACTED] stating that the petitioner competed in this competition in 2001 and won one of five outstanding prizes as selected from the 8,700 participants. [REDACTED] letter contradicts the other evidence regarding the year (2001 versus 2002) and the number of entrants (8,700 versus 1,000). The petitioner failed to provide objective documentary evidence from the [REDACTED] verifying his receipt of the preceding “Outstanding Award” certificate.

With regard to item 1, counsel states: “Service . . . alleged that a cover of the petitioner’s work was pasted to a book entitled [REDACTED]. Again, the works on this website are totally irrelevant to the petitioner’s.” The AAO agrees with counsel that the art work on the preceding website is not relevant to any works of art submitted by the petitioner. In addition, USCIS is not asserting that the inner content of the book [REDACTED].

is the work of . Instead, the derogatory information noted by both the director and the AAO is that while the petitioner submitted what he alleges is his book entitled the book was actually constructed using the cover of another book entitled . The director specifically noted that a cover made by the petitioner “was pasted onto the original book which is entitled . The petitioner’s appellate submission includes an “Affidavit” dated “12/12, 20012” [sic] stating: “USCIS’s allegation that a cover of my work was pasted onto the original book which is entitled was false.” The petitioner, however, has failed to submit any new evidence, or point to specific evidence in the record, that overcomes the director’s finding. The petitioner’s assertion does not overcome the director’s determination that the petitioner altered the cover of a book published by another individual to create what the petitioner alleges is his own book entitled . As the record includes evidence showing that a book cover entitled was pasted onto the book cover of the AAO must affirm the director’s finding that the petitioner has made a material misrepresentation.

In regard to items 2 and 3, the petitioner submitted a May 15, 2012 letter from counsel in response to the director’s NOIR that states:

Service also mentioned two recommendation letters from (dated 4/20/05), (dated 6/18/04). According to Service’s investigation, the two entities were inactive and dissolved prior to the dates of letters. Please kindly be advised that when petitioner participated at a program / received a letter, he did the have [sic] the ability to check if that organization was technically active. The petitioner is a painter from China. He did not speak English, without much knowledge of American systems. It was virtually impossible at that time, when petitioner, who was a newcomer, participated at events, won recognition from hosts, and then ask if they were legally active. It was completely out of his comprehension to do so. We sincerely apologize for the irregularities which have caused doubts. Kindly forgive the honest oversights and affirm the approval accordingly.

In response to the NOIR, counsel asserted that the petitioner “participated at events” and “won recognition from hosts,” but as indicated by the director and by the AAO (items 2 and 3), the did not exist in 2005 and the did not exist in 2003 and 2004. Without documentary evidence to support his claims, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has failed to submit any independent and objective evidence to overcome the director’s findings or to demonstrate the existence of the above organizations when the two letters of support and Certificate of Award were issued. Further, the affidavit submitted by the petitioner on appeal does not contest the director’s findings regarding the documents from the and the . Accordingly, AAO must conclude that the April 20, 2005 letter of support allegedly issued by , the June 18, 2004 letter of support allegedly issued by and the September 26, 2003 Certificate of Award are falsifications.

On appeal, counsel states:

[W]ith regard to irregularities of some letters which were dated prior to the establishment of entities or after they became inactive. Petitioner admits irregularities and feels very sorry. He regrets that the things like this happened. However, this is due to honest mistakes not intentional frauds.

Regarding the material misrepresentations outlined in items 1 – 3 above, the AAO notes 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.” By submitting the altered book of cover of [REDACTED] falsified letters of support, and a false September 26, 2003 Certificate of Award from the [REDACTED] the petitioner has made willful material misrepresentations.

With regard to item 4, counsel states: “It is true that my employee recommended petitioner to the Strathmore for consideration. However, Strathmore independently interviewed the petitioner and decided if he is qualified for inclusion.” The petitioner, however, failed to submit documentary evidence from *Strathmore’s Who’s Who* demonstrating that he was “independently interviewed” for inclusion in the publication. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

In regard to item 5 (the November 25, 2004 “Certificate of Appointment” from the [REDACTED] the petitioner’s appellate submission does not include objective documentary evidence demonstrating the existence of this organization in New York in 2004.

With regard to item 6 (the March 26, 2003 “Letter of Employment” from the [REDACTED] stating the petitioner “has been employed” there as an “art consultant” beginning in 2003), the petitioner’s response to the director’s NOIR included an October 8, 2003 document from the [REDACTED] stating “consent is hereby given to the filing of the annexed certificate of incorporation of [REDACTED] a not-for-profit corporation.” Counsel points out that [REDACTED] was registered with the New York State Education Department, not the Division of Corporations. Regardless, the October 8, 2003 document from the [REDACTED] submitted in response to the director’s NOIR fails to demonstrate that the [REDACTED] existed on March 26, 2003, or that the petitioner was actually employed by the organization in early 2003.

Regarding item 7 (the August 26, 2004 letter of support from the [REDACTED], the petitioner failed to submit objective documentary evidence demonstrating the association’s operations at [REDACTED] in 2004.

In regard to item 8, as the March 26, 2005 letter from [REDACTED] contained inconsistencies, the director's NOIR specifically instructed the petitioner to submit "objective documentary evidence from the [REDACTED] to verify [the petitioner's] actual receipt of the 'Outstanding Award' certificate." In response, the petitioner submitted a document entitled [REDACTED] a document entitled [REDACTED] and a second letter from [REDACTED] dated May 6, 2012. The two documents entitled "[REDACTED]" do not mention the petitioner's receipt of an "Outstanding Award" certificate. The [REDACTED] document states that the judges "select 539 pieces for awards." In addition, the document contains spelling, capitalization, and grammatical errors and inconsistent font sizes. For instance, in the "Prizes" section, the document states: "Total awards will be the flowings [sic]" and in the "Schedule" section, the document states: "Award Ceremony ( At The [REDACTED] ) will be noticed." The submitted documents indicate that the award ceremony was "held at the [REDACTED] and that works were submitted to the [REDACTED]"

The May 6, 2012 letter from [REDACTED] bears an address of [REDACTED], [REDACTED] and states:

We write this letter to confirm that [the petitioner] participated in the [REDACTED] [REDACTED] co-sponsored by the [REDACTED] and won the outstanding prize. A total of 8700 participants, *1000 participants won various awards.*

This international art event was started from the May 2001 and had an awards ceremony in May 2002. Per requested by [the petitioner], we issued a recommendation letter on behalf of him on March 26, 2005.

[Emphasis added.] The preceding letter from [REDACTED] states that "1000 participants won various awards," but [REDACTED] document states that the judges "select 539 pieces for awards." Once again, the information provided in the letter from [REDACTED] contradicts other documentation in the record. 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.* Regardless, the director's NOIR specifically requested the petitioner to submit "objective documentary evidence from the [REDACTED] verifying his receipt of the preceding 'Outstanding Award' certificate." The May 6, 2012 letter from [REDACTED] however, is not from the [REDACTED]. The regulation at 8 C.F.R. § 103.2(b)(14) provides: "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application

or petition.” Based on the petitioner’s failure to submit the requested evidence in response to the director’s NOIR, this petition cannot be approved.

With regard to the above derogatory information outlined in items 1 – 8, the petitioner has failed to resolve the inconsistencies with independent and objective evidence. As previously discussed, 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. at 591-92. 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. Furthermore, as the petitioner failed to provide independent and objective evidence to overcome, fully and persuasively, the director’s findings regarding items 1 – 3, the AAO affirms the director’s finding of willful material misrepresentation.

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, 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 record shows that the petitioner has made material misrepresentations by submitting a falsified book cover entitled [REDACTED] false letters of support purportedly issued by [REDACTED] and [REDACTED] and a false September 26, 2003 Certificate of Award from [REDACTED]

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 a book entitled [REDACTED] letters of support purportedly issued by [REDACTED] and a September 26, 2003 Certificate of Award 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 a falsified book cover, falsified letters of support, and a false Certificate of Award from dissolved businesses in support of the Form I-140 petition constitutes false representations to a government official.

Second, the AAO finds that the petitioner willfully made the misrepresentations. 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 documents submitted by the petitioner relate to his eligibility for the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (v), and (viii). Accordingly, the AAO concludes that the misrepresentations were material to the petitioner’s eligibility.

By filing the instant petition and submitting false documents, 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 director’s finding that he submitted falsified documentation, the AAO affirms the director’s determination 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.<sup>2</sup>

### III. ANALYSIS

#### A. Evidentiary Criteria at 8 C.F.R. § 204.5(h)(3)<sup>3</sup>

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

The petitioner submitted a June 29, 1993 certificate from the [REDACTED] [REDACTED] stating that he “was selected as 1992 Outstanding Professional.” The petitioner also submitted an August 22, 2004 letter from [REDACTED] Art Professor, Central [REDACTED] stating that the preceding award “honors, nationwide, 100 most distinguished professionals in the fields of fine arts, science, education, and literature.” There is no documentary evidence showing that the petitioner’s award is equivalent to a nationally or internationally recognized award for excellence in the field of endeavor.

The petitioner submitted a 1999 “Silver Prize” certificate from the [REDACTED] [REDACTED]. The petitioner also submitted an October 27, 1999 letter from New York City Council Member [REDACTED] to the [REDACTED] congratulating the Center for its competition in which “eleven hundred pieces of art have been selected for awards.” The preceding statement from [REDACTED] contradicts the June 18, 2004 letter of support from [REDACTED] stating that the [REDACTED] review team “selected 5 golden prize winners, 10 silver prize [sic] and 100 bronze prizes winners [sic].” As previously discussed, the petitioner also submitted a “Certificate of Award” issued to him by the [REDACTED] on September 26, 2003. The certificate bears a raised seal stating: [REDACTED]. A search of the “Corporation and Business Entity Database” of the NYS Department of State, Division of Corporations indicates that [REDACTED] is an inactive business that dissolved on June 26, 2002. See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. As the [REDACTED] did not exist in 2003 and 2004, the September 26, 2003 Certificate of Award and the June 18, 2004 letter of support from [REDACTED] discussing the 1999 [REDACTED] are falsifications. 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. at 591-92. Doubt cast on any aspect of the petitioner’s proof

<sup>2</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 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).

<sup>3</sup> The petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

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.

The petitioner submitted a December 29, 2000 "Certificate of Award" stating that his work won a [REDACTED] in Hong Kong, but the English language translation accompanying his award certificate was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* The petitioner also submitted a July 19, 2005 letter from [REDACTED] Executive Director, [REDACTED] stating that the petitioner's painting won the "Gold Award which is the highest prize" in the [REDACTED]. The preceding letter from [REDACTED] does not include an address, a telephone number, or any other information through which she can be contacted. The director's November 23, 2009 NOIR stated that the petitioner submitted an award from the [REDACTED] in Hong Kong from December 12-28, 2000, but that the petitioner has not left the United States since his entry in 1995. The petitioner responded to the NOIR by submitting a December 14, 2009 affidavit stating that he displayed his work at the preceding exhibition, but "did not have to personally appear at the exhibition." The record, however, does not include documentary evidence from the exhibition's organizers to support the petitioner's 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted a March 1, 2002 "[REDACTED]" from the [REDACTED] stating: "You are one of the award recipients for the [REDACTED] . . . We have received more than 1000 pieces works [sic] from all over the world, such as the United States, Canada, France, Italy, China, Japan, etc." In addition, the petitioner submitted an "Outstanding Award" certificate dated May 7, 2002, and program material reflecting that the exhibition and award ceremony occurred in May 2002. The petitioner's evidence also included a March 26, 2005 letter from [REDACTED] Co-Chairman of the [REDACTED] stating that the petitioner competed in this competition in 2001 and won one of five outstanding prizes as selected from the 8,700 participants. [REDACTED] letter contradicts the other evidence regarding the year (2001 versus 2002) and the number of entrants (8,700 versus 1,000). As previously discussed, the director's NOIR specifically requested the petitioner to submit "objective documentary evidence from the [REDACTED] verifying his receipt of the preceding 'Outstanding Award' certificate." The May 6, 2012 letter from [REDACTED] submitted in response to the director's NOIR contained additional conflicting information and was not issued from the [REDACTED]. 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. at

591-92. 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.

The petitioner submitted an August 26, 2004 letter of support from [REDACTED] Executive Director of the [REDACTED] [REDACTED] stating: [REDACTED] has selected one recipient each year for the Outstanding life Time [sic] Achievement Award . . . . In 1995, [the petitioner] was the winner of this grand award." Rather than submitting primary evidence of his 1995 Outstanding Lifetime Achievement Award, the petitioner instead submitted a letter issued almost ten years later mentioning his receipt of the award. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. *Id.* Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The August 26, 2004 letter from [REDACTED] does not comply with the preceding regulatory requirements. Further, as previously discussed, a search of the "Corporation and Business Entity Database" of the NYS Department of State, Division of Corporations indicates that "No business entities were found" to have existed in 2004 for the [REDACTED] [REDACTED] accessed on September 14, 2011, copy incorporated into the record of proceeding. 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. at 591-92. 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.

With regard to the petitioner's 1992 Outstanding Professional award from the [REDACTED] [REDACTED] 1999 Silver Prize from the [REDACTED] [REDACTED] Competition, 2003 Certificate of Award from the [REDACTED] [REDACTED] 2000 Golden Award from the [REDACTED] [REDACTED] Exhibition, 2002 "Outstanding Award" from the [REDACTED] [REDACTED] Competition, and 1995 Outstanding Lifetime Achievement Award from the [REDACTED] [REDACTED] aside from the aforementioned deficiencies, the petitioner did not submit evidence of the national or international *recognition* of his awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's awards were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

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

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In his August 19, 2004 letter accompanying the petition, counsel asserts that the petitioner is a member of the [REDACTED]

[REDACTED] Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no documentary evidence (such as bylaws, rules of admission, or official membership criteria) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts. Accordingly, the petitioner has not established that he meets this regulatory criterion.

*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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup>

The petitioner submitted a January 30, 1995 article about him in [REDACTED] but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the petitioner submits information about [REDACTED] from the online encyclopedia *Wikipedia*. The petitioner has not established that [REDACTED] and [REDACTED] are one-in-the-same. Moreover, with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>5</sup>

<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

<sup>5</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source. Thus, the petitioner has failed to submit evidence demonstrating that [REDACTED] is a form of major media.

The petitioner submitted a partial English language translation of an April 5, 2005 article in [REDACTED] but the translation was not a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the author of the article was not identified and there is no documentary evidence showing that [REDACTED] qualifies as a form of major media.

As previously discussed, the petitioner submitted a November 2004 letter from the Executive Director of *Strathmore's Who's Who* congratulating the petitioner on his "acceptance and inclusion in the forthcoming 2005 edition of *Strathmore's Who's Who*" and a blurred color photocopy of plaque commemorating his inclusion. In September 2009, a USCIS officer contacted *Strathmore's Who's Who* to verify the preceding documentation submitted by the petitioner. In its September 11, 2009 response to USCIS, the publication confirmed the petitioner's nomination for inclusion by [REDACTED]. The AAO notes that Part 9, "Signature of person preparing form," of the Form I-140 is signed by [REDACTED] of the [REDACTED] who "prepared this petition" and who certified several English language translations contained in the record. Thus, the petitioner gained acceptance and inclusion in *Strathmore's Who's Who* based on the recommendation of an employee of the law firm that represents him. Regardless, the petitioner failed to submit evidence of the published material about him in the 2005 edition of *Strathmore's Who's Who* including the author of the material. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Moreover, there is no documentary evidence showing that this expansive biographical registry listing of thousands of individuals constitutes published material about the petitioner in a form of major media. The company heavily promotes the sale of volumes to those invited to submit biographies, demonstrating that each volume is similar to a vanity press. A vanity press is not major media.

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

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WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on May 6, 2013, copy incorporated into the record of proceeding.

*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.*

The petitioner submitted a November 25, 2004 "Certificate of Appointment" from the [REDACTED] [REDACTED] stating that he "has been appointed to be the Member of the Judge Committee of the [REDACTED] since the date of November 25, 2004." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's *participation* . . . as a judge of the work of others." [Emphasis added.] While the petitioner may have been appointed to the judging committee, there is no documentary evidence of his actual participation as a judge. For instance, there is no documentary evidence showing the specific work judged by the petitioner and the names of those he evaluated. Further, as previously discussed, a search of the "Corporation and Business Entity Database" of the NYS Department of State, Division of Corporations indicates that "No business entities were found" for the [REDACTED]. See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. 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. at 591-92. 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.

The petitioner submitted a partial English language translation of a page from a 1992 issue of [REDACTED] identifying the petitioner as one of 22 editorial board members, but the translation was not a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, the AAO cannot ignore that the petitioner is a painter. The petitioner failed to establish that [REDACTED] is in the same or an allied field of specialization. There is no documentary evidence demonstrating that the petitioner's editorial position related to judging visual artists.

The January 30, 1995 article about the petitioner in [REDACTED] states that he directed "stage art design, light design and artistic figure design for the [REDACTED]" Counsel asserts that the petitioner's work for the [REDACTED] constitutes the petitioner's participation as judge of the work of others in his field. The petitioner also submitted a March 26, 2003 "Letter of Employment" from the [REDACTED] stating the petitioner "has been employed" there as an "art consultant" beginning in 2003. The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge of the work of others." Working as an artistic designer or as an art consultant does not equate to participation as a judge of the work of others in the field. 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). The regulation cannot be read to include routine employment duties or consultancy services. There is no documentary evidence showing the specific work judged by the petitioner and the names of those he evaluated. Further, as previously discussed, a search of the "Corporation and Business Entity Database" of the NYS Department of State, Division of Corporations indicates that "No business entities were found" for the [REDACTED].

See [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html), accessed on September 14, 2011, copy incorporated into the record of proceeding. 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. at 591-92. 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.

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

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

The petitioner submitted documentation indicating that his work has purportedly been displayed at artistic exhibitions. However, the aforementioned inconsistencies in the record raise serious questions regarding the reliability of the petitioner's evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Without reliable objective evidence documenting his exhibitions, the petitioner has not established that he meets this regulatory criterion.

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

In his August 19, 2004 letter accompanying the petition, counsel asserts that the petitioner "has served as founder and director of [redacted] which is a major art organization that has outstanding reputation." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. There is no documentary evidence showing that the petitioner performed in a leading or critical role for [redacted] or that the organization has a distinguished reputation.

The petitioner submitted a March 26, 2003 "Letter of Employment" from the [redacted] stating the petitioner "has been employed" there as an "art consultant" beginning in 2003. As previously discussed, the October 8, 2003 document from the [redacted] submitted in response to the director's NOIR fails to demonstrate that the [redacted] existed on March 26, 2003, or that the petitioner was actually employed by the organization in early 2003. There is no documentary evidence showing that the petitioner performed in a leading or critical role for the [redacted] or that the organization has a distinguished reputation.

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

#### B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence.

#### IV. 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.

Even if the petitioner had 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>6</sup> Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

The petitioner has not established his eligibility pursuant to section 203(b)(1)(A) of the Act. The decision of the director to revoke the approval of the petition with a finding of willful material misrepresentation is affirmed.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Esteime*, 19 I&N Dec. at 452 n.1; and *Matter of Ho*, 19 I&N Dec. at 589.

**ORDER:** The appeal is dismissed with a separate finding of willful misrepresentation of a material fact.

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<sup>6</sup> The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

**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.