



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 20 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant 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 alien of extraordinary ability in business. The director determined that the petitioner had not met the requisite criteria 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. The director determined that the petitioner had not met any of the categories of evidence at 8 C.F.R. § 204.5(h)(3).

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59

(1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 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 (9th Cir. 2009) *aff’d in part* 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.¹ 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.*

II. MATERIAL MISREPRESENTATION AND DEROGATORY INFORMATION

On June 27, 2013, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the petitioner of derogatory information regarding documentation that he submitted in support of the petition. The notice specifically observed that the petitioner signed the Form I-140, thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.” The AAO’s notice of derogatory information stated:

The regulation at 8 C.F.R. § 204.5(h)(5) calls for “clear evidence that the alien is coming to the United States to continue work in the area of expertise.” In support of your petition, you

¹ 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).

submitted a "Contract Worker Agreement" that you executed with [REDACTED] on May 13, 2005. The contract reflected a term of employment "commencing June 1, 2005 and ending May 31, 2006." A search of the "Corporation and Business Entity Database" of the NYS [New York State] Department of State, Division of Corporations indicates that [REDACTED] was initially registered as a business on April 17, 2007.² Accordingly, you claim to have entered into a work contract with the company more than 23 months prior to the formal existence of the company. Without independent and objective evidence demonstrating that [REDACTED] existed and operated as a business entity from May 13, 2005 to May 31, 2006, it appears that you misrepresented your employment with that company.

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) calls for "evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." In support of your petition, you submitted the following books that you claimed to have authored:

1. Book entitled [REDACTED] that shows ISBN (International Standard Book Number) [REDACTED]. This book was actually authored by [REDACTED]. See [REDACTED] accessed on June 20, 2013, copy incorporated into the record of proceeding and attached to this notice;
2. Book entitled [REDACTED] that shows ISBN [REDACTED] and ISBN [REDACTED]. This book was actually authored by [REDACTED]. See [REDACTED] accessed on June 20, 2013, copy incorporated into the record of proceeding and attached to this notice;
3. Book entitled [REDACTED] that shows ISBN [REDACTED] and ISBN [REDACTED]. This book was actually authored by [REDACTED]. See [REDACTED] accessed on June 20, 2013, copy incorporated into the record of proceeding and attached to this notice;
4. Book entitled [REDACTED] that shows ISBN [REDACTED]. This book was actually authored by [REDACTED]. See [REDACTED] accessed on June 20, 2013, copy incorporated into the record of proceeding and attached to this notice;

² See [REDACTED] accessed on June 21, 2013, copy incorporated into the record of proceeding.

³ The International Standard Book Number (ISBN) is a number that uniquely identifies books and book-like products published internationally. See <http://www.isbn.org/standards/home/isbn/us/isbnqa.asp>, accessed on June 20, 2013, copy incorporated into the record of proceeding.

5. Book entitled [REDACTED] that shows ISBN [REDACTED]. This book was actually authored by [REDACTED]. See [REDACTED] accessed on June 20, 2013, copy incorporated into the record of proceeding and attached to this notice; and
6. Book entitled [REDACTED] that shows ISBN [REDACTED]. This book was actually authored by [REDACTED]. See [REDACTED] accessed on June 20, 2013, copy incorporated into the record of proceeding and attached to this notice.

By falsely claiming authorship of the above books, it appears you have sought to obtain a visa by willful misrepresentation of a material fact. 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.

* * *

By filing the instant petition and making false claims regarding your authorship and employment, you have sought to procure a benefit provided under the Act through willful misrepresentation of a material fact.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner was afforded 33 days in which to respond to the AAO's notice. The petitioner failed to respond to the notice. With regard to the aforementioned derogatory information, the petitioner has failed to resolve the inconsistencies with independent and objective evidence. As the petitioner failed to provide independent and objective evidence to overcome, fully and persuasively, the derogatory information, it is concluded that the petitioner has sought to obtain a visa by willful misrepresentation of a material fact.

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 regarding his employment and authorship.

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 made false claims regarding his previous employment and his authorship of six books. 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 “Contract Worker Agreement” executed with [REDACTED] more than 23 months prior to the company’s formal existence and of six books falsely identifying him as the author in support of the Form I-140 petition constitutes false representations to a government official.

Second, 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, it must be concluded 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 misrepresentations made by the petitioner relate to his eligibility for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi) and the regulation at 8 C.F.R. § 204.5(h)(5). Accordingly, the AAO concludes that the misrepresentations were material to the petitioner's eligibility.

By filing the instant petition and making false claims regarding his authorship and employment, 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.⁴

The remaining documentation and the director's bases of denial will be discussed below. The AAO notes that 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 noted, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Regardless, the AAO will address the director's finding that the petitioner has failed to demonstrate that he meets at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the director's decision denying the petition will be upheld.

III. ANALYSIS

A. Evidentiary Criteria⁵

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The issue, therefore, is considered to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims found to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this regulatory criterion.

⁴ 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).

⁵ The petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

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.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The issue, therefore, is considered to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. 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.

Although the petitioner submitted evidence for this regulatory criterion, the director erroneously found that no evidence had been submitted. On appeal, as will be discussed, the AAO has reviewed the evidence and concurs with the ultimate determination of the director that the petitioner has not established eligibility for this criterion.

In response to the director's request for evidence (RFE), the petitioner submitted a March 25, 2006 article in [REDACTED] – An Interview with [the petitioner],” but the English language translation accompanying the article was not a full translation 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.* In addition, there is no circulation evidence showing that [REDACTED] qualifies as a form of major media.

The petitioner submitted a March 28, 2006 article in [REDACTED] but the English language translation accompanying the article was not a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no documentary evidence showing that [REDACTED] is a form of major media.

The petitioner submitted a May 8, 2003 article purportedly published in *Beijing Daily Newspaper* and entitled [REDACTED] but the English language translation accompanying the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). In addition, the English language translation did not identify the author of the article. Moreover, there is no evidence showing that *Beijing Daily Newspaper* qualifies as a form of major media.

The petitioner submitted an article purportedly published in *China National Newspaper* and entitled [REDACTED] but the English language translation accompanying the article was not certified by the translator as required by the regulation

at 8 C.F.R. § 103.2(b)(3). Further, the date and author of the article were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, there is no evidence demonstrating that *China National Newspaper* is a form of major media.

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

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Although the petitioner claimed “major contributions to his field of endeavor,” the director did not discuss the petitioner’s claim in the denial. The petitioner’s response to the director’s RFE stated:

The petitioner, due to his significant contributions, has won a number of major awards including

This together with his extensive authorship including many books and professional articles illustrates his major contributions to his field of endeavor.

With regard to the the petitioner has failed to submit documentary evidence showing that the contributions for which he received recognition rise to the level of original business-related contributions of major significance in the field. ⁶The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field.” [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of *original* business-related contributions “of major significance in the field.” The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

Regarding the petitioner’s claim of “extensive authorship including many books and professional articles,” there is no documentary evidence showing that his publications are frequently cited by independent scholars, have significantly influenced business practices in the field, or otherwise qualify as original contributions of major significance in the field. In addition, the petitioner failed to submit independent and objective evidence to overcome the finding that he falsely claimed authorship of six books. Once again, doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

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

⁶ The director determined that none of the petitioner’s awards qualified as nationally or internationally recognized prizes or awards for excellence in the field of endeavor and the petitioner did not contest that finding on appeal.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. In addition, the AAO issued a notice of derogatory information to the petitioner indicating that he falsely claimed authorship of six books. The petitioner failed to respond to the AAO's notice. The petitioner does not contest the findings of the director and the AAO for this criterion or offer additional arguments. Therefore, the issue of the petitioner's eligibility for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi) is considered to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory criterion.

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

Although the petitioner submitted evidence for this regulatory criterion, the director found that no evidence had been submitted. On appeal, as will be discussed, the AAO has reviewed the evidence and concurs with the ultimate determination of the director that the petitioner has not established eligibility for this criterion.

In response to the director's RFE, the petitioner submitted a March 2006 letter purportedly issued by [redacted] invited [the petitioner] to conduct environmental survey and Fengshui evaluation and paid [the petitioner] 68,000 RMB for his service." The petitioner failed to submit primary evidence documenting this claimed remuneration. Absent evidence that primary and secondary documents are either not available or nonexistent, this letter cannot be relied upon as evidence. 8 C.F.R. § 103.2(b)(2).

The petitioner also submitted a January 2005 "Fee Chart for Architecture Fengshui Evaluation," purportedly prepared by [redacted], showing the rates that Fengshui Masters charge in China. The letter from [redacted] and the fee chart from [redacted] do not include an address, a telephone number, or any other information through which those individuals can be contacted. Again, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

In addition, the record lacks documentary evidence regarding the Chinese Association of Architecture Fengshui to demonstrate that its Fee Chart is a reliable basis for comparison in demonstrating that the petitioner received "significantly high remuneration" for his services relative to others in the field. The petitioner must submit evidence showing that he has earned *significantly high* remuneration in relation to others in his field, not simply a rate of pay that is above the standard or basic rate for his occupation. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL

enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

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. CONTINUING WORK IN THE AREA OF EXPERTISE IN THE UNITED STATES

Beyond the decision of the director, the statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. *Id.* On the Form I-140, under Part 6, "Basic information about the proposed employment," the petitioner failed to provide a specific address where he will work in the United States. As previously discussed, the petitioner submitted a "Contract Worker Agreement" with [REDACTED] dated May 13, 2005. The contract reflected a term of employment "commencing June 1, 2005 and ending May 31, 2006."

According to the "Corporation and Business Entity Database" of the NYS Department of State, [REDACTED] was initially registered as a business on April 17, 2007. The petitioner's work contract with [REDACTED] was executed more than 23 months prior to the formal existence of the company. Once again, 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 582, 591-92. Without independent and objective evidence demonstrating that [REDACTED] existed and operated as a business entity from May 13, 2005 to May 31, 2006, it must be concluded that the petitioner misrepresented his employment with that company. Accordingly, the petitioner has not submitted "clear evidence" that he will continue to work in his area of expertise in the United States as required by the regulation at 8 C.F.R. § 204.5(h)(5).

V. 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.⁷ 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 eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

FURTHER ORDER: The AAO finds that the petitioner knowingly misled USCIS on elements material to his eligibility for a benefit sought under the immigration laws of the United States.

⁷ 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).