



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: AUG 05 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the preference visa petition on April 28, 2011. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR) on June 24, 2014. In a Notice of Revocation (NOR), dated November 20, 2014, the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140) with a finding that the self-petitioner misrepresented a material fact while seeking an immigration benefit. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed. We will also affirm the director's separate administrative finding of willful material misrepresentation.

The petitioner seeks classification as an "alien of extraordinary ability" in business as a wine expert and enologist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria, in addition to the finding that the petitioner had misrepresented material facts in violation of section 212(a)(6)(C)(i).

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)).

¹ The petitioner's Form I-290B Notice of Appeal or Motion (Form I-290B), indicates within Part 1 that the appeal is related to the receipt number of the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). There is no appeal from the petitioner's Form I-485. However, the Form I-290B also indicates within Part 3 that the appeal is related to a Form I-140, and the discussion on appeal also relates to the Form I-140. Therefore, the petitioner's intent to appeal the Form I-140 is clear.

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.*

I. ELIGIBILITY FOR THE CLASSIFICATION SOUGHT

The petitioner does not contest the director's determination that the evidence does not establish his eligibility for the classification sought. Specifically, the director found that the petitioner had not established that he meets any of the regulatory criteria. Accordingly, he has abandoned any such eligibility claims. *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) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). In fact, the petitioner expressed that he accepted the director's determination that he did not meet his burden of proof, and that he intended to reapply by filing a new petition. The sole issue on appeal is the director's finding of material misrepresentation.

II. MISREPRESENTATION

A. Legal Authority

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the individual 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 individual's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: (1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; (2) that the

misrepresentation was willfully made; and (3) that the fact misrepresented was material. See *Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

B. Analysis

For the reasons discussed below, we uphold the director's decision to deny the petition and finding of willful misrepresentation for the reasons the director specified. USCIS may consider a formal finding of willful misrepresentation of a material fact in any future proceeding where the petitioner's admissibility is an issue.²

The director concluded the petitioner submitted evidence that constituted misrepresentations of material facts in violation of section 212(a)(6)(C)(i) of the Act under the following regulatory criteria:

- The prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i);
- The contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v);
- The authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi); and
- The high salary or significantly high remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix).

First, the director considered the 2006 patent for a [REDACTED] that the petitioner submitted, listing himself as a designer. The director reviewed the English language website for Chinese patents, [REDACTED] and was unable to confirm a Chinese patent with that title. The director did confirm a U.S. patent with that title at [REDACTED] but the petitioner is not a listed inventor for the patent. The director included this information in the NOIR. Based on this information and concerns about the translations, the director also questioned the corresponding awards for [REDACTED] Award in 2007 and the First Prize of the State [REDACTED] Award in 2010. The petitioner relies on the patent and related awards to meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v).

Second, the director determined, using the website [REDACTED] that the petitioner was not the author of two articles that garnered two awards. Once again, the director provided this information to the petitioner in the NOIR. The titles of the two articles in question under the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi) are, [REDACTED] and [REDACTED] that both appeared in [REDACTED]

² While the adjudication of the Form I-140 Immigrant Petition for Alien Worker (Form I-140) may present the opportunity to enter an administrative finding of willful material misrepresentation, the immigrant visa petition is not the appropriate forum for finding a self-petitioner or beneficiary inadmissible. See *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the self-petitioner or beneficiary may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to that of a permanent resident. See sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).

[REDACTED]. The petitioner submitted awards from 2008 relating to these articles titled [REDACTED]. The petitioner relied on the articles to meet the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi).

Third, regarding the high salary or significantly high remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix), the director noted a conflict between information the petitioner provided while applying for his nonimmigrant visa and the information he provides with the immigrant petition. The director stated:

Furthermore, the Department of State's (DOS') records show the petitioner previously applied for a B-2 nonimmigrant visa in [REDACTED] China on January 5, 2011. On his nonimmigrant visa application, he listed his primary occupation as Business, and that he was the President for [REDACTED] and earned a monthly salary of "70,000" (which USCIS assumes to be RMB 70,000, and which USCIS equates to RMB 840,000 per year). He indicated that no one assisted him in filling out that application.

USCIS notes the wage the petitioner reported to the DOS (RMB 840,000) is significantly different from the wage reported [in the income certificate the petitioner submitted in support of the Form I-140] to USCIS two months after the petitioner applied for his nonimmigrant visa (RMB 2,000,000).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.*

On appeal, the petitioner submits a brief, a personal statement, testimonial evidence relating to the petitioner's character and evidence relating to his business reputation. The petitioner does not address the director's bases for concluding that the documentary evidence on which his petition approval was based was falsified. Instead, the petitioner asserts that he provided original documents to his attorney, but he did not review the translations of the evidence that was subsequently submitted with the Form I-140. He explains that he was also not aware of incorrect translations submitted with the petition until the revocation. According to the petitioner, his own staff in China and some of the attorney's staff handled his case and the translations.

The petitioner's appeal focuses on the director's passing references to the insufficiency of the translations; however, as we have detailed above, the director's bases for finding misrepresentation were not simply that the translations were insufficient or incorrect. Rather, the director obtained publicly available information from patent websites and scholarly article search engines that contradicted the evidence the petitioner submitted. The petitioner's statement does not address this publicly available information other than to assert that he did not authorize anyone to submit false

evidence and that he did not knowingly or willfully misrepresent the evidence in support of the petition. Finally, the petitioner requests that we withdraw the finding of misrepresentation, thereby enabling him to reapply by filing a new petition.

The petitioner asserts within his statement dated December 23, 2014 that he did not provide, nor did he authorize the submission of any false documentation or any false claims in support of the present petition. While the petitioner discusses who prepared the translations, the petitioner does not offer an explanation of where the fraudulent foreign language evidence originated. Additionally, the petitioner's Personal Statement submitted when he filed the petition includes references to some of the misrepresented evidence listed above. For example, the statement reflects the petitioner received the [REDACTED] Award in 2007, that he received a patent for a [REDACTED] [REDACTED] 2006, and that he authored the two articles titled [REDACTED] and [REDACTED] that both appeared in [REDACTED]. The petitioner's position that he had no knowledge of any evidence or eligibility claims that constitute material misrepresentations is not persuasive based on the evidence on record.

The record contains correspondence dated October 30, 2014 from the Law Office of [REDACTED]. [REDACTED] Following the issuance of the NOIR, [REDACTED] requested the withdrawal of the petition, and indicated the misrepresentations originated from a junior attorney from the firm of the petitioner's authorized representative. The record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) relating to [REDACTED]. The regulation at 8 C.F.R. § 292.4(a) provides that:

An appearance must be filed on the appropriate form as prescribed by DHS [Department of Homeland Security] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered.

As [REDACTED] did not submit a Form G-28 to accompany the October 30, 2014 correspondence, he cannot be considered the petitioner's authorized representative. As such, [REDACTED] was not authorized to withdraw the petition and his comments relating to the origin of the misrepresentations have limited probative value as he does not profess any first-hand knowledge of the preparation of the petition.

The director sent the NOIR to both the petitioner's address of record and to his attorney of record, which is the same attorney that filed the appeal. Therefore, the petitioner's assertion that he was not aware of any false translations, or other documents submitted on his behalf, until the revocation is not persuasive. The director put the petitioner on notice of the false nature of several documents within the NOIR, and subsequently granted the petitioner additional time in which to respond to the NOIR.

In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003) (upholding the AAO's finding that evidence in that matter was not credible). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. at 591.

The petitioner submits new evidence on appeal that, according to the appellate brief, "puts forth his good character in rebuttal to the" final decision. At issue is whether evidence the petitioner, or his representative, submitted constituted misrepresentations of material facts under section 212(a)(6)(C)(i) of the Act. The petitioner offers no rebuttal relating to the director's bases for finding that the foreign language documents were themselves false (irrespective of the translations). The petitioner does not assert that he did not provide the original foreign language patent and articles, only that he was unaware of the content of their translations. As noted, the petitioner indicated in a signed statement accompanying the petition that he was both the inventor on the patent and the author of the two articles. The petitioner has not submitted independent objective evidence to establish that he is, in fact, a named inventor on a Chinese patent or that he authored the two submitted articles. Accordingly, the petitioner has not demonstrated by a preponderance of the evidence that he did not willfully misrepresent a material fact in support of this petition.

First, the petitioner made multiple misrepresentations regarding his achievements. 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). The petitioner initially submitted to USCIS a patent and two scholarly articles. In his personal statement, which is in English and not translated, he presented himself as the designer of the patented technology and the author of the two articles. On appeal, he has not addressed the evidence from the patent websites and the scholarly articles search engine listing other individuals as the inventors of the patent and the authors of those articles. Accordingly, the petitioner's submissions and personal statement in support of the instant petition constitute false representations to a government official.

Second, we find that the petitioner willfully made the above misrepresentations for the reasons discussed in this paragraph. The petitioner signed the Form I-140, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the Form I-140, at part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." On the basis of the petitioner's signed I-140 affirmation, made under penalty of perjury, we find that the petitioner willfully and knowingly made the misrepresentation. Furthermore, the regulation at 8 C.F.R. § 102.2(a)(2) provides that "[b]y signing the application or petition, the applicant or petitioner...certifies under penalty of perjury that the application or petition, and all evidence submitted with, either at the time of filing or thereafter, is true and correct." The

petitioner also signed the personal statement, which is in English rather than a translation of a foreign language document, that accompanied the Form I-140. In this statement, he indicated he was the inventor on a patent and had authored two articles.

Third, the evidence is material to the petitioner's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cuts off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537. The patent is relevant to the petitioner's claim to have made contributions of major significance pursuant to 8 C.F.R § 204.5(h)(30)(i). The petitioner submitted the articles as evidence that he has authored scholarly articles pursuant to 8 C.F.R § 204.5(h)(3)(vi). The income certificate pertains to the petitioner's claim to meet the high salary criterion at 8 C.F.R § 204.5(h)(3)(ix). As the false claims relate to the petitioner's claimed eligibility for the requested classification, they are material to this proceeding.

By filing the instant petition and providing false information, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Due to our finding that the petitioner made false claims, we find that he willfully misrepresented material facts. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

Even if the petitioner did not apprise himself of what was submitted in support of his own petition as implied on appeal, such action constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support of the petition. *See Hanna v. Gonzales*, 128 F. App'x 478, 480 (6th Cir. 2005) (finding that an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). *Cf., Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533 (1991) (finding that a represented party who signs his or her name to documents filed in court bears personal, non-delegable responsibility to certify truth and reasonableness of the documents and failure to meet that duty subject signor to Rule 11 sanctions). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. *See Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993).

III. SUMMARY

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

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NON-PRECEDENT DECISION

FURTHER ORDER: We find that the petitioner knowingly misrepresented material facts in an effort to mislead USCIS on elements material to his eligibility for a benefit sought under the immigration laws of the United States