U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-L-

DATE: APR. 2, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner indicates that he is a Kung Fu master and warrior monk seeking classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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 of the Nebraska Service Center revoked the approval of Form I-140, Immigrant Petition for Alien Worker, concluding that the record did not establish eligibility for the benefit sought. Specifically, the Director found discrepancies and inconsistencies relating to the Petitioner's immigration history and supporting documentation.

On appeal, the Petitioner submits additional evidence. He also asserts that the Director improperly revoked the approval of his petition. In February 2018, we issued a notice of intent to dismiss (NOID) based on additional discrepancies in the record found during an overseas investigation. The Petitioner responded with a statement and additional exhibits.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability 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.

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." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

With respect to revocations, 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 revocation on notice, 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. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

A. Revocation

Initially, the Director approved the petition. Upon further review, he issued a notice of intent to revoke and ultimately revoked the approval. We have considered all evidence responding to the grounds of revocation on appeal and in response to our NOID, discussed below.

In revoking the approval of the petition, the Director questioned the Petitioner's claimed qualifications as a warrior from the Shaolin Buddhist Temple. Specifically; the Director noted the Petitioner's marriage and fathering of a child, which appeared contrary to an aspect of Buddhism. Accordingly, the Director determined that "this role of warrior monk would have ceased at the time of his marriage (2009)."

The Director also determined that the Petitioner provided fraudulent award certificates from the "National Juniors' Martial Arts Elite Championships" in 2004 and the "National Juniors' Martial Arts Tournament" in 2005. Specifically, the Director found that the Petitioner was over 21 years of age at the time he received the awards and would have been ineligible to compete as a junior. Moreover, the Director pointed out that the certificates contained the recognized Olympics' logo of five interlocked rings. However, the International Olympic Committee declined to allow the International Wushu Federation to be included in the Olympics; and therefore, it was not permitted to use the Olympic trademark.

In addition, the Director concluded that the Petitioner's two awards at the "First World Traditional Wushu Festival" in 2004 and "The Second World Traditional Wushu Championships" in 2006 were issued for participation. Further, the Director indicated that the certificates were generic, fill-in-the-blank, and although official results are posted on the International Wushu Federation's website for the events, the Petitioner was not included amongst the winners.

In response to the director's notice of intent to revoke, the Petitioner provided a letter from abbot of the Shaolin Temple, who explained that "even the monks who have taken the vows can choose to disavow at any time" and "if a warrior monk of advanced level in the Warrior Monk Troop chooses to disavow, he is still considered a warrior monk of the Shaolin Temple, as long as he continues to advocate and pass down Shaolin Kung Fu and Chan outside the temple." Further, stated that even though the Petitioner disavowed and married, he is still considered a warrior monk. The Director, however, determined that because there were inconsistencies in letters, the statements were "unfounded and potentially false." In particular, the Director found

that the timeline of the Petitioner's residence and employment in the United States did not match previous immigration filings. For instance, the Director pointed out that even though the Petitioner was present at the Shaolin Temple during a U.S. Citizenship and Immigration Services (USCIS) site visit in 2008, never mentioned the Petitioner's residence or service to the Shaolin Temple.

Further, the Petitioner submitted letters from the and the claiming that the Petitioner received the awards questioned by the Director. Specifically, the letters from and indicated that the Petitioner competed in the 18-39 age category at the 2004 and 2005 junior championships. Regarding the "First World Traditional Wushu Festival" and "The Second World Traditional Wushu Championships," the letter from HAS stated that Shaolin Temple warrior monks are not allowed to participate in any competitions; however the abbot decided that the Petitioner could participate but "his name and final result shall not appear in the result book of the competition." In addition, the Petitioner presented another letter from Abbot Shi who confirmed the Petitioner's attendances at the competitions and repeated letter.

In revoking the approval of the petition, the Director questioned the authenticity of the letters. In particular, the Director noted that the letters were not written on the organizations' letterheads and no contact information was provided. In addition, the Director found that the letters appeared "similarly formatted."

On appeal, the Petitioner argues that the Director improperly discredited letter due to his failure to list every detail of the Petitioner's itinerary in the United States. In addition, the Petitioner claims that he provided sufficient evidence to show that he received the awards. Further, he contends that the Director utilized the drafting standards for documents in the United States rather than in China, and the use of the Olympic ring trademark is not relevant to his eligibility.

The Petitioner also submits a letter from who summarizes his previous letters and indicates that "[i]t was not his intention to list all of [the Petitioner's] travel history to the U.S.," including to the Shaolin Temple. In addition, the Petitioner provides documentation relating to standard Chinese document formatting, using "Red Letterheads" by Chinese government agencies, and utilizing printed seals on Chinese documents ("chop system"). Moreover, the Petitioner offered additional letters from and Specifically, relating to the 2004 junior festival, he presented a "Certifying Letter" from asserting that the statements in its previous letter were true. Moreover, in regards to the 2005 junior championship, he offered a "Certifying Letter" from claiming that its previous statements were true, and "we don't keep detailed materials about his participation or the Championship for that long, this certifying letter is the only proof we can provide." We note that none of the letters include addresses or contact information, nor do they identify who wrote the letters; instead the letters are stamped with the organizations' names.

During adjudication of the appeal, USCIS forwarded the documentation overseas to verify that [redacted] wrote the letters and the Petitioner received the awards. The overseas investigation, however, was unable to confirm whether the letters in the record from [redacted] were genuine. Although the investigating officers attempted to contact [redacted] several times, they were unable to speak directly to him to verify that he wrote the letters or discuss the veracity of the content. Further, our overseas investigators contacted the International Wushu Federation, who confirmed that the Petitioner received awards from the "First World Traditional Wushu Festival" and "The Second World Traditional Wushu Championships." However, when the investigators contacted the National Wushu (Martial Arts) Sports, Training and Competition Department One, a representative was unable to locate any information relating to the Petitioner receiving the awards from the 2004 "National Juniors' Martial Arts Elite Championships" and the 2005 "National Juniors' Martial Arts Tournament." In addition, the representative indicated several inaccuracies and discrepancies present on his award certificates that called into question their authenticity. In particular, the representative disclosed that the Petitioner's 2004 certificate listed the incorrect name, time, and place of the competition. Moreover, the 2005 certificate did not include the competition category.

Accordingly, we notified the Petitioner of the derogatory information in our NOID. In response, the Petitioner argues that the investigators did verify that [redacted] letters were authentic through correspondence with [redacted] captain of the warrior monk troop. The investigators contacted that Shaolin Temple and spoke with [redacted] who agreed to accept the copies of letters and ask for [redacted] verification of the documentation. After the third contact, [redacted] claimed that [redacted] reviewed all of the letters and confirmed that he issued them. The investigators, however, were not able to directly speak to [redacted] to verify his review of the letters or about the veracity of the content.

Further, the Petitioner submits a statement claiming that he participated in the relevant competitions and received the awards. The Petitioner contends that the investigators contacted the incorrect organization, and that instead the sponsoring organization was the General Administration of Sports of China, and "[redacted] and several others" handed out the awards. We do not find the Petitioner's arguments to be credible or sufficient to overcome the negative findings with regard to the awards certificates. First, the investigators contacted the National Wushu (Martial Arts) Sports, Training and Competition Department One because it specializes in the National Martial Arts Skills, which is the Chinese name of the competition listed on the award certificate provided by the Petitioner. Second, the representative had knowledge of the competition as it fell under the purview of his department. Third, the representative provided specific information regarding the competition and certificates. Finally, the representative had records and results from the competitions.

The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* For the reasons discussed above, the Petitioner has not sufficiently resolved the discrepancies noted by the Director or the issues raised in our NOID. Accordingly, we find no error in the Director's revocation based on unresolved

discrepancies in the record that call into question the Petitioner's eligibility, and the appeal will be dismissed on that basis.

B. Material Misrepresentations

For the reasons discussed above, the Petitioner has not established eligibility as an individual of extraordinary ability. In addition, we find that he has misrepresented material facts.

The regulatory criterion at 8 C.F.R § 204.5(h)(3)(i) permits a petitioner to submit "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." As discussed above, the Petitioner provided fraudulent award certificates claiming that he received awards from the 2004 "National Juniors' Martial Arts Elite Championships" and the 2005 "National Juniors' Martial Arts Tournament." In general, a few errors or minor discrepancies are not reason to question the credibility of an individual or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). 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 Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors lead us to conclude that the evidence of the Petitioner's achievements, which is material to his eligibility as an individual of "extraordinary ability," is neither true nor credible.

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. *See 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); *Kai Hing Hui*, 15 I&N Dec. at 288.

First, the Petitioner misrepresented his accomplishments and achievements by claiming to have received awards from the 2004 "National Juniors' Martial Arts Elite Championships" and the 2005 "National Juniors' Martial Arts Tournament." 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 provided fraudulent documentation and made untrue claims about himself, constituting false representations to a government official.

Second, the Petitioner willfully made the misrepresentations. The Petitioner signed 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). 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 Ng*, 17 I&N Dec. at 537. Here, the misrepresentations regarding his award relate to eligibility under the regulation at 8 C.F.R. § 204.5(h)(3).

Accordingly, by filing the instant petition, making false representations, and submitting fabricated documentation, the Petitioner has sought to procure a benefit provided under the Act through a willful misrepresentation of material facts. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue. *See* section 212(a)(6)(C) of the Act.

C. Additional Eligibility Issues

Because we conclude that the Petitioner did not overcome the Director's basis for revocation, we need not fully address other eligibility issues evident in the record. However, we will briefly address the Petitioner's argument, made on appeal, that even if he does not meet the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), he still meets at least three criteria and has shown eligibility as an individual of extraordinary ability. We find that the record reflects that he only meets one criterion. Specifically, the Petitioner demonstrated that he participated as a judge at martial arts competitions from 2009 to 2013, thus complying with 8 C.F.R. § 204.5(h)(3)(iv).

As indicated above, the overseas investigation confirmed the Petitioner received two certificates from the World Traditional Wushu Festivals. These awards, as pointed out by the Director, are acknowledgements of participation rather than nationally or internationally recognized prizes or awards for excellence in the field as required under 8 C.F.R. § 204.5(h)(3)(i). Moreover, although the Petitioner claims that his membership with the Shaolin Temple satisfies the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the record does not establish that outstanding achievements are required for membership as judged by recognized national or international experts as most individuals begin membership around the age of eight based on proving their devotion to Kung Fu and Buddhism. In

addition, while the Petitioner claims to meet the criterion for published material about him under 8 C.F.R. § 204.5(h)(3)(iii), he presented partial and summary translations of articles.[1] Further, he did not provide the required titles, dates, and authors, and the articles mention his name or contain a picture but are not about him.[2] Also, the Petitioner did not show that the articles were published in professional or major trade publications or other major media. Finally, even though [redacted] asserted that the Petitioner is "a leading member" of the Shaolin Temple, he does not provide specific information to demonstrate that the position qualifies as a leading role under C.F.R. § 204.5(h)(3)(viii).

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. In addition, the overall record does not support a finding that the Petitioner has established the level of expertise required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). In the case here, the Petitioner has not shown that his judging experience is indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Without documentation that sets him apart from others in his field, such as evidence that he has a consistent history of judging nationally or internationally recognized martial artists, the Petitioner has not established his local or regional judging places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner has not provided documentation demonstrating that his submitted awards and press coverage are consistent with being among the small percentage at the top of his field or having a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the record does not otherwise demonstrate that the Petitioner's work has garnered national or international acclaim in the field. *See* section 203(b)(1)(A) of the Act.

III. CONCLUSION

We find the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability, and he has made a willful misrepresentation of material facts.

ORDER: The appeal is dismissed.

Cite as *Matter of C-L-*, ID# 451571 (AAO Apr. 2, 2018)

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[1] *See* 8 C.F.R. 103.2(b)(3).

[2] *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).