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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

JUN 09 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO). The AAO acknowledged the petitioner's withdrawal of the appeal and entered a finding of fraud and material misrepresentation. The petitioner has filed a motion to reopen, seeking a reversal of the finding of fraud and material misrepresentation. The AAO will grant the petitioner's motion and withdraw the finding of fraud and material misrepresentation.

The petitioner had sought classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time he filed the petition, the petitioner was a doctoral student at Purdue University, West Lafayette, Indiana. At that time, the petitioner's attorney of record was Johnny Zhen Wang, who stated his address as the Law Offices of Wang & Associates, 10900 183rd St., Ste. 330, Cerritos, California.

The initial filing of the petition included an introductory brief from [REDACTED]. On pages 8-9 of that introductory brief, [REDACTED] stated: [REDACTED] has authored and co-authored many original research papers." [REDACTED] then listed three articles as follows:

- [REDACTED], etc. "A new traveling wave matching structure for enhancing the bandwidth of MMIC broadband amplifiers," has been accepted by IEEE, Microwave Wireless Components Letters.
- [REDACTED];"
Microwave and Optical Technology Letters, 1993, March, pp. 221-223
- [REDACTED]
Proceedings of Conference on Microwave Measurement, Zhu'hai, P.R. China, June, 1992

On page 16 of that same introductory brief, Mr. Wang stated:

The following is a list of [REDACTED] publications:

- [REDACTED], "On-state Characteristics of SiC Power UMOSFETs on 115-μm Drift Layers," *IEEE Electron Device Letters*, vol. 26, no. 4, (2005)
- [REDACTED], "Device Options and Design Considerations for High-Voltage (10-20kV) SiC Power Switching Devices," *International Conference on Silicon Carbide and Related Materials 2005*, Pittsburgh, Pennsylvania, Sep 18-23, (2005)
- [REDACTED], "Device Options for High-Voltage SiC Power Switching Devices," Invited talk, *IEEE Device Research Conference*, Santa Barbara, CA, June 20-22, (2005)

These two lists are entirely different.

An accompanying "List of Exhibits" listed the three publications from 2005, but not the three publications from 1992-1993. The petitioner's *curriculum vitae* listed the three 2005 publications, but not the three earlier ones. The petitioner submitted copies of the 2005 publications, but not the earlier publications. Throughout the initial submission, the only reference anywhere to the 1992-1993 publications is on pages 8-9 of Mr. Wang's introductory brief.

On March 5, 2007, the director issued a request for evidence (RFE). In response to the RFE, the petitioner submitted a second brief from Mr. Wang. Portions of this brief are copied from the first brief. The list of 1992-1993 publications from pages 8-9 of the first brief appears on page 9 of the RFE brief. The list of 2005 publications from page 16 of the first brief appears on page 21 of the RFE brief.

The director denied the petition on August 11, 2007, in part because the petitioner had not established a significant citation history for his published work. The petitioner filed his appeal on his own behalf on September 7, 2007, without Mr. Wang's involvement. Referring to himself in the third person, the petitioner stated:

The reason there has not been a large number of citations of the petitioner's work at the time of petition is that publishing technical articles in this specific discipline takes years of turn-around time. Since the first publication of the petitioner's work is in 2005, it is expected that the citations of his work will not start to appear in the database until 2007.

During review of the appeal, the AAO took notice of the list of 1992-1993 publications that appeared in both of Mr. Wang's briefs. It seemed extremely unlikely that the petitioner, born in 1977, was producing technical publications as a teenager. A search of the <http://scholar.google.com> database revealed two of the three 1992-93 publications named in Mr. Wang's briefs. The information about those publications mostly matched the information in the briefs, except the true author was one [REDACTED]. In Mr. Wang's briefs, the petitioner's name appeared in place of [REDACTED]'s name. This created the impression that the petitioner fraudulently claimed credit for [REDACTED]'s work.

On October 20, 2008, the AAO advised the petitioner of the AAO's intent to dismiss the appeal with a finding of fraud and material misrepresentation. That notice read, in part:

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. 582, 591 (BIA 1988). The AAO has found false information in the record. Based upon this false information, the AAO intends to issue a finding of fraud and willful misrepresentation of a material fact. Pursuant to Citizenship and Immigration Services regulations at 8 C.F.R. § 103.2(b)(16)(i), we hereby notify you of this derogatory information and provide you with an opportunity to respond before we render our final decision.

Absent independent and objective evidence to overcome, fully and persuasively, our above finding, the AAO will enter a formal finding of fraud and willful misrepresentation of a material fact into the record. You may choose to withdraw your appeal, but this will not prevent or preclude a finding of fraud and willful misrepresentation of a material fact. . . .

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho* at 582, 591-92. The AAO reserves the right to verify any evidence that you may choose to submit in response to this notice.

The AAO sent a copy of this notice to _____ at the Cerritos address listed above. That copy was returned to the AAO on May 20, 2009, with an attached letter that read, in part:

[Letterhead:]
IRVINE UNIVERSITY
ADMINISTRATION OFFICES
10900 183RD ST. SUITE #330 · CERRITOS, CA 90703

* * *

This letter is to inform you that at one time **Johnny Zhen Wang** was employed as a Law Professor at Irvine University. He no longer teaches at the University and does not have his law offices located in our facilities, nor has he ever practiced law at the University.

While Mr. Wang clearly did not receive the notice, the petitioner received his own copy of the notice. In response, the petitioner (who had secured new representation) withdrew his appeal and submitted an affidavit in which he stated:

I spoke with Mr. Wang by phone and by email only, and I never met him in person.

. . . Mr. Wang sent me his written fee agreement, which I reviewed, signed, and returned to him with a retainer check in the amount of \$1500. According to the fee agreement, I had no right to copies of the documents submitted on my behalf. Moreover, according to the agreement, Mr. Wang would not permit any inspection of the documents except at the physical office of his firm. . . .

Mr. Wang never let me see what he attached to [the petition] forms. . . .

Although I have requested copies of my file from Mr. Wang, he has not responded to my requests. I therefore do not know what counsel asserted in his brief. I told Mr.

Wang that I published three articles in the initial I-140 petition and six additional articles at the time of the RFE [request for evidence], and I never claimed to have published more than the above. . . . I can affirm that I did not author the articles that the USCIS points out in its Notice to me. In fact, in the appeal letter I personally filed to [the] Administrative Appeal[s] Office in September 2007, I explicitly indicated that my first publication was in 2005, which is in direct contradiction to Mr. Wang's fraudulent statements about me and my work. My appeal letter is strong evidence that I did not know that anything other than what I provided to Mr. Wang was submitted on my behalf. I agree that, if indeed such documents were submitted, they would be fraudulent, yet I do not have any knowledge of their content.

A copy of the "Attorney Fee Agreement" between Mr. Wang and the petitioner contains a clause indicating that while an alien may inspect all writings and submissions "on Attorney's premises," "no duplication by any means or otherwise transmission to anyone by Beneficiary of all materials stated above and samples will be allowed." As noted previously, the petitioner was in Indiana, whereas Mr. Wang was in California. This very substantial distance effectively precluded the petitioner from visiting Mr. Wang's premises. One could debate the wisdom of agreeing to such an arrangement, but such a discussion would be outside the scope of this proceeding.

The AAO issued a finding of fraud and material misrepresentation on December 19, 2008. In that notice, the AAO acknowledged that Johnny Zhen Wang had provided, in the same brief, two contradictory lists of articles attributed to the beneficiary. The AAO also stated:

We cannot ignore 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." Only in response to the AAO's October 20, 2008 notice has the petitioner acknowledged that his submissions contain material misrepresentations regarding his accomplishments. An alien's timely and voluntary retraction of his false statement may serve to excuse the misrepresentation, but the retraction may not simply be in response to the actual or imminent exposure of his falsehood. See *Rahman v. Mukasey*, 272 Fed. Appx. 35, 39 (2nd Cir. 2008)(unpublished) (citing *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973); *Matter of Ngan*, 10 I&N Dec. 725, 727 (BIA 1964); *Matter of M*, 9 I&N Dec. 118, 119 (BIA 1960)). Until USCIS confronted the petitioner with the misrepresentations regarding his published accomplishments, it appears that he would have been content to receive an approval of the petition based on these misrepresentations.

It is important to repeat, here, that the petitioner, on appeal, stated that his "first publication" was in 2005, not in 1992. The AAO quoted the petitioner's observations to that effect, but did not discuss their implications. Instead, the AAO cited substantial regulations and case law to indicate that the petitioner is responsible for materials submitted in support of a petition, and cannot shield himself from responsibility for false statements simply by blaming his attorney.

In the present decision, the AAO in no way minimizes or repudiates this strong law and precedent. It is vital that the petitioner should not be able to avoid the consequences of fraud simply by having his attorney commit the fraud on his behalf, and then claiming ignorance of the fraud. In this instance, however, we must take individual circumstances into account. This is not a question of ineffective assistance of counsel, but rather a question of fairness and (as present counsel asserts) due process.

Immigration fraud is a serious affront both to the laws of the United States and to those aliens who are honest in their conduct. It is proper that there are serious penalties for fraud, whether an alien actively participates or knowingly permits it to occur, and the AAO will continue to assert its authority to make findings of fraud when appropriate. At the same time, however, a finding of fraud presents permanent and onerous obstacles to an alien's future attempts to obtain lawful immigration status, and we must not shoulder this solemn responsibility lightly or capriciously.

Various statements by the petitioner and present counsel indicate that the petitioner is under the impression that Mr. Wang submitted copies of [REDACTED] publications, fraudulently altered to show the petitioner as an author. The record contains no such altered documents. The materials at issue are briefs by Mr. Wang, containing incorrectly credited lists of publications.

The AAO's prior finding hinged on the following passage:

Significantly, it appears that the petitioner was the author of at least one of the documents containing the misrepresentations regarding his accomplishments. The director's RFE was issued on March 5, 2007. According to an e-mail from the petitioner around May 1, 2007, he drafted the "petition letter" response and left "highlighted parts...to be finished or verified" by prior counsel. On May 4, 2007, he gave prior counsel the following instructions: "About the petitioner letter I have made some minor changes and verified some of the highlighted parts. If you plan to make changes on the petitioner letter, please use this updated one (attached with this e-mail.)." The petitioner failed to provide USCIS with a copy of the attachment; however, it is clear that he not only drafted the response that was ultimately provided to USCIS, but that he edited his own attorney's work. We acknowledge th[at] prior counsel failed to provide the petitioner with a final copy of the letter (*see* e-mail of May 18, 2007 at 9:10 PM); however, this does not establish that the letter provided to USCIS was other than the version prepared by the petitioner.

On motion, the petitioner submits a copy of a draft RFE response dated May 1, 2007. The cover letter matches the cover letter actually submitted with the RFE response. The accompanying brief, however, is substantially different from the brief that accompanied that response. The formats of the two documents are very different from one another. The draft version mentions two of the petitioner's (true) publications from 2005; it does not mention any of [REDACTED] misattributed publications. The draft response is entirely consistent with the petitioner's version of events, rather than the AAO's prior contention that the petitioner silently consented to acts of fraud by Mr. Wang.

While it is important to consider individual documents on their own merits, we must also consider the record as a whole. The record shows that the petitioner himself never mentioned the 1992-93 publications, either to claim them as his own or in any other context. When the petitioner submitted copies of his publications, he submitted only the undisputed 2005 publications, not the misattributed 1992-93 publications. Before the AAO ever saw the record of proceeding, the petitioner stated that his "first publication" was in 2005. The only references to the 1992-93 publications are in Mr. Wang's two briefs, the second of which is essentially a copy of the first, and even then, the two briefs each contain two conflicting lists of publications – one correct, and one misattributing [REDACTED] articles to the petitioner.

USCIS records show that [REDACTED] was Mr. Wang's client some months before the filing of the petition now under discussion. Because the only materials referring to [REDACTED] work are from Mr. Wang's office, it is extremely relevant and significant that Mr. Wang's office had prior records relating to [REDACTED]

Taking all of this information into account, the available evidence points to the conclusion that Mr. Wang, or an assistant, inadvertently inserted [REDACTED] information from an older brief into the newer brief prepared for the petitioner. While the record does not contain absolute proof of this conclusion, given the present state of the record, the conclusion that the petitioner and Mr. Wang colluded to commit deliberate fraud requires a number of unlikely assumptions that are not required for the alternative conclusion that the misattributed articles are the result of careless but inadvertent error by Mr. Wang's office. While Mr. Wang was certainly negligent in including another client's information in briefs for the petitioner, the evidence submitted on motion and elsewhere in the record does not show malicious or fraudulent intent on the part of the petitioner, or any attempt by the petitioner to turn a blind eye to willfully fraudulent evidence submitted on his behalf.

ORDER: The AAO withdraws its December 19, 2008 finding of fraud and material misrepresentation.