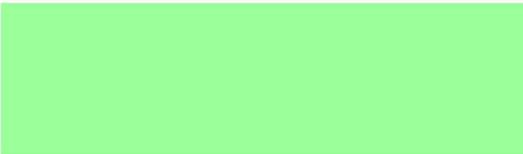




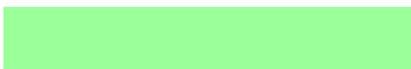
U.S. Citizenship
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Services

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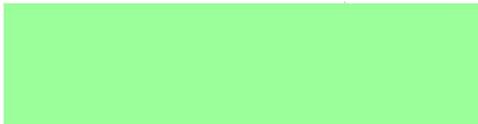
DATE: **MAR 07 2013** Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The the Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary achievement in the motion picture or television industry. The petitioner, a California-based production company, seeks to employ the beneficiary as an actor for a period of six days.

The director denied the petition, concluding that the petitioner failed to provide written consultations from an appropriate union representing the beneficiary's occupational peers and a management organization in the area of the beneficiary's extraordinary achievement, as required by section 214(c)(3)(A) of the Act and the regulations at 8 C.F.R. §§ 214.2(o)(2)(ii)(D) and 214.2(o)(5)(iii).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

On appeal, the petitioner submitted a Form I-290B, notice of appeal, stating as follows:

. . . Last time we didn't submit all necessary documents (U.S. peer group letters and consultations), we are now sending these as evidence . . . Please approve 3 day working visa O-1B for [the beneficiary.] We have filmed the movie without him and we are only waiting on him to come for 3 days (Sep 1 to Sep 4).

Accompanying the Form I-290 B, notice of appeal, the petitioner submitted a letter signed by [redacted] purportedly the Administrative Officer of [redacted] in which he asserts:

This letter from [redacted] in conjunction with [redacted] is proud to support one of our own nominees [redacted] for his splendid directorial debut of film [redacted] earning [redacted] candidacy for [redacted] that year.

We are a US based organization and this letter is only a consultation peer review in support of [redacted] future endeavors.

The consultation letter did not contain any contact information for the organization or for [redacted] such as an address or a telephone number, which would permit USCIS to verify the information contained in the letter. USCIS was not able to locate an address or telephone number for [redacted] or any evidence that this organization exists and that [redacted] is employed by it. In addition, in attempting to obtain contact information for [redacted] USCIS determined that he is credited as being both an actor in and second unit director/assistant director for the petitioner's motion picture titled [redacted] the same film for which the petitioner seeks to utilize the beneficiary's services.¹

¹ Also accompanying the Form I-290B was a letter from a Serbian management company, [redacted]

Based upon the above information, the AAO concluded that the [REDACTED] letter is fraudulent. The petitioner submitted a consultation letter from an organization that does not exist, whose name was an alteration of the name of the [REDACTED] in an attempt to obtain credibility from the fame of that organization and its [REDACTED]. Further, the letter misrepresents the beneficiary's qualifications. The beneficiary was never an Oscar Nominee. In [REDACTED] for an [REDACTED] in the category of Best Foreign Language Film, but the film did not receive an [REDACTED]. The petitioner's submission of this letter constitutes a willful misrepresentation of two material facts, i.e., the claim that the beneficiary is an alien of extraordinary ability, as demonstrated by an evaluation from The [REDACTED] to this effect, and that petitioner has obtained a valid consultation as required by the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(D).

Pursuant to USCIS regulations at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice of intent to dismiss dated January 24, 2013, in which it notified the petitioner of the derogatory information and provided the petitioner with an opportunity to respond before rendering a final decision. Specifically, the AAO notified the petitioner of its intent to make a finding of fraud. The AAO gave the petitioner thirty days to respond to the notice of intent to dismiss.

The petitioner, through counsel, responded to the notice on February 25, 2013. The petitioner submitted unsworn statements from [REDACTED] respectively.

[REDACTED] states that the U.S. consultation letter he signed was drafted as a "sample", and further states:

When I drafted these letters, I only did so in order to give the writers an outline of what I wanted in the letter and how I wanted the letter to look . . . My sample letter . . . was never intended to be used by [the petitioner] to attach with his submission to support his appeal of the denial of the O visa. My letter got inadvertently mailed with the submission. My intention of creating the letter was only to try and shortcut the work that (sic) an administrative officer or someone in a similar position, in preparing a letter in support of [the beneficiary.]²

[REDACTED] states that in the "sample" consultation letter, he erroneously referred as [REDACTED] which "I now know [is] called the [REDACTED]" He also states that at the time he drafted the "sample" U.S. consultation letter, "I did not know the technical difference between a 'candidate' and a 'nominee' for an Academy award."

[REDACTED] does not explain why the "sample" consultation contained his signature as an administrative assistant of the U.S. consulting entity, when [REDACTED] statement does not indicate that he was ever employed by [REDACTED].

[REDACTED] also states he drafted a "sample letter" a management company in Serbia, [REDACTED] which as stated above, was also filed with the Form I-290B.

Further, [REDACTED] statement that the “sample” consultation letter was inadvertently included in the appeal packet is inconsistent with the information on the Form I-290-B, notice of appeal, stating a U.S. peer group letter accompanies the appeal.

[REDACTED] on behalf of the petitioning entity, states he verified that the beneficiary’s film titled [REDACTED] was a *candidate* for an [REDACTED] [as opposed to being actually nominated for the award], but that he did not intend to mislead USCIS about the beneficiary’s “accolades or accomplishments.” He also states, regarding the U.S. consultation letter:

I asked [REDACTED] to call the [REDACTED] and try to obtain a letter from an administrative officer or someone in that capacity to try to satisfy your requirements. I sent the packet that [REDACTED] prepared for me, not realizing that [REDACTED] sample letter had been inadvertently added to the packet – we were in a big hurry. At no time did I mean to send the letter . . .

Further, [REDACTED] confirms that the beneficiary did perform the services which the petition was filed, acting in the petitioner’s motion picture titled [REDACTED] although [REDACTED] states “we both agreed that in order to respect the law of the United States and his tourist visa, that he would not be compensated in any way.”

These declarations do not suffice as evidence that the [REDACTED] letter was not fraudulent and that the letter was not a willful misrepresentation that the beneficiary is an alien of extraordinary ability. In addition, these declarations do not suffice as evidence that the [REDACTED] letter was not a willful misrepresentation that the petitioner has obtained a valid consultation as required by the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(D).

Firstly, the declarations are not affidavits as they were not sworn to or affirmed by the declarants before an officer authorized to administer oaths or affirmations who, having confirmed the declarant's identity, has administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signer, in signing the statements, certifies the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus, as is the case with the arguments of counsel, are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Secondly, even if the AAO were to accept the declaration of [REDACTED] on its face, his statements are still insufficient evidence that the consultation letter was a “sample” letter which was “never intended to be used by [the petitioner] to attach with his submission to support his appeal of the denial of the O visa,” and not a fraudulent letter intended to be submitted appeal with the Form I-290-B, notice of appeal. The statements of [REDACTED] in this regard are inconsistent with the statements of the [REDACTED] of the petitioning entity on appeal that, “. . . Last time we didn’t submit all necessary documents (U.S. peer group letters and consultations), we are now sending these as evidence . . .”

By signing the Form I-129 petition, the petitioner certified under penalty of perjury that all of the information submitted with the petition was, to the best of its knowledge, true and correct. It is axiomatic, therefore, that the submission of any material claim, information, or document that the petitioner knew to be incorrect constitutes perjury.

Based upon the discussion above, the AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The AAO hereby enters a finding of fraud.

Additionally, the required consultation letter is not credible and will not be given any weight in this proceeding. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Moreover, the petitioner's submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

Finally, the AAO notes that the beneficiary's admission and continued stay in the United States is conditioned on the full and truthful disclosure of all information requested by USCIS in conjunction with this petition. The willful failure to provide truthful information constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. § 1227(a)(1)(C)(i).

While the AAO observes that it was the beneficiary's employer that technically provided the fraudulent documentation to USCIS, the director's denial of the petition and the dismissal of this appeal effectively terminate the beneficiary's lawful status in the United States. Accordingly, the AAO recommends that the director issue a Notice to Appear and commence proceedings to remove the beneficiary from the United States in accordance with section 239 of the Act, 8 U.S.C. § 1229.

ORDER: The appeal is dismissed.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.