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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC-02-212-51359 Office: CALIFORNIA SERVICE CENTER Date: JAN 21 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. On December 11, 2003, counsel and the petitioner requested that the appeal in behalf of the petitioner be withdrawn.

The petitioner sought 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. On November 12, 2003, this office advised the petitioner of derogatory information obtained by CIS indicating that several of the petitioner's claims were demonstrably false and that several documents were demonstrably fraudulent. In response, the petitioner withdrew the appeal.

In our November 12, 2003 notice, we advised the petitioner that the withdrawal of the petition would not prevent a finding of inadmissibility pursuant to Section 212(a)(6)(C) of the Act. In his letter requesting that the appeal be withdrawn, counsel asserts that this statement is contrary to the law. Counsel cites *Mwongera v. INS*, 187 F. 3d 323, 330 (3d Cir. 1999), *Witter v. INS*, 113 F.3d 549 (5th Cir. 1997), and *Espinoza-Espinoza v. INS* 554 F. 2d 921 (9th Cir. 1977) in support of his assertion.

While this office does not make determinations of inadmissibility, we note that the cases cited by counsel do not support his assertion. The court in *Mwongera v. INS* did state that CIS "must show that the alien obtained a visa by fraud" but in that case the alien had obtained a visa by fraud. Thus, the court did not need to discuss the fact that Section 212(a)(6)(C) of the Act makes inadmissible not only those who have obtained a visa through fraud, but also an alien "who sought to procure" a visa through fraud. We note that the court also rejected the plaintiff's argument that CIS "is required to show an intent to deceive in order to satisfy the statute."

In *Witter v. INS*, the court found that the vacation of an annulment did not "relate back" to the time of misrepresentation and found that the plaintiff's failure to testify at his deportation hearings was not a negative factor in the Board of Immigration Appeals' decision. The court continued: "Indeed, the record does not indicate that the Board drew any negative inference from Nee Ntreh's silence, *even though it would have been constitutionally permitted to do so*." *Witter v. INS*, *supra*, at 555. (Emphasis added.)

In *Espinoza-Espinoza v. INS*, the court found that a charge that an alien had procured a visa by fraud was not too vague since the first six charges sufficiently advised the alien of the basis for that conclusion. The court further concluded that a finding of "willful" did not require a finding that the fraud was "intentional," but "deliberate and voluntary."

8 C.F.R. § 103.2(b)(15) provides: "Withdrawal or denial due to abandonment shall not itself affect the new proceeding; *but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition*." (Emphasis added.) Counsel has cited no case law or other legal authority to support his assertion that a withdrawal precludes a finding of fraud.

The petitioner filed the instant petition supported by fraudulent documentation on June 19, 2002, submitted additional fraudulent documentation in response to the director's request for additional documentation and filed the instant appeal affirming her initial claims. On October 18, 2003, she submitted a letter affirming her initial claims and requesting approval of the petition. Her withdrawal of the appeal less than two months after requesting approval of the petition and only upon being confronted with derogatory evidence conclusively

establishing the fraudulent nature of the petitioner's claims does not overcome the fact that the petitioner has sought to procure benefits by fraud.

Finally, while this office does not make determinations of inadmissibility, we affirm our finding of fraud.

ORDER: The appeal is dismissed based on its withdrawal by counsel with a finding of fraud.