U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-K-L-

DATE: DEC. 11, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a fashion journalist, seeks classification as an "alien of extraordinary ability" in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals 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 evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a brief and an additional document, stating that she meets at least three of the criteria listed under 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the Petitioner has not established her eligibility for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then she must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "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").

II. INFORMATION FROM OUR NOTICE

On June 22, 2015, we issued a notice of intent to dismiss (NOID) the appeal, advising the Petitioner that the evidence in the record raised serious questions regarding the credibility of the evidence submitted to establish the Petitioner's eligibility. Specifically, regarding the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner asserted that she received the following awards: (1) [redacted] on February 14, 2012; (2) [redacted] on June 30, 2011; and (3) the [redacted] on June 27, 2011. Although the awards were from three separate entities, the award certificates were similar in format, style, and appearance.

Moreover, the Petitioner submitted a certificate from the [redacted] reflecting that she received a bachelor's degree in fashion designing on November 27, 2011. The award certificates reflect that the Petitioner received two awards in June 2011 when she was still at [redacted] and one award in February 2012 when she had just graduated college.

Further, according to the Petitioner's Form G-325, Biographic Information, which she signed and dated on May 15, 2013, the Petitioner indicated that she had no employment in the last five years (May 2008 to May 2013). The Petitioner did not establish how she received three fashion journalism awards when she was not employed in the field at that time. In addition, the Petitioner submitted a May 3, 2013, letter from who indicated that she had been employed by since 2011 as a Senior Producer, which contradicts her answers to the questions on Form G-325.

Based on the discrepancies described above, the Petitioner did not establish that she had, in fact, received the the and the

Regarding the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner submitted: (1) an article entitled, "[The Petitioner]: on December 2, 2011; (2) an article with translation entitled, "[The Petitioner], on April 5, 2013; and (3) an article with translation entitled, on December 3, 2012.

article indicates that it was published on "2011 December 2 Sunday." However, December 2, 2011, fell on a Friday. , accessed on June 3, 2015, and incorporated into the record of proceeding. Furthermore, the article indicates that the Petitioner won four awards in 2011 and lists the awards. Besides the three previously discussed awards, the article lists another award – Although the article indicates that all of the awards occurred in 2011, according to the certificate mentioned above, the Petitioner received the on February 14, 2012. Moreover, while the article indicates that it was published on December 2, 2011, it reflected that the Petitioner did not receive the award until over two months later. The Petitioner did not show how the author of the article had knowledge that the Petitioner was going to receive the award two months later. In addition, a review of the article reflects that it contains language strikingly similar to the language in the regulation at 8 C.F.R. § 204.5(h)(3). For instance, the article indicates that the Petitioner won "four nationally acclaimed awards." The article also lists the Petitioner's judging experience (8 C.F.R. § 204.5(h)(3)(iv) and responsibilities (8 C.F.R. § 204.5(h)(3)(viii). This article appears to have been written to conform to the requirements of the regulation. Additionally, the article contains language that appears to be written to conform to the regulation at 8 C.F.R. § 204.5(h)(3). For example, the article states that "the program [was] organized to honor this significant contribution (8 C.F.R. § 204.5(h)(3)(v).

The and the articles were authored while the Petitioner was in the United States. According to Form I-140, Immigrant Petition for Alien Worker, the Petitioner indicated that she entered the United States on November 18, 2012. Although the articles reflect

interviews conducted with the Petitioner, the authors make no mention of her current presence in the United States during the interviews. They do not indicate that they were telephonically conducted or while she was in the United States; they do, however, give the impression that the Petitioner was interviewed while in Nepal. For example, the article, which is dated on April 5, 2013, referenced "a recent weekend" in which the Prime Minister, honored the Petitioner at a program; it makes no mention that she had been in the United States since November 18, 2012. Furthermore, the article, which is dated on December 3, 2012, quoted the Petitioner and indicated that "she said this running her hand in her hair during [a] meeting at day [sic] during her program editing."

Finally, although the articles are from three separate publications, all three reflect the same style at the bottom of the pages: there is a gray line running across with four circles of blue, red, yellow, and black. Similarly, all three support letters assert that the articles were printed in "special supplements" to the main publications; there is no evidence that these special supplements were ever published. Further, according to the supporting letter from Editor-In-Chief of the article was written by who has the same last name as the Petitioner. It was not clear from the record whether the Petitioner is related to the author. Any relationship to the author diminishes the value of this evidence. Moreover, the supporting letter states that the article was published on December 12, 2012, but the article and translation indicate that it was published on December 3, 2012.

Based on the discrepancies described above, the Petitioner did not establish that these articles have ever been published.

In accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), we afforded the Petitioner 33 days to rebut the derogatory information; however, the Petitioner did not respond to the notice.

III. ANALYSIS

As the Petitioner did not respond to the derogatory information outlined in our NID, she has foreclosed "a material line of inquiry [which constitutes] grounds for denying the benefit request." *See* 8 C.F.R. § 103.2(b)(14). Furthermore, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If the United States Citizenship and Immigration Services (USCIS) does not believe that a fact stated in the petition is true, USCIS may reject that fact. 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). In the case here, the Petitioner has not resolved her inconsistencies by independent, objective evidence; and therefore, the Petitioner has not demonstrated that her remaining documentary evidence is reliable and sufficient to establish eligibility in support of the visa petition.

Accordingly, we will dismiss the Petitioner's appeal without further discussion on the merits. *See* 8 C.F.R. § 103.2(b)(13).

IV. MATERIAL MISREPRESENTATION

Furthermore, an immigration officer will deny a visa petition if the petitioner submits evidence that contains false information. 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 Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors lead us to conclude that the evidence of the Petitioner's achievements, which is material to her eligibility as an "alien of extraordinary ability," is neither true nor credible.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts.[1] A misrepresentation of material fact may lead to serious consequences, including but not limited to the denial of the visa petition, a finding of fact that may render an individual inadmissible to the United States, and criminal prosecution. Immigration officers, under the authority accorded to them by statute and regulation, may enter a finding of fraud or willful misrepresentation of a material fact whenever it is discovered in the course of their duties. *See* sections 101(a)(18), 103(a) and 287(b) of the Act; 8 C.F.R. §§ 2.1, 287.5(a). Additionally, the Secretary of Homeland Security has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, and to make recommendations for prosecution or other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(I) (effective March 1, 2003).

As an issue of fact that is material to an individual's eligibility for the requested immigration benefit, or that individual's subsequent admissibility to the United States, the administrative decision in an immigration proceeding must include specific findings of fraud or material misrepresentation. Outside of the basic adjudication of visa eligibility, there are many critical DHS functions that hinge on a finding of fraud or material misrepresentation. Most critical, the Act provides that an individual is inadmissible to the United States if that individual seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting

[1] The terms "fraud" and "misrepresentation" are not interchangeable. Unlike a finding of fraud, a finding of material misrepresentation does not require an intent to deceive or that the officer believes and acts upon the false representation. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). A finding of fraud requires a determination that the individual made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

material fact. Section 212(a)(6)(C) of the Act. For this provision to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.[2]

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. at 289-90. 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); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

First, the Petitioner misrepresented her receipt of awards and published material about her. 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's submission of fabricated award certificates, newspaper articles, and other supporting documentation constitutes 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). More specifically, the signature portion of 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 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

[2] Although it may present the opportunity to enter an administrative finding of fraud or material misrepresentation, the immigrant visa petition proceeding is not the appropriate forum for finding an individual inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the individual may be found inadmissible at a later date when he or she subsequently applies for admission into the United States.

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 Matter of Ng*, 17 I&N Dec. at 537. Here, the misrepresentation cut off a potential line of inquiry regarding the Petitioner's actual receipt of awards and published material about her, and the Petitioner's misrepresentations were accordingly material to her eligibility.

Therefore, 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 willful misrepresentation of a material fact. 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.

V. CONCLUSION

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.

Cite as *Matter of S-K-L-*, ID# 10896 (AAO Dec. 11, 2015)