MATTER OF L-B-M-, INC

DATE: NOV. 25, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a fashion accessories designer and manufacturer, seeks to classify the Beneficiary as an "alien of extraordinary ability" in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification 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, Texas Service Center, denied the petition, concluding that the Petitioner had not provided documentation that the Beneficiary satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

The matter is now before us on appeal. In its appeal, the Petitioner contends that the Beneficiary, a creative director, meets more than three criteria based on her awards, published material, original contributions, and display of her work.

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

I. LAW

The Petitioner may demonstrate the Beneficiary's extraordinary ability through sustained national or international acclaim and achievements that have been recognized in her field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states:

> 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 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of the beneficiary's achievements in the field through a one-time achievement (that is a major, internationally recognized award). If the petitioner does not submit this documentation for the beneficiary, then it 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 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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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"). Accordingly, where a petitioner submits qualifying evidence for the beneficiary under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

A. Willful Misrepresentation of a Material Fact

On September 19, 2016, we issued a notice of intent to dismiss (NOID) the petition, advising the Petitioner of derogatory information regarding documentation submitted in support of the Form I-140, Immigrant Petition for Alien Worker. The NOID specifically observed 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." We further stated:

> The regulatory criterion at 8 C.F.R § 204.5(h)(3)(iii) permits a petitioner to submit "[p]ublished material about the alien in . . . professional or major trade publications or other major media." You submitted an article from [redacted] entitled [redacted] in which the Beneficiary's name was substituted for that of artist [redacted] We obtained the actual article online at http://www.[redacted]

accessed on August 9, 2016, a copy of which has been incorporated into the record of proceeding and a copy is attached to this notice.

In addition, you submitted an article in entitled ' in which the Beneficiary's name was substituted for ' the artist actually mentioned. We obtained the actual article online at http:/ accessed on August 9, 2016, a copy of which has been incorporated into the record of proceeding with a copy also attached to this notice.

In accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the Petitioner was afforded 33 days in which to respond to the NOID. The Petitioner did not respond to our notice.[1] With regard to the aforementioned derogatory information, the Petitioner has not resolved the inconsistencies with independent and objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

According to section 204(b) of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In this matter, the record shows that the Petitioner has made material misrepresentations regarding published material about the Beneficiary.

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. 288, 289-90 (BIA 1975). The term "willfully" means knowingly 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 beneficiary'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.

[1] On October 11, 2016, we received a letter from the Petitioner's former counsel withdrawing his legal representation regarding the petition.

First, the Petitioner made false claims regarding published material about the Beneficiary. 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. Genco Op. No. 91-39 (INS), 1991 WL 1185150 (April 30, 1991). Here, the Petitioner's submission of two articles in support of the Form I-140 that falsely substituted the Beneficiary's name constituted misrepresentations to a government official.

Second, the Petitioner willfully made the misrepresentations. The Petitioner signed the Form I-140 petition, 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 the Form I-140, at part 8, required 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, we conclude that the Petitioner willfully and knowingly made the misrepresentations.

Third, the evidence is material to the Beneficiary'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 cuts 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. In the present matter, the misrepresentations made by the Petitioner related to the Beneficiary's eligibility for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). Accordingly, we conclude that the misrepresentations were material to the Beneficiary's eligibility.

By filing the instant petition and making false claims regarding published material about the Beneficiary, the Petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Because the Petitioner did not provide competent independent and objective evidence to overcome, fully and persuasively, our determination that it submitted falsified documentation, we find that the Petitioner has willfully misrepresented a material fact. The Petitioner knowingly misled USCIS on elements material to the Beneficiary's eligibility for a benefit sought under the immigration laws of the United States.

In addition, the submission of falsified articles seriously compromises the credibility of the Petitioner and the remaining documentation of record. Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Matter of Ho*, 19 I&N Dec. at 591-592. Nonetheless, we will address the Director's finding that the Petitioner has not shown that the Beneficiary meets at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

B. Evidentiary Criteria

The Beneficiary serves as creative director for the Petitioner, a company that designs and manufactures fashion accessories. According to the Petitioner, she has "full and overall responsibility for handling all phases of visual and artwork design for the company's products." The Director found that the Beneficiary met the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii), but had not satisfied any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that the Beneficiary meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v). We have reviewed the entire record of proceedings, and it does not support a conclusion that the Beneficiary meets the plain language requirements of at least three criteria.

As the Beneficiary has not received a major, internationally recognized award, the Petitioner must demonstrate that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner submitted an event program for the exhibition ' indicating that the Beneficiary was one of four ' who displayed their work at The ' section of the program stated (note: errors in the original text have not been changed): ' In addition, the program described the exhibition as "the

The Petitioner also provided an 2009 article in entitled ' The article stated: ' (Chairwoman , a non-profit art organization that encourages and supports established and promising artists, hosted the and its fundraising dinner on the at Furthermore, the article listed the first and second place award winners and then identified the Beneficiary as one of four other recipients who received "additional awards." Another article, dated 2010 and entitled mentioned the Beneficiary as one of multiple Regarding the Beneficiary's two awards mentioned in there are no objective circulation figures for the publication showing that its news coverage is indicative of national or international recognition.

With respect to the Beneficiary's awards from the the Petitioner did not submit evidence demonstrating their national or international recognition in the visual arts field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary's awards be nationally or internationally recognized in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. The record does not establish that the aforementioned awards were recognized at a level commensurate with nationally or internationally recognized awards for excellence in the field.

In addition, the Petitioner offered a 2008 with an 2009 and an 2010 with The plain language of this criterion requires receipt of nationally or internationally recognized prizes or awards for excellence in the field. The consignment agreement and artist contracts do not constitute prizes or awards for excellence, and the record does not include documentary evidence of their national or international recognition in the field of endeavor.

In light of the above, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

As previously discussed, the Petitioner submitted articles in and that falsely substituted the Beneficiary's name. Despite our issuance of a NOID informing the Petitioner of the deficiencies, it did not offer a response to contest our findings. The falsified articles cast doubt on the reliability and sufficiency of the remaining evidence offered in support of this criterion. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The Petitioner also provided a 2010 article in entitled but its author was not identified and it does not mention the Beneficiary. The plain language of the regulation requires "published material about the alien." Articles that are not about the Beneficiary do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). The Petitioner also submitted a document from stating that it "is the most influential Chinese-language newspaper in North America." USCIS, however, need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that USCIS did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

As previously mentioned under the awards criterion, the Petitioner submitted two articles in dated 2009 and 2010. The 2009 article entitled is about the and its fundraising dinner," and only briefly mentions the Beneficiary. The 2010 article entitled ' is about the exhibition and just lists the Beneficiary as an award recipient. Additionally, the author of the 2010 article was not identified and there is no evidence showing that is a form of major media.

In addition, the Petitioner provided an 2010 article in a Chinese language newspaper. The Petitioner did not offer an English language translation of the article as required by the regulation at 8 C.F.R. §103.2(b)(3), which states in pertinent part:

> *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Without a full English language translation, the Petitioner has not established that the article meets this regulatory criterion. Furthermore, the Petitioner did not provide evidence demonstrating that is a form of major media.

Finally, the Petitioner submitted an 2010 article in a Japanese language newspaper, but the English language translation accompanying the article was not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, the author was not identified, the article is about the ' and not the Beneficiary, and there is no evidence indicating that the newspaper is a form of major media.

In light of the above, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner stated: "With well over 40 disparate art pieces and project specific appearances in exhibitions and in galleries over her young career she has a prolific and persistent record of engaging the art world and producing art which meets the highest standards." The regulations include a separate criterion for display of one's work in the field at artistic exhibitions at 8 C.F.R. § 204.5(h)(3)(vii), and the appearances of the Beneficiary's art at exhibitions and galleries will be addressed there. Evidence relating to or even meeting the display criterion is not presumptive evidence that the Beneficiary also meets this criterion. Because separate criteria exist for artistic display and original contributions of major significance in the field, USCIS does not view the two as being interchangeable. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least three separate criteria. Regardless, the Petitioner has not shown that the

Beneficiary's artwork rises to the level of original contributions of major significance in the field. For example, there is no documentary evidence demonstrating that the Beneficiary's art has influenced others in the creative design or visual arts fields, that any of her specific works are widely viewed as important pieces of contemporary art, or that her original work otherwise equates to artistic contributions of major significance in the field.

In addition, the Petitioner submitted design sheets for multiple scarves that the Beneficiary created, and two sales tables listing products that "incorporated designs and artwork created by [the Beneficiary]." According to the first table, 229,015 units were sold for a total of $674,551.55. The second table indicated that 297,848 units were sold for a total of $813,222.50. Neither table identified the specific time periods during which the units were sold. Furthermore, there is no documentary evidence showing how the sales of scarves designed by the Beneficiary compared to those of competing designers or were otherwise of major significance in the fashion accessories industry.

While the Beneficiary's design work has helped the Petitioner sell its fashion accessories, there is no indication her product designs and artwork have affected the field in a substantial way or otherwise constitute original artistic contributions of major significance in the field. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions" that are "of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original artistic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

president of the petitioning entity, stated that the Beneficiary's "design work will positively impact the industry as a whole for many years to come. Her creations are hallmarks to the industry in its entirety and her designs have sparked and inspired fashion trends within our product category and beyond." does not identify the Beneficiary's specific creations that are "hallmarks to the industry in its entirety" or provide actual examples of their impact on fashion trends. USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

also claimed that the Beneficiary "is a leader and a force within the confines of her field" and that she has the vision to transform company products "into fashion statements that challenge our competition and the entire fashion industry to keep up," but did not offer specific examples of company product transformations that have substantially influenced the fashion industry or were otherwise of major significance in the field. Vague, solicited letters that do not explain how the beneficiary's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the individual's] contributions in the field" were insufficient was "consistent with the relevant regulatory

language." 596 F.3d at 1122. It is not enough to be a talented designer or visual artist and to have others attest to that talent. An individual must have demonstrably impacted her field in order to meet this regulatory criterion.

We have addressed specific affirmations above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 15. In addition, uncorroborated statements are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the beneficiary's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Without additional, specific evidence showing that the Beneficiary's work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the Petitioner has not established that she meets this regulatory criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner provided documentation indicating that the Beneficiary exhibited her work at such locations as the and the As the Petitioner submitted articles in and that falsely substituted the Beneficiary's name when discussing her exhibitions at those articles cast doubt on the reliability and sufficiency of the evidence offered in support of this criterion. *See Matter of Ho*, 19 I&N Dec. at 591-92. Accordingly, we withdraw the Director's finding that the Beneficiary meets this regulatory criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

In Part 6 of the Form I-140, the Petitioner listed the Beneficiary's wages as $90,000 per year, but it did not offer documentation of her earnings. Although the Director issued a request for evidence (RFE) instructing the Petitioner to submit "the Beneficiary's W-2 or 1099 forms for years in which [she] has received a high salary," it did not provide any of those forms in its response. By not submitting documentary evidence in support of its statements regarding the salary or remuneration earned by the Beneficiary, the Petitioner has not satisfied its burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

While the Petitioner did not document the stated wages of $90,000 per year, the record includes the Beneficiary's 2010 with the which includes: "The Gallery shall pay the artist an annual salary of $50,000 . . . ." The Petitioner also provided median annual wage information for fashion designers from the U.S. Bureau of Labor Statistics (BLS) and The BLS stated that the median annual wage for fashion designers was $62,800 in May 2012, while indicated that their median annual wage was $46,992. As the Beneficiary's $50,000 contract salary was below the BLS median for fashion designers and just over three thousand dollars above the median amount identified by the Petitioner has not demonstrated that she received a high salary relative to other fashion designers.

In addition, although the Petitioner compares her compensation to fashion designers, the Beneficiary currently serves as its "creative director" in a managerial capacity, and previously executed a contract with the as an "artist." The Petitioner must present evidence showing that the Beneficiary has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the Petitioner has not established that the median annual wage information for fashion designers constitutes an appropriate basis for comparison.

Because it did not submit the requested evidence of the Beneficiary's salary or remuneration, the Director determined that the Petitioner had not established the Beneficiary's eligibility for this criterion. On appeal, the Petitioner does not contest the Director's findings for this criterion, or offer any additional arguments or evidence. We find the Petitioner has not established that the Beneficiary meets this regulatory criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation that the Beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, our next step of analysis would be a final merits determination that considers all of the submissions in the context of whether the Beneficiary has achieved: (1) a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the [beneficiary] has sustained national or international acclaim" and that his "achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done

so, the proper conclusion is that the Beneficiary has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate does not support a finding that the Beneficiary has achieved the level of expertise required for this classification.

C. O-1 Nonimmigrant Status

We note the record of proceedings reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g.*, *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. Furthermore, our authority over a USCIS service center, the office responsible for adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

IV. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that the Beneficiary is an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Furthermore, the Petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Accordingly, the Petitioner has not established the Beneficiary's 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).

ORDER: The appeal is dismissed.

Cite as *Matter of L-B-M-, Inc*, ID# 74066 (AAO Nov. 25, 2016)