U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-S-

DATE: AUG. 4, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner seeks classification as an individual of extraordinary ability in journalism. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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 of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied the initial evidentiary criteria, but that he had not demonstrated that he has sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. On appeal, the Petitioner submits a brief stating that he has established eligibility for the benefit sought.

During the adjudication of the Petitioner's appeal, we received information that compromised the credibility of his claims. Accordingly, in June 2017, we issued a notice of intent to dismiss (NOID) the appeal, to which the Petitioner did not respond. For the reasons discussed below, we will dismiss the appeal as abandoned and also enter an administrative finding of a willful misrepresentation of material facts.

I. LAW

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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternately, he or she must provide documentation that meets at

least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).[1]

II. ANALYSIS

In our NOID, we advised the Petitioner that the evidence in the record and information obtained during an overseas investigation by U.S. Citizenship and Immigration Services (USCIS) raised serious questions regarding the credibility of his submitted evidence. We set forth the derogatory information that is detailed later in this decision, and provided the Petitioner an opportunity to respond.

A. Appeal Abandoned

We may dismiss an appeal if the Petitioner does not respond to our notice. The regulation provides, in pertinent part:

> If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

8 C.F.R. § 103.2(b)(13)(i). Our NOID specifically informed the Petitioner that "[w]e may dismiss your case if we do not receive your response at the address at the top of this page **within 33 days of the date of this NOID**. This time period includes three days added for service by mail." (Emphasis in original.) To date, more than 33 days have lapsed, and we have yet to receive a response from the Petitioner on issues we discussed in the NOID. As such, we will dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

B. Material Misrepresentations

In the alternative, the Petitioner has not overcome derogatory information regarding the credibility of his submitted documentation. Accordingly, he has not established eligibility as an individual of extraordinary ability and we find he has material misrepresented material facts. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the

[1] Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

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." In our NOID, we noted that the Petitioner submitted an article about him entitled leading political journalism" in 2014, pages 43 and 44, which was allegedly written by In addition, the Petitioner provided a photograph of himself on page 28. The investigating officer located an online archive of this magazine for the above period. It does not include the aforementioned article or photograph. The actual magazine pages 28, 43, and 44 have been incorporated into the record of proceedings and were attached to the NOID. Moreover, the investigator contacted the purported author, who stated that he has never written an article about the Petitioner.

The Petitioner also offered a 2013, article about him entitled ' in (page 8). The investigating officer located the online archive for the magazine at http:/ a copy of which has been incorporated into the record of proceedings and a copy was attached to the NOID. It does not include the aforementioned article on page 8.

Furthermore, we noted the Petitioner provided what appears to be an original printing of the Friday, 2014, issue of the newspaper. However, it misspells Friday as "Firday" at the top of four of its pages, calling into question the authenticity of that submission as well.

In addition, the regulatory criterion at 8 C.F.R § 204.5(h)(3)(i) permits a petitioner to submit evidence showing that he received "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The Petitioner provided documentation indicating that he received an (2013). The investigating officer contacted the Petitioner's former employer and spoke to senior reporter and manager of After inquiring with his colleagues, indicated that the staff was unaware that the Petitioner received such an award. He noted that would have covered the news of such a prestigious award being given to one of its employees.

Moreover, the investigator contacted Secretary of the whose signature appears on the however, stated that he did not know the Petitioner. Furthermore, the investigating officer's review of the Petitioner's Facebook profile showed that the Petitioner mentioned having been awarded the [2] but not the

[2] confirmed that the Petitioner received a ' (2012) at the

Further, the Petitioner offered an October 2014 letter of support from chairman of the asserted that the Petitioner completed a term as chairman of the and was nominated as a special central committee member for a period of five years beginning in December 2012. The investigating officer contacted a well-known journalist and Secretary of the in 2013, who was able to confirm that the Petitioner received the ' from the organization, but indicated he is not aware of the Petitioner. This casts doubt on the Petitioner's claimed positions for The investigator also noted that because the number of political journalists in Nepal is extremely limited, it would be unusual that neither of the aforementioned senior journalists, or knew of the Petitioner. In addition, it calls into question the Petitioner's assertion on appeal that he is ' in Nepal."

The Petitioner also provided a letter from who was the and the head of the until his death in The investigating officer contacted personal assistant to who indicated that he has never heard of the Petitioner, nor is he aware of the having written or requested that a member of staff write a letter in support of the Petitioner's qualifications. Further, we noted that the English language translation of letter states that the letter was written in 2015, but the original in Nepali uses the Nepali year 2071, which is 2013.

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 Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors lead us to conclude that the evidence of the Petitioner's achievements, which is material to his eligibility as an individual of "extraordinary ability," is neither true nor credible.

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. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). 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); *Kai Hing Hui*, 15 I&N Dec. at 288.

First, the Petitioner misrepresented his accomplishments and achievements, including his award, his press coverage, his positions with an association, and his overall standing in the field. 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 provided altered, forged, or fraudulent documentation and made untrue claims about himself, constituting false representations to a government official.

Second, the Petitioner willfully made the misrepresentations. The Petitioner signed Form I-140, Immigrant Petition for Alien Worker, 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 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 Ng*, 17 I&N Dec. at 537. Here, the misrepresentations regarding his award, press coverage, positions, and standing relate to eligibility under the regulation at 8 C.F.R. § 204.5(h)(3).

Accordingly, 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 a willful misrepresentation of material facts. 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.

IV. CONCLUSION

As the Petitioner did not respond to our NOID, he abandoned his appeal. In addition, we find the Petitioner has not established eligibility for the benefit sought, and has made a willful misrepresentation of material facts.

ORDER: The appeal is dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of G-S-*, ID# 126764 (AAO Aug. 4, 2017)