



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-S-

DATE: MAY 17, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an artist, seeks classification as an individual 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 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had only shown that he met two of the ten initial evidentiary criteria, of which he must meet at least three. The Director also concluded that the Petitioner willfully misrepresented facts in support of the petition.

On appeal, the Petitioner submits additional evidence and contends that he meets five criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 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). Alternatively, 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, memberships, and published material in certain media).

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).

II. ANALYSIS

The Petitioner is an artist. As he has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner had only met two of these criteria: published material at 8 C.F.R. § 204.5(h)(3)(iii) and display at 8 C.F.R. § 204.5(h)(3)(vii). We agree with the Director's conclusions regarding these two criteria. On appeal, the Petitioner asserts that he meets three other criteria which we will discuss below. Upon review, we conclude that the evidence in the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

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 Director discussed the Petitioner's book [REDACTED], which showcases his artwork and a letter from the [REDACTED] informing the Petitioner that one of his works was selected to be in the [REDACTED]. While we find that this evidence demonstrates that the Petitioner meets the published material and display criteria under 8 C.F.R. § 204.5(h)(3)(iii) and (vii), as the Director concluded, we find that under this criterion, the Petitioner has not shown how his original contributions are of major significance in the field.

The Petitioner highlights the fact that the letter inviting him to participate in the [redacted] Exhibition states that this is “the most authoritative exhibition of the world” and that it is “a lifelong honor for artists to attend” bringing “more than 600 pieces of works of painting and sculpture together.” The record does not contain evidence establishing the relationship between this art exhibit and the [redacted] museum. On appeal, the Petitioner references the book [redacted] which contains the Petitioner’s painting [redacted] but the record does not demonstrate the significance of this art exhibit or its sponsor, [redacted]. In addition, we do not find evidence of the impact the Petitioner’s work has had on the field resulting from this exhibition to constitute contributions of major significance.

The Petitioner contends that his foundation of the [redacted] movement constitutes an original contribution of major significance. [redacted] director and curator at [redacted] and [redacted] in [redacted] states:

[The Petitioner] introduces an original artistic idea that brings Chinese art towards an independent and new artistic language. With the birth of [redacted] we have a breeze of fresh air, an albeit novel but definite path and direction, another room, another voice, and something that the Chinese and many other Asian artists can relate to and build on.

In another letter, [redacted], president of the [redacted], states that “this original theory [redacted] could potentially lead the Chinese modern artists to a new and exciting path.” A letter from [redacted], the Executive Curator of [redacted]¹ states that after Petitioner introduced [redacted], “the Chinese and even the Asian art community had their eyes open to an original panorama, a new horizon, a fresh canvas.” 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 individual’s eligibility for the benefit sought). *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). Even though these letters describe the Petitioner’s work in positive ways, they are prospective in nature and do not describe how [redacted] had impacted the field at the time of filing. Thus, while the Petitioner’s new artistic movement appears to have been an original contribution, the record does not establish that it has been of major significance.

The Petitioner also asserts that he founded the [redacted], constituting an original contribution of major significance. [redacted] chief secretary of the [redacted] states that the Petitioner founded the [redacted] and that he organized the [redacted]. [redacted] states that the Petitioner attracted many artists to the art district. In his decision, the Director cited articles published in [redacted] magazine and the [redacted] indicating that a

¹ We note that the evidence in the record does not establish the existence of the [redacted] or demonstrate its relationship to the [redacted].

different artist, [REDACTED] was the founder of the [REDACTED]. When the record contains conflicting information, the Petitioner must resolve the inconsistency with independent, objective evidence pointing to where the 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.* Here, the Petitioner reiterates his claim but provides no new evidence in support of his assertion. Furthermore, the record does not establish why the foundation of the [REDACTED] constitutes an original contribution of major significance.

The Director addressed numerous other issues that the Petitioner has not addressed on appeal. For example, the Director noted several discrepancies in the submission of a [REDACTED] from a [REDACTED] that call into question whether the Petitioner received such an award.² He also noted that the [REDACTED] for [the Petitioner's] Works did not contain a proper translation as required by 8 C.F.R. § 103.2(b)(3). The Petitioner provided a Certificate of Appraisal of the Petitioner's abstract oil painting [REDACTED] appraised by [REDACTED] Director of the [REDACTED]. The record also contains a photograph of this painting with a caption stating that the Petitioner won a gold medal from the 2009 [REDACTED]. The Director noted that the record did not contain any evidence showing the Petitioner exhibited this painting or received this award. The Petitioner has not resolved these issues on appeal.

In addition, the record contains a letter purportedly from [REDACTED], from the [REDACTED] attesting to the Petitioner's expertise as an artist, stating that he "has explored and reinvented the eastern art form of painting." The Director called into question the authenticity of this letter, noting that there is no evidence of this entity's existence on the New York Department of State Division of Corporations website or the Internal Revenue Service's Exempt Organizations Select Check website. The Petitioner has not provided evidence on appeal to rebut these findings. This letter, together with other discrepancies in the record, diminishes the persuasiveness of the evidence submitted in support of this criterion. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 591-592. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* Here, he has not done so, and, therefore, has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Director noted the submission of the books [REDACTED] and [REDACTED] and held that the Petitioner had not demonstrated that these were published in professional or major trade publications or major

² The Director noted that the Petitioner submitted a copy of a proclamation purportedly from the mayor of [REDACTED] to corroborate this award, but this proclamation contained dates that did not match the timing of the alleged [REDACTED]

media and the record did not contain evidence of the circulation details of these publishers. On appeal, the Petitioner only addresses [REDACTED] and states that [REDACTED] is a professional publisher in China. However, the Petitioner has not submitted evidence to support this fact. We note that in addition to the Director's focus on whether these are professional or major trade publications or major media, the Petitioner has not established that his writings constitute scholarly articles. A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.³ [REDACTED] transcribes conversations the Petitioner has had, though the record does explain the identity and significance of his interlocutors. Similarly, the Petitioner's publication, [REDACTED] provides details of his conversations and interviews, while also showcasing his artwork. The record does not establish that the Petitioner's publications were intended for learned persons in the field of art, and thus do not qualify as scholarly articles.

Additionally, the Director noted that a two-page document accompanying a 2008 cover of the [REDACTED] magazine did not demonstrate that it had been published in the magazine or that the Petitioner had authored it. Furthermore, he found that the record did not establish that [REDACTED] was a professional or major trade publication or other major media. The Petitioner has not addressed this issue on appeal. Accordingly, that the record does not establish that the Petitioner meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Director found that the Petitioner's role as the honorable chairman of [REDACTED] and as founder of the [REDACTED] did not constitute a leading or critical role in an organization with a distinguished reputation to meet this criterion.⁴ A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities.

On appeal, the Petitioner states that the evidence in the record demonstrates that he was appointed as art director and honorable chairman of the [REDACTED]. The Petitioner states that the [REDACTED] was registered in [REDACTED] and funded through donations from the community. The Petitioner references the [REDACTED] website, specifically the "About [REDACTED] page, but the information there does establish that the [REDACTED] has a distinguished reputation.

³ See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions: Revisions to the Adjudicator Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 9* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

⁴ The Petitioner had previously sought to establish eligibility for this criterion through his position as a senior advisor to the [REDACTED]. The Director noted several discrepancies with the evidence regarding this position. On appeal, the Petitioner has not provided additional evidence to rebut the Director's concerns.

While the Petitioner claims to have started the [REDACTED] as indicated above, the record contains conflicting evidence over the identity of its founder, which he has not resolved. In addition, he has not established that the art district, a geographic location, constitutes an organization or establishment, or possesses a distinguished reputation. The Petitioner has not demonstrated he meets the plain language of this criterion.

B. Willful Misrepresentation

Willful misrepresentation involves willfully making a false representation to a U.S. government official about a material fact while attempting to obtain an immigration benefit.⁵ 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, the officer must determine that the petitioner or beneficiary made a false representation to a United States government official; that the misrepresentation was willfully made; and that the misrepresented fact was material. See *Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

The Director held that the Petitioner willfully misrepresented a material fact: (1) by submitting documentation with the Form I-140 petition regarding certain roles for various entities that conflicted with his nonimmigrant visa applications, and (2) by the fact that none of the documentation submitted with the Form I-140 contained references to the Petitioner’s employment by [REDACTED] as an artist/performer and by [REDACTED] as a general manager. The Director noted that the Petitioner submitted letters from entities that did not exist at the time of issuance, including [REDACTED] and [REDACTED] concluding that this documentation was fraudulent.

On appeal, counsel for the Petitioner states that the inconsistencies in the record pertaining to the business data of some state systems are not per se willful misrepresentation and asserts that his client lacked fluency in English and thus had no knowledge of the falsity of submitted documents. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. When signing the form, the Petitioner attested, under penalty of perjury, to the veracity of evidence submitted in support of the petition. Regardless, counsel has not

⁵ *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998).

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supported its assertions with evidence. The Petitioner has not rebutted the Director's finding of willful misrepresentation, which the record supports.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of L-S-*, ID# 1142734 (AAO May 17, 2018)