



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

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

MATTER OF P-R-S-

DATE: SEPT. 10, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an actor and model, 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 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 did not establish eligibility in the final merits analysis. In addition, the Director determined the record did not establish, as required, that the Petitioner intended to work in his area of expertise upon entering the United States.

On appeal, the Petitioner submits additional evidence, and maintains that he intends to work as an actor and model in the United States and that he qualifies as an individual of extraordinary ability. Subsequently, we issued a notice of intent to dismiss (NOID) in which we raised concerns about discrepancies found during an overseas investigation regarding the Petitioner's supporting documentation. The Petitioner responded with a statement and an additional photograph.

Upon *de novo* review, we will dismiss the appeal and enter an administrative finding of a willful misrepresentation of material facts.

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). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

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’s evidence indicated that he launched his modeling and acting career after he was first runner-up in the beauty pageant [redacted] 2004), and the winner of the [redacted] [redacted] 2004).¹ Subsequently, he has worked as an actor in the Indian movies [redacted] (2007) and [redacted] (2009), and as a model in advertising campaigns in India for several fashion brands.

The Director determined that the evidence submitted did not establish that the Petitioner has received a major, internationally recognized award. The Director held that the Petitioner met the criteria for lesser prizes, published material, and judging, at 8 C.F.R. § 204.5(h)(3)(i),(iii), and (iv), respectively,

¹ As discussed more fully below, there is a discrepancy regarding the actual name of the 2004 [redacted] competition that calls into question the authenticity of the award.

but that he had not met the criteria for leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii).² Ultimately, the Director concluded that the Petitioner had not established eligibility in the final merits analysis.

A. Derogatory Information

The record contains derogatory information related to the evidence supporting the petition, specifically, regarding an award, an article, and several reference letters. In May 2019, we issued a NOID advising the Petitioner that information obtained during an overseas investigation by U.S. Citizenship and Immigration Services (USCIS) raised serious credibility questions regarding his evidence of eligibility. We set forth the information detailed below and provided the Petitioner an opportunity to respond.

Specifically, the regulatory criterion at 8 C.F.R. § 204.5(h)(3) permits the petitioner to submit evidence that he has received a major, internationally recognized award. The Petitioner provided documentation indicating that in 2004 in [redacted] Ecuador, he received an award from [redacted] including articles mentioning his receipt of the award published mostly in Indian sources. However, there was inconsistency regarding the actual name of the competition that called into question the authenticity of the award. Specifically, a photo of the trophy shows it is for [redacted] while an award certificate indicates it was for [redacted]. The record did not contain any information about the awarding organization. During the adjudication of the appeal, we forwarded the documentation overseas to confirm the Petitioner's award was genuine. The overseas investigation was unable to confirm whether the award was genuine. Specifically, a USCIS investigating officer was able to locate press articles dated 2007 and 2008 about an event titled [redacted] [redacted]" but was unable to locate any information relating to the Petitioner's receipt of the title [redacted] [redacted] in 2004.

Accordingly, we notified the Petitioner of the derogatory information in our NOID. In response, the Petitioner argues that the inability of the overseas investigation to confirm whether the award was genuine is "not surprising" given "that this event occurred 15 years ago." He claims that the inconsistencies in the record are "slight" and states that the articles submitted about the award are sufficient evidence of his receipt of it. He submits an additional photograph of himself wearing a sash bearing the legend [redacted] 2004." The Petitioner also provides a statement that he participated in the relevant competition and received the award. He further asserts that he has "requested [redacted]. . . who participated in the same contest as me to write a letter confirming my victory," and his brief indicates her letter is enclosed. The Petitioner's response, however, does not contain a letter from [redacted]. We do not find the Petitioner's arguments to be credible or sufficient to overcome the negative findings with regard to the trophy and award certificate. The Petitioner has not provided documentation from the awarding organization or other independent and objective evidence to explain the discrepancies pertaining to the award and to confirm that the award is genuine.

² The Petitioner initially stated that he satisfied the high salary criterion. See 8 C.F.R. § 204.5(h)(3)(ix). On appeal, he no longer asserts that claim, so we will not consider it.

As an alternative to demonstrating that the Petitioner 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 Petitioner submitted an article titled [redacted] purportedly published in the U.K. newspaper *The Sun*, with information about the publication that is consistent with major media.³ The article, which includes three photographs of the Petitioner, is about him and relates to his work in modeling. Accordingly, this article is material to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner provided an additional copy of this article from an unknown source. The article from *The Sun* contains apparent alterations when compared to the other article, that now indicate its source and date, a different author, and other inconsistencies calling into question its authenticity. In our NOID, we noted that the investigating officer was unable to confirm the veracity of the article from *The Sun*. In response, the Petitioner's statement claims that he "was engaged with a PR firm in India" and that he "was told that this was a reproduction of an article in Sri Lanka that was passed on by the interviewer who had that article printed in the UK online publication." He asserts that he was "not aware of the authenticity of this article as this was filed in my PR booklet." We do not find the Petitioner's arguments to be credible or sufficient to overcome the negative findings with regard to the article published in *The Sun*, and to confirm that the article was genuine.

The Petitioner further provided letters that appear to bear the signatures of [redacted] the director of [redacted] a film producer, that are material to the lead or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). The three letters from [redacted] attest to the Petitioner's critical role as a model with [redacted]. The two letters from [redacted] indicate that the Petitioner performed in a critical role for [redacted] as a lead actor in the film [redacted] for which [redacted] was the production company.

The recent overseas investigation, however, found derogatory information that casts doubt on the veracity of the above letters. Specifically, a USCIS investigating officer showed [redacted] the letter dated July 17, 2018, on the letterhead of [redacted] which appears to have been written and signed by him. [redacted] stated that he never wrote a reference letter for the Petitioner, he did not write the letter dated July 17, 2018, the signature on that document is not his, the date is written in the American format (mm/dd/yyyy) which he never uses, and, therefore, the "document is a counterfeit." Accordingly, the record contains three falsified letters from [redacted] including the letter dated July 17, 2018.

In addition, the investigating officer showed [redacted] the letter dated June 24, 2018, on the letterhead of [redacted] purportedly authored and signed by him. [redacted] denied that he wrote or signed the letter. More particularly, he stated that he never used a company by the name of [redacted] the signature on the letter was not his, he has "never issued any letter addressed to USCIS for [the Petitioner] for immigration benefits on June 24, 2018," and, therefore, the letter "is totally counterfeited and fabricated." Therefore, [redacted] has confirmed that the record contains a falsified letter from him dated June 24, 2018.⁴

³ We note that other articles submitted do not contain information identifying their source, date or author.

⁴ Although the investigating officer did not ask [redacted] about the authenticity of the other letter in the record, allegedly written and signed by him in 2015, the falsified 2018 letter seriously compromises the authenticity of the

We notified the Petitioner of the above-referenced derogatory information in our NOID. In response, the Petitioner's statement claims that he hired an individual in India, [REDACTED] "to obtain the reference letters," more specifically "to go collect the draft from [the Petitioner's] sister's place in [REDACTED] take the print out and go to individuals for signing purposes." The Petitioner indicates that he "did not think to authenticate their signatures" once he "received the signed letter from [REDACTED] because "[t]hey were expecting my drafts, as per my conversations with them." The Petitioner indicates that he has tried unsuccessfully to contact [REDACTED] "multiple times to get clarity on the issue highlighted [in the NOID]." The Petitioner acknowledges that "the AAO has presented evidence in support of the fact that the signatures on the letters themselves were false." The Petitioner argues, however, that "no evidence has been submitted which demonstrates that [the Petitioner's] representations were 'willful.'"

The Petitioner must resolve inconsistencies in the record 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.* For the reasons discussed above, the Petitioner has not sufficiently resolved the discrepancies in the record set forth in our NOID that call into question the Petitioner's eligibility, and the appeal will be dismissed on that basis.

B. Material Misrepresentations

For the reasons discussed above, the Petitioner has not established eligibility as an individual of extraordinary ability. In addition, we find that he has misrepresented material facts.

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 above-referenced 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

remaining documentation submitted in support of the petition, as well as the Petitioner's credibility. *See Matter of Ho*, 19 I&N Dec. at 591.

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 having received a major, internationally recognized award, press coverage in *The Sun*, and critical roles with organizations. 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. *See* 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, 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). 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 above-referenced misrepresentations regarding his award, press coverage, and critical roles 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.

C. Additional Eligibility Issues

We will briefly address the Petitioner's argument, made on appeal, that even if he has not shown that he received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3), he still meets at least three criteria and has shown eligibility as an individual of extraordinary ability. We conclude that the Petitioner has not submitted the required initial evidence that he meets at least three of the ten criteria.

We find that the record reflects that he only meets two criteria, lesser awards and judging, thus complying with 8 C.F.R. § 204.5(h)(3)(i) and (iv). The Petitioner demonstrated that he received a lesser national award as the first runner-up in the [redacted] competition (2004). He submitted evidence indicating that he was the first runner-up in the 2004 [redacted] beauty pageant in [redacted] including a photo of the trophy he received, and an award certificate from the sponsoring organization. In addition, the Petitioner provided a 2015 letter from [redacted] the national director of the 2004 [redacted] competition, who states that the pageant conducted rigorous regional competitions to determine the 30 individuals chosen to compete in the pageant.⁵ [redacted] letter, together with the other media coverage in the record, shows that this award represents a lesser nationally recognized award for excellence in the field of modeling. The Petitioner also submitted evidence that he participated as a judge at [redacted] (2008), a national beauty pageant that annually selects representatives to compete in [redacted] and [redacted] (2016),⁶ thus complying with 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner further claims to meet the criterion for published material about him under 8 C.F.R. § 204.5(h)(3)(iii) based on the remaining articles in the record. However, as noted previously, those articles do not contain information identifying their source, date or author, and the Petitioner did not show that they were published in professional or major trade publications or other major media.

For the reasons discussed above, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria.

III. CONCLUSION

We find the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability, and he has made a willful misrepresentation of material facts.

ORDER: The appeal is dismissed.

Cite as *Matter of P-R-S-*, ID# 2012050 (AAO Sept. 10, 2019)

⁵ Although [redacted] letter does not detail his involvement with the [redacted] contest, the Petitioner's award certificate indicates he was the national director of the 2004 contest.

⁶ This event is also referred to in the record as the [redacted] competition.