U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7880530

Date: MAY 20, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability in business. *See* Immigration and Nationality Act (the Act) § 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 concluded that the Petitioner had neither demonstrated his receipt of a major internationally recognized award nor met three of the ten evidentiary criteria, as required. The Petitioner then filed a combined motion to reopen and motion to reconsider the Director's decision. Both motions were subsequently dismissed. The Petitioner then appealed the Director's dismissal of these motions to us. During the adjudication of the Petitioner's appeal, we received information that compromised the credibility of his claims. Accordingly, on March 23, 2021, we issued a notice of intent to dismiss (NOID) the appeal. In response, we received a letter from counsel dated March 30, 2021, requesting that the Petitioner's appeal be withdrawn. The Petitioner's request to withdraw the appeal is granted; however, notwithstanding the withdrawal of this appeal, we will enter a separate finding of willful misrepresentation of a material fact against the Petitioner.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through 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 sufficient qualifying documentation that meets at least three of the ten criteria 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).

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).

II. REQUEST FOR WITHDRAWAL OF THE APPEAL

As noted above, we issued a NOID, notifying the Petitioner of adverse findings outside the record of proceeding. The Petitioner subsequently asked to withdraw the appeal. He did not acknowledge, discuss, or dispute the adverse findings in his withdrawal request.

A withdrawal may not be retracted and may not be refused. 8 C.F.R. § 103.2(b)(6); *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976). Accordingly, the Petitioner's request will be granted and the appeal will be dismissed based on that withdrawal.

III. MATERIAL MISRESPRESENTATION

For the reasons discussed below, we find that the Petitioner willfully misrepresented information about his membership in the China Beverage Industry Association (CBIA), which was material to the adjudication of the petition.

A. Evidence of Record

The Petitioner claimed to be an alien of extraordinary ability in the field of business as a wine expert. In relevant part, the Petitioner asserted his eligibility for the classification sought based upon the regulatory criterion at 8 C.F.R § 204.5(h)(3)(ii), which permits a petitioner to submit evidence of his "membership in associations in the field . . . which require outstanding achievements of their members." The Petitioner claimed that he satisfied this criterion through membership in multiple organizations, one of which was the China Beverage Industry Association (CBIA).[1] To demonstrate this, he submitted a Chinese language certificate

[1] The Petitioner also claimed eligibility through his memberships in the China National Food Industry Association, China

allegedly from CBIA and accompanying English language translation of that certificate identifying him as "Senior Member." The Petitioner also provided Chinese language screenshots from the website www.chinabeverage.org and English language translations of these documents titled "Introduction of [CBIA]," "Articles of [CBIA]," and "Organizational Structure of [CBIA]," and screenshots from www.famous-entrepreneurs.com about [redacted] and from www.bloomberg.com about [redacted]

However, as we advised the Petitioner in our NOID, an overseas investigation by USCIS revealed derogatory information relating to the certificate and translations of the CBIA articles to establish his membership. As part of this investigation, a USCIS officer contacted the CBIA's Director of Membership to verify the authenticity of the membership certificate provided with the instant petition. The Director of Membership stated that members of CBIA are names of businesses, and that to her knowledge, there has never been a "Senior Member" membership category. The investigating officer then provided the Director of Membership a copy of the membership certificate in the record. Upon review of this certificate, the Director of Membership reiterated that she is unaware of CBIA issuing certificates in the category of "Senior Member." She further advised that all [redacted] certificates are issued with CBIA's official seal and that this certificate does not contain said seal.

The investigating officer also reviewed the CBIA website screenshots and translations provided by the Petitioner and determined that the translation for "Article 12. Senior Membership Criteria" does not accurately reflect what the website says. The investigating officer advised that, upon careful review of the website pages provided, there are no other sections entitled "Senior Membership Criteria" nor do any other sections refer to a "Senior Member." The officer stated that Article 7 of the provided webpage printout indicates that there are only two types of memberships: "Ordinary Member" and "Associate Member," and that it appears this section was omitted from the accompanying translation.

In our NOID, we further noted that the Petitioner provided this evidence with a previous petition [redacted] to establish his membership in CBIA.[2] Accordingly we notified the Petitioner that it appeared he had repeatedly submitted fraudulent documents and incomplete translations to establish eligibility for classification as an individual of exceptional ability.

Our NOID gave the Petitioner an opportunity to respond to the adverse information, as required by 8 C.F.R. § 103.2(b)(16)(i). We also advised the Petitioner that the withdrawal of his appeal would not prevent a finding of willful material misrepresentation. The Petitioner responded to our NOID with a request to withdraw the appeal but did not address the above-described adverse findings in any way.

B. Analysis

The facts and evidence presented in the instant matter warrant a finding of willful misrepresentation of a material fact against the Petitioner.

National Association for Liquor Spirits Circulation, the China General Chamber of Commerce, the China Green Ribbon Care Association, and th[redacted] Wine & Spirits Association.

[2] The record reflects that this petition was initially approved by the Director, but then revoked as it was approved in error and the Petitioner had not established eligibility for the benefit sought. In addition to revoking the approval of the petition, the Director entered a finding of willful misrepresentation. In a subsequently filed appeal of that decision, we upheld the Director's decision and the willful misrepresentation finding.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. As outlined by the Board of Immigration Appeals, 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).

USCIS will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of a foreign national or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner does not resolve those errors and discrepancies given the opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the claims stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In this case, the discrepancies in the documents relating to the petition constitute substantial and probative evidence. The regulation at 8 C.F.R § 204.5(h)(3)(ii) permits a petitioner to submit evidence of his "membership in associations in the field . . . which require outstanding achievements of their members." The Petitioner submitted a certificate for CBIA identifying him as a member; however, an overseas investigation determined that this organization does not admit individuals as members. This investigation also revealed that official CBIA membership certificates include the association's official seal, and that the submitted certificate lacked this seal. Moreover, the investigating officer determined that the translations of the CBIA articles of membership submitted by the Petitioner were altered. In this case, these discrepancies and errors lead us to conclude that the evidence of the Petitioner's membership in CBIA, which is material to his eligibility as an individual of "extraordinary ability," is neither true nor credible.

When given an opportunity to rebut these findings, the Petitioner offered no rebuttal or explanation for the inconsistencies. Instead, he withdrew the appeal. If the Petitioner had not withdrawn the appeal, we would have dismissed the appeal based, in part, on these misrepresentations. *See Cintron*, 16 I&N Dec. at 9; *see also* 8 C.F.R. § 103.2(b)(14).

Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that an individual foreign national sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the foreign national is inadmissible to the United States based on the past misrepresentation.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides:

> Misrepresentation – (i) In general – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

To find a willful and material misrepresentation in visa petition proceedings, an immigration officer 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, with the instant petition, and with a prior petition, the Petitioner submitted documents and altered translations intended to establish his membership in CBIA and therefore his eligibility for the regulatory criterion at 8 C.F.R § 204.5(h)(3)(ii). The Petitioner's submission of these falsified documents in support of his immigrant visa petition constitutes a false representation to a government official.

Second, the Petitioner willfully made the misrepresentation. The Petitioner signed the Form I-140, certifying under penalty of perjury that his petition and the evidence submitted with it 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, 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 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 memberships relate to the regulatory criteria under 8 C.F.R. § 204.5(h)(3). Therefore, they are material to his eligibility.

Accordingly, by filing the instant petition, making false representations, and submitting altered translations, 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. Furthermore, the regulation at 8 C.F.R. § 103.2(b)(15) provides: "Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition."

IV. CONCLUSION

Although the Petitioner withdrew his appeal, we find that he made a willful misrepresentation of material facts.

ORDER: The appeal is dismissed based on its withdrawal by the Petitioner.