U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-Q-

DATE: SEPT. 19, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a road construction entrepreneur, seeks classification as an individual of extraordinary ability in business. *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 while the Petitioner had met at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3), the record did not show a level of expertise indicating that he was among that small percentage who have risen to the very top of his field of endeavor. During the adjudication of the Petitioner's appeal, we received information that compromised the credibility of his claims. Accordingly, in July 2017, we issued a notice of intent to dismiss (NOID) the appeal. In response, we received a letter from counsel dated August 28, 2017, withdrawing the Petitioner's appeal. Although the Petitioner has withdrawn his appeal, we will enter an administrative finding of a willful misrepresentation of material facts.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).[1]

II. DEROGATORY INFORMATION

The record contains derogatory information related to the evidence supporting the petition. On July 24, 2017, 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)(ii) permits a petitioner to submit evidence of his "membership in associations in the field . . . which require outstanding achievements of their members." The Petitioner provided documentation of his membership in the Committee of Experts. His supporting evidence included an October 2007 appointment certificate; a July 2015 recommendation letter allegedly signed by Director of and a July 2014 letter of certification also allegedly signed by The investigating officer contacted and sent him the aforementioned documents for review. responded that the signatures on the two letters were not his own and that he had not issued those letters. The record, therefore, contains two falsified letters from

As further evidence under the criterion at 8 C.F.R § 204.5(h)(3)(ii), the Petitioner submitted documentation of his membership in the His documents included a July 2014 "letter of certification" and a July 2015 "confirmation of membership" letter, both allegedly signed by deputy chairman of the Term of Council of The investigator contacted and sent him the aforementioned documents for review. response indicated that the signatures on the two letters were not his own, and that he had not signed any documents or issued any recommendation letter in the Petitioner's behalf. Accordingly, the record includes two falsified letters from

In addition, the Petitioner offered a February 2012 ' and an October 2013 issued by '

[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).

The investigating officer contacted at (listed on the association's website: www. and sent the and the for verification. responded that the Petitioner did not become a member until 2013 and that he had not fulfilled his duty as a member and paid its membership fee since 2015. As the Petitioner was not a member of in 2012, the February 2012 ' he submitted is a falsification.

The regulatory criterion at 8 C.F.R § 204.5(h)(3)(iv) permits a petitioner to offer evidence of his "participation, either individually or on a panel, as a judge of the work of others." The Petitioner provided appointment certificates from the indicating that he was a member of the judging panel for the "' 2011) and a member of the ' 2005). In addition, he offered two appointment letters issued by in November 2015 listing his duties as a judge and an evaluator. The investigator contacted the section chief of the of the and sent him the aforementioned documents for verification. His response letter indicated that the records did not show that his agency had issued those documents. Accordingly, the documents the Petitioner offered are falsifications.

As further evidence under the criterion at 8 C.F.R § 204.5(h)(3)(iv), the Petitioner provided a November 2003 appointment certificate and a July 2015 certification letter from the Editorial Committee of indicating that he was appointed as a "contributing editor." The investigating officer contacted the Editorial Committee of using the telephone number listed on the certification letter and sent the aforementioned documents for verification. The Editorial Committee responded that the appointment certificate and certification letter the Petitioner submitted were not issued by their organization. In addition, the response indicated that the letterhead and the stamp used in the documents were inconsistent. The actual stamp of the Editorial Committee should contain a registration code and the English name of the journal. Furthermore, the Chinese name of the journal is actually and not The record indicates, therefore, that the appointment certificate and certification letter are falsifications.

As evidence of a leading role for his company under 8 C.F.R § 204.5(h)(3)(viii) and a high salary under 8 C.F.R § 204.5(h)(3)(ix), the Petitioner submitted an August 2014 "Expert Opinion Letter" allegedly from Professor and Dean of The investigator contacted and sent him the aforementioned letter for verification. In response, stated that the signature on the letter was not his own and that he did not write a letter in the Petitioner's behalf. He also indicated that the stamp of the was a forgery. In addition, provided a formal statement with his signature and the genuine stamp of the Accordingly, the record contains a falsified letter from

In accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), we afforded the Petitioner 33 days to rebut the aforementioned derogatory information. In response, he requests that his appeal be withdrawn rather than contesting our findings. Our NOID advised the Petitioner that the withdrawal of his appeal would not prevent a finding of willful material misrepresentation.

III. MATERIAL MISREPRESENTATIONS

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.* As the Petitioner did not offer a rebuttal overcoming the above derogatory information, we will enter a finding of a material misrepresentation of 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 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, 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 memberships, participation as a judge of others' work, leading role, and salary. 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 falsified letters and other documents offered in support of his petition.

Second, the Petitioner willfully made the misrepresentations. 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, 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, 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, judging, leading role, and salary relate to the regulatory criteria under 8 C.F.R. § 204.5(h)(3); and therefore, are material to his eligibility.

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. 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."

III. 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.

Cite as *Matter of Q-Q-*, ID# 410030 (AAO Sept. 19, 2017)