U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8375407

Date: JUNE 30, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, an actor and model, seeks classification as an individual of extraordinary ability. *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 petition, concluding that the Petitioner had satisfied the initial evidentiary criteria but that he did not establish his eligibility as an individual of extraordinary ability in the final merits determination. 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.

We dismissed the Petitioner's subsequent appeal after issuing a notice of intent to dismiss (NOID) and reviewing the Petitioner's response to derogatory information obtained through an overseas investigation. We determined that the Petitioner met only two of the initial evidentiary criteria for this classification, of which he must satisfy at least three. We further determined that the Petitioner had willfully misrepresented material facts.[1]

The matter is now before us on a combined motion to reopen and motion to reconsider. On motion, the Petitioner submits additional evidence and asserts that he can establish that he had no intent to mislead or to misrepresent his qualifications. He further asserts that he meets at least three of the ten initial evidentiary criteria for this classification and is otherwise qualified for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen must state new facts

[1] We did not address the Petitioner's appellate arguments addressing his intent to continue work in the United States in his area of expertise, as the other issues addressed in our decision were dispositive of the appeal.

and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that we based our decision on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability. 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 sustained acclaim and the 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 they must provide sufficient qualifying 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).

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).

III. ANALYSIS

At issue in this matter is whether the newly submitted facts and/or legal arguments overcome our previous findings that the Petitioner: (1) willfully misrepresented material facts by submitting falsified documents; and (2) did not establish that he has a qualifying one time achievement or that he meets at least three of the initial evidentiary criteria at 8 C.F.R. §204.5(h)(3)(i)-(x).

A. Motion to Reopen

1. Material Misrepresentation

In order for an immigration officer to find a willful and material representation 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); *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

In our appellate decision, we determined that the Petitioner submitted fabricated reference letters and a media article that had been altered. In addition, we questioned the credibility of the Petitioner's "Mr. Model of the [redacted] 2004" award. Although we acknowledged the Petitioner's claim that he was not aware that the letters and published article were not genuine, we found inadequate evidence to support this claim. On motion, the Petitioner submits additional evidence and once again denies that he willingly or intentionally made any material misrepresentation to USCIS.

Reference Letters

In our NOID, we advised the Petitioner that an overseas investigation revealed that reference letters submitted in support of the petition had been fabricated. These letters, ostensibly written and signed by [redacted] and [redacted] were deemed material as the Petitioner relied on them to support his claim that he had served in leading or critical roles with organizations that have a distinguished reputation, under 8 C.F.R. § 204.5(h)(3)(viii). Specifically, the investigating officer showed [redacted] a letter dated July 17, 2018 which had been submitted in response to a request for evidence (RFE). He stated that the "document is a counterfeit" and that he never wrote a reference letter for the Petitioner, thus invalidating two previous letters attributed to him which are also in the record of proceedings. Similarly, [redacted] denied that he wrote or signed the submitted letter dated June 24, 2018 and stated it "is totally counterfeited and fabricated."[2]

In response to the NOID, the Petitioner explained that he hired an individual in India named [redacted] to obtain the reference letters from [redacted] and [redacted] Specifically, he claimed that [redacted] was hired to collect the draft letters from his sister's residence in [redacted] and "take the print out and go to individuals for signing purposes." The Petitioner stated 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." He also indicated that he was unsuccessful in his attempts to follow up with [redacted] prior to the deadline for responding to the NOID. Finally, the Petitioner acknowledged that "the AAO has presented evidence in support of the fact that the signatures on the letters themselves were false" but he argued that "no evidence has been submitted which demonstrates that [the Petitioner's] representations were 'willful.'" He did not provide any additional evidence to corroborate his claims.

We determined that the Petitioner's uncorroborated statements were insufficient to establish that he had no knowledge that the letters from [redacted] and [redacted] were fabricated. We emphasized that he signed the 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). Therefore, based on this affirmation, made under penalty of perjury, and based on the lack of evidence to support the Petitioner's explanation, we found that he had not overcome the derogatory information set forth in the NOID or our reasons for making a finding of willful misrepresentation of a material fact.

On motion, the Petitioner submits a new declaration in which he again explains that he hired [redacted] "through an actor friend," to procure the reference letters from [redacted] and [redacted] on his behalf. He emphasizes that due to the time difference between California and India and the fact that he had limited time to obtain a new letter, it was "extremely difficult to coordinate this in a timely manner." He provides additional details, noting that [redacted] was hired to collect a pen drive with the draft letters from his sister's residence, and that his sister paid [redacted] a sum of 15,000 rupees. The Petitioner also emphasizes his business relationship with [redacted] and [redacted] noting that "at no point is there any denying that I have worked with these individuals and shared a healthy professional relationship with them both." He emphasizes that he obtained letters from them in support

[2] As noted in our previous decision, [redacted] was not questioned about the authenticity of another letter allegedly written and signed by him in 2015.

of a prior O-1 nonimmigrant petition, and that "[g]iven the nature and depth of my professional relationship with [redacted] and [redacted] I did not once think to authenticate their signatures." He mentions that he has since tried to contact [redacted] but was unable to do because "he is overseas shooting for a film." Finally, he notes that he is unable to document his phone communications with [redacted] because he used [redacted] and the call history is not accessible.

The Petitioner also submits a letter from his sister, [redacted] who states that she met with [redacted] at her [redacted] residence twice, on June 8 and June 24, 2018, and paid him 15,000 rupees in two installments. She notes that [redacted] "never mentioned there were any issues or problems with their signing their letters" and states that he is now "unavailable through the modes of communication we used earlier." [redacted] attaches a copy of her May/June 2018 bank statement with three ATM withdrawal transactions highlighted. Those transactions, made on June 1, June 4, and June 15, 2018, amount to 16,000 rupees.

Finally, in her brief, counsel emphasizes that "[b]oth [redacted] and [redacted] who signed support letters for his previously filed O-1 visa, agreed to sign new support letters on [the Petitioner's] behalf." She states that the Petitioner's "failure to authenticate the signed letters was not an act of willful misrepresentation, but a simple mistake."

Upon review, it remains undisputed that the petition was accompanied by falsified letters attributed to [redacted] and [redacted], and that the letters were material to USCIS' adjudication of this benefit request as they were intended to establish that the Petitioner satisfied the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(viii). As noted, [redacted] denies that he has ever provided a reference letter for the Petitioner, and there are three letters in the record of proceeding attributed to him: one on [redacted] letterhead dated August 14, 2014; a second, on [redacted] letterhead, dated "07/05/2018"; and a third, on [redacted] letterhead, dated July 17, 2018.

The Petitioner has consistently claimed, in response to our NOID and again on motion, that he relied on [redacted] to obtain the most recent letters from [redacted] and [redacted] This claim, in which the Petitioner implies that [redacted] must be responsible for the falsification of the letters and signatures, is not persuasive for reasons that will be discussed below.

However, we acknowledge that the Petitioner's sister now confirms the Petitioner's arrangement with [redacted] She provides evidence of some ATM cash withdrawals that could have been made for any purpose and indicates that she last saw [redacted] and gave him his second and final fee installment on June 24, 2018. However, the letter that is allegedly from [redacted] is dated July 17, 2018, several weeks after that meeting and no explanation for this apparent discrepancy has been provided. We also note that the Petitioner now indicates that he hired [redacted] "through an actor friend," but has not identified this friend or provided a statement from him. Finally, the record lacks any evidence of telephone, text, or email contacts between the Petitioner and [redacted]

The Petitioner also states that he did not question the authenticity of the letters allegedly provided by [redacted] because [redacted] and [redacted] had provided reference letters for him previously. Although we advised the Petitioner that [redacted] denies that he ever provided a reference letter for the Petitioner, he does not address [redacted]'s denial. He repeats his claim that [redacted] and [redacted] were expecting to receive draft letters for signature on this occasion, a statement that is also

undermined by [redacted]s denial that he agreed to provide the July 2018 letter or any other reference letter. Further, there is no corroborating evidence of communications between the Petitioner and [redacted] or the Petitioner and [redacted] in support of his claim that he contacted them in advance and confirmed their willingness to provide the letters in question.

We also note that, in addition to the July 17, 2018 letter from [redacted], the record also contains a letter allegedly signed by him on "05/07/2018," which depending on the date format used was signed on May 7, 2018 or July 5, 2018. This letter either pre-dates or post-dates the Petitioner's alleged use of [redacted]s services and the Petitioner has not claimed that he retained [redacted] to obtain two letters from [redacted]. The Petitioner has not attempted to explain the origins of this letter, which was also submitted in support of his appeal. As noted, [redacted] denies providing any reference letter for the Petitioner.

Finally, the Petitioner also briefly addresses the fact that he does in fact have a professional relationship with both [redacted] and [redacted]. It appears he is suggesting that the facts stated in the letters are true, even if the letters were not actually written, reviewed or signed by their purported authors. However, will not consider the content of the fabricated letters for any purpose.

For all of these reasons, the Petitioner's claim that he was not responsible for the fabricated letters and did not willfully or knowingly misrepresent material facts to the USCIS is not persuasive. Although he has submitted new evidence on appeal pertaining to the reference letters, that evidence is not sufficient to warrant reopening and does not overcome our prior finding of willful misrepresentation of a material fact.

Award and Published Material

In addition to addressing the fabricated letters in our appellate decision, we questioned the credibility of evidence relating to the Petitioner's 2004 "Mr. Model [redacted]" title and an article titled [redacted] which purportedly appeared in *The Sun* (U.K.).

In our NOID, we noted that *The Sun* article appeared to be an altered version of a previously submitted *Mirror Life* article from Sri Lanka and questioned its authenticity, noting that it was material because the article was submitted under the published materials in major media criterion at 8 C.F.R. § 204.5(h)(3)(iii). We also informed the Petitioner that the investigating officer was unable to confirm the veracity of the article from *The Sun*. In response, the Petitioner stated that his public relations firm in India told him that the article that appeared in *The Sun* "was a reproduction of an article in Sri Lanka" that had been passed along by the interviewer and reprinted in "the UK online publication." He indicated that the article was in his "PR booklet" and he was unaware of its authenticity. We found his statement insufficient to establish that the article allegedly published in *The Sun*, which was submitted for the first time in response to the Director's request for evidence, was genuine. He did not submit a statement from the PR firm in support of his claim that they provided him with the article.

In his declaration submitted on motion, the Petitioner reiterates that his PR firm told him that the article in *The Sun* was "a reproduction" of the article from Sri Lanka, and counsel asserts that he "had no reason to question the authenticity of a document given to him by his PR firm." The Petitioner does

not dispute our finding that the submitted article allegedly published by *The Sun* is not genuine or submit new evidence to overcome that finding.

Finally, we addressed the Petitioner's title of "Mr. Model [redacted] 2004" which he claimed was a major, internationally recognized award that qualifies as a one-time achievement under 8 C.F.R. § 204.5(h)(3). In the NOID, we advised the Petitioner that there were inconsistencies in the record regarding the actual name of the competition. For example, the award certificate from the competition organizer in Ecuador referred to the title as "Mr. Model [redacted] while a photo of the trophy indicates that it was inscribed with "Mr. Male [redacted]." We emphasized that the record did not contain any information about the awarding organization, and noted that during the course of the overseas investigation, an investigating officer in Ecuador was unable to locate any local media coverage of the Petitioner's receipt of the title, or to confirm that the 2004 award was genuine.

In response, the Petitioner emphasized that he had submitted many articles that mention his receipt of the award, and an additional photograph of himself wearing a sash bearing the legend "Mr. Model [redacted] 2004." He stated that he requested a letter from fellow contestant [redacted], but did not submit the letter with his appeal. We found his response insufficient to overcome or explain the discrepancies in the record and noted that he had not provided any documentation from the awarding organization.

On motion, the Petitioner submits a letter from [redacted] who states that she met the Petitioner as a fellow participant in the "Top Model [redacted]" event held in Ecuador in [redacted] 2004. She indicates that she received the title "Miss Model [redacted]" and the Petitioner "clinched the title Mr. Model [redacted]." The Petitioner also submits a photograph of him wearing the "Mr. Model [redacted]" sash with a woman wearing a crown and a "Top Model [redacted]" sash. He provides [redacted] IMDb page which indicates that, as Miss Italy, she participated in the televised Miss [redacted] 2005 pageant, and includes photographs of her. The person in the photograph with the Petitioner appears to be [redacted].

Upon review, we find the evidence sufficient to establish that the Petitioner won a competition in Ecuador in 2004. However, the inconsistencies in the title of the event (in both the awards themselves and in Indian press coverage about the Petitioner's title), the lack of information about the awarding organization, the lack of contemporaneous media coverage of the event in Ecuador, and the inability of the investigating officer to confirm the existence of the 2004 event all indicate that his title was not a major, internationally-recognized award as claimed by the Petitioner. His "Mr. Model [redacted]" title therefore does not satisfy the one-time achievement requirement at 8 C.F.R. § 204.5(h)(3).

In summary, the new evidence submitted on motion does not overcome our finding that the Petitioner submitted multiple fabricated letters and an altered press article in support of his petition. Further, the new evidence is not sufficient to support his claim that he did not knowingly or intentionally do so. We will not disturb our previous finding that he willfully misrepresented material facts to USCIS.

2. Evidentiary Criteria

In dismissing the Petitioner's appeal with an administrative finding of willful misrepresentation, we also addressed the merits of his petition and determined that he met only two of the ten initial

evidentiary criteria for this classification at 8 C.F.R.§ 204.5(h)(3)(i)-(x), specifically related to lesser nationally recognized awards under 8 C.F.R. § 204.5(h)(3)(i) and judging the work of workers in his field under 8 C.F.R. § 204.5(h)(3)(iv).

We acknowledged the Petitioner's claim that he met the criterion for published material about him at 8 C.F.R. §204.5(h)(3)(iii) because the submitted articles either did not contain information identifying their source, data or author, or because the Petitioner did not show that they were published in professional or major trade publications or other major media. On motion, the Petitioner resubmits articles from *Telegraph India*, *Bombay Times*, and *Delhi Times* with additional or updated circulation information.

To meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner must provide published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. The articles re-submitted on appeal are about the Petitioner and include the author, title and date of publication. The Petitioner has not established that the submitted publications, all of which are newspapers, qualify as major media.[3]

With respect to *The Telegraph*, the Petitioner has not provided comparative circulation or distribution statistics establishing that its online circulation is high in relation to other publications, and instead relies on promotional information from the newspaper's own website[4] and average readership statistics from a third-party website. Neither of these sources provides comparative information demonstrating a high circulation relative to other newspapers.

The Petitioner submits an updated table published by Audit Bureau of Circulations (ABC) which lists *The Times of India* as the third highest circulated daily newspaper "amongst ABC Member Publications" as of February 2019. According to a screenshot from the ABC website, ABC is a "not for profit, voluntary organization consisting of Publishers, Advertisers and Advertising Agencies." It is unclear based on the information provided whether all major newspapers in India are members and included in the rankings. In addition, the articles about the Petitioner appeared in *Delhi Times* and *Bombay Times*. The Petitioner previously submitted evidence indicating that these are supplemental lifestyle sections of *The Times of India*, distributed only in these respective localities, and therefore they do not have the national reach of the parent publication.

The new evidence submitted on motion does not overcome our finding that the Petitioner did not meet the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). Accordingly, with his motion to reopen, he has not overcome our finding that he met only two of the ten initial criteria for this classification.

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[3] *See* USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html. (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

[4] We need not rely on assertions from the publication. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

B. Motion to Reconsider

As noted, a motion to reconsider must establish that we based our decision on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

Although the Petitioner submits a brief in support of his combined motion, the brief does not include legal arguments alleging that we incorrectly applied law or USCIS policy to the facts presented here. The Petitioner's general assertion that he "is falsely accused of willful misrepresentation" does not provide sufficient grounds for reconsideration, and his claim that he "was under the impression that the supporting documents submitted were in fact authentic and correct" has been addressed above. Further, the Petitioner has not argued that we misapplied the law or USCIS policy in evaluating the evidence submitted in support of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, the motion to reconsider will be dismissed.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration or established eligibility for the immigration benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.