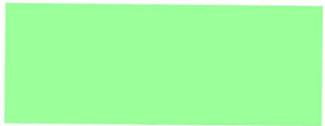


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: JUL 31 2013

Office: TEXAS SERVICE CENTER

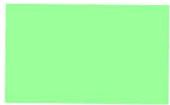
FILE:



IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal based on the petitioner's request to withdraw the petition. The AAO will also enter a separate administrative finding of willful misrepresentation of a material fact.

On November 16, 2011, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act). The petitioner asserted claims to be an alien of extraordinary ability as a mechanical engineer. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for this classification.

On June 24, 2013 this office issued a notice of adverse information and intent to dismiss the appeal, advising the petitioner that the evidence in record, considered with information available in public records, raised serious questions regarding the credibility of the evidence submitted to establish the petitioner's eligibility. In accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO afforded the petitioner an opportunity to submit evidence and explanation to rebut the derogatory information. Specifically, the AAO addressed three articles in which he claims to be the first-author. The petitioner submitted an article titled, "Decentralized Hash Tables for Mobile Robot Teams Solving Intra-Logistics Tasks" in which the petitioner asserted that he was the first-author. The evidence the petitioner submitted lacked any publication information. A Microsoft Academic Search for this title revealed the same article that the petitioner provided as evidence was published as a result of a conference, Autonomous Agents & Multiagent Systems/Agent Theories, Architectures, and Languages - ATAL, pp. 923-930, 2010. This search also revealed that the petitioner is not listed as this article's author.

The petitioner also submitted an article titled, "Improving Throughput for Grid Applications with Network Logistics" in which he asserted that he was the first author. A Microsoft Academic Search for this title revealed the same article the petitioner provided as evidence was published as a result of a 2004 supercomputing conference. This search also revealed that the petitioner is not listed as this article's author. A third article the petitioner submitted titled, "Optimized Concrete Delivery Scheduling Using Combined Simulation and Genetic Algorithms" listed him as the first author. However, a Microsoft Academic Search for this title revealed the same article the petitioner provided as evidence was published as a result of a 2005 Winter Simulation Conference. This search also revealed that the petitioner is not listed as this article's author. Finally, the AAO also provided copies of five additional articles the petitioner submitted as his own that researchers who are not the petitioner actually wrote.

On July 11, 2013 the petitioner responded to the notice by requesting that the petition be withdrawn. The petitioner's only response to the derogatory information was to imply that others may have plagiarized his work, but that he could not currently provide evidence to demonstrate this claim. The petitioner's request to withdraw the petition will be granted. 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). The appeal will be dismissed based on its withdrawal.

Although the appeal will be dismissed, the remaining issues that must be addressed are: (1) whether the petitioner made a false representation to a government official; (2) was the misrepresentation willfully made; and (3) was the fact misrepresented material to the adjudication of the visa petition; and, if so, (4) whether the withdrawal of the appeal constitutes a timely recantation of the misrepresentation. 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. at 288 (BIA 1975).

#### A. Misrepresentation

As a preliminary matter, the AAO will address whether the evidence submitted with respect to the articles the petitioner claims to have authored rises to the level of a misrepresentation. A misrepresentation is an assertion or manifestation that is not in accord with the true facts.<sup>1</sup> A misrepresentation of material fact may lead to serious consequences, including but not limited to the denial of the visa petition, a finding of fact that may render an individual alien inadmissible to the United States, and criminal prosecution.

An immigration officer 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 an alien 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 *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors lead the AAO to conclude that the evidence of the petitioner's authorship of three articles, which is material to 8 C.F.R. § 204.5(h)(3)(vi), is neither true nor credible.

When given an opportunity to rebut these findings, the petitioner stated:

During the time of the past ten year [sic], [the] majority of my articles were published or post[ed] at many intentional [sic] scientific conferences or Chinese domestic scientific conferences. Usually at international scientific conferences, the host or the organization would has [sic] all of [the] collected papers from the anticipators printed and distributed to all attendants at every meeting, so it is such a way to put my papers to public [sic] at international meetings. I don't know whether my papers were utilized or plagiarized by other people, even published on other places, but it's maybe

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<sup>1</sup> The terms "fraud" and "misrepresentation" are not interchangeable. Unlike a finding of fraud, a finding of material misrepresentation does not require an intent to deceive or that the officer believes and acts upon the false representation. See *Matter of Kai Hing Hui*, 15 I&N Dec. at 288. A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. See *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

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[sic]. So far in the diverse kinds of scientific fields, there are [a] majority of articles to be referenced or incited from each other, even there are lots of articles to be plagiarized.

Nevertheless, the petitioner withdrew the petition, asserting that within the time allowed to respond to the June 24, 2013 notice it would be difficult to collect further evidence.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The petitioner submits no new evidence in response to the June 24, 2013 notice. Moreover, the evidence of record is not consistent with the petitioner's current claim that other researchers plagiarized his work after its distribution at various Chinese and international conferences. The following facts instead support a finding that the petitioner submitted altered articles.

- Two of the article headings on the versions the petitioner provided have typographical errors. Specifically, the petitioner's copy of [REDACTED] shows the heading "Tokyo, Japan December, 2007," with a hanging comma after "2007."<sup>2</sup> Similarly, the petitioner's version of "[REDACTED]" bears the journal name "[REDACTED] [sic]" on the odd pages and [REDACTED] on the even pages.
- Some of the petitioner's versions contain information about the true authors and the actual circumstances of publication. For example, the petitioner submitted a copy of "[REDACTED]". The petitioner claimed to be an author of that article, purportedly published in March 2010. The petitioner's version of the article includes a footnote that states: "current version published April 7, 2010," the date of the online version, and provides information about [REDACTED] the credited authors of the online version of the article, but not the petitioner. Similarly, the petitioner's version of "[REDACTED]" contains a "cite as" footnote on page 923 which lists the authors credited on the online version the AAO located, and not the petitioner.
- The petitioner submitted two articles both purportedly from volume 6, number 3 of [REDACTED] but one has a publication date of March 2010 and the other has a publication date of April 2011. As noted in the June 24, 2013 notice, the AAO located the March 2010 article, [REDACTED]

<sup>2</sup> While not mentioned in the June 24, 2013 notice, publicly available material on the conference's own website, [REDACTED] also reveals that the 2007 conference took place in Washington, D.C., not Tokyo, Japan.

\_\_\_\_\_” in volume 7, issue number 2 of \_\_\_\_\_ published in April 2010.

- Some of the articles the petitioner submitted as his own have the same page numbers as the actual articles the AAO located online in different publications. For example, the online version of the article \_\_\_\_\_ “Routing Problem” appears on page 383 of volume 7, issue number 2 of \_\_\_\_\_ while the version the petitioner submitted also appears on page 383, but in the publication \_\_\_\_\_. In addition, the petitioner’s version of \_\_\_\_\_’ purportedly published in the proceedings of the \_\_\_\_\_’ begins on page 2572. The AAO located this same article at \_\_\_\_\_ from the proceedings of the 2005 Winter Simulation Conference, also beginning on page 2572 of the proceedings with the exact same pagination. Finally, the petitioner’s version of \_\_\_\_\_’ begins on page 465 of the \_\_\_\_\_ while the AAO located this same article beginning on page 465 of *Wireless Networks*. The AAO provided the online versions, with page numbers, to the petitioner and he makes no attempt to explain how an author plagiarizing his work in a subsequent, different publication as he now alleges, could secure the same page numbers as an earlier version in a different publication.
- As provided in the June 24, 2013 notice, the AAO located the articles online as published in the proceedings by the conference organizers. The AAO was unable to locate any versions of the petitioner’s articles listing him as one of the authors as would be expected if the petitioner’s versions also exist.

The petitioner has not overcome the finding in the June 24, 2013 notice that he submitted scholarly articles in which he substituted his name in place of the original authors. If the petitioner had not withdrawn the petition, the petition would have been properly denied based on this misrepresentation. *See Matter of 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 alien 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 alien 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.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. at 289-90. 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 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. at 149; *Matter of L-L-*, 9 I&N Dec. at 324; *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

First, as previously discussed, the petitioner submitted eight articles to USCIS, in support of a visa petition, which contained information that is patently false. 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 submission of documents containing false information in support of an extraordinary ability visa petition constitutes a false representation to a government official.

Second, the AAO finds that the petitioner willfully made the misrepresentation. The petitioner has not asserted that he accidentally or inadvertently claimed that the documents he submitted list him as the first-author. When given the opportunity to address the AAO's findings, pursuant to 8 C.F.R. § 103.2(b)(16)(i), the petitioner withdrew the petition. Simply withdrawing the petition in response to the notice of derogatory information, will not meet the petitioner's burden of proof. See section 291 of the Act; see also *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

Furthermore, the petitioner electronically signed the visa petition as well as providing a physical copy of the visa petition in which the petitioner provided an original signature, certifying under penalty of perjury that the visa 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). The signature portion of the 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 is all true and correct." On the basis of this affirmation, made under penalty of perjury, the AAO finds that the petitioner willfully and knowingly made the misrepresentation.

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-

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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 *Matter of Ng*, 17 I&N Dec. at 537.

The misrepresentation cut off a potential line of inquiry regarding the petitioner's claimed authorship of scholarly articles. The petitioner submitted evidence that he authored eight scholarly articles. These facts are directly material to the petitioner's eligibility under the regulatory requirement at 8 C.F.R. § 204.5(h)(3)(vi) and the AAO concludes that the petitioner's misrepresentations were material to his eligibility.

By filing the instant petition and falsely claiming authorship of scholarly articles, the petitioner has sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact. The AAO will enter a finding that the petitioner made a willful material misrepresentation. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

#### B. Effect of Withdrawal on the AAO's Finding of Willful Material Misrepresentation

As discussed, the AAO provided the petitioner with notice of its serious doubts regarding the credibility of the submitted evidence, advised the petitioner of derogatory information not contained within the record of proceeding, and requested specific evidence to explain and rebut the discrepancies. In response, the petitioner requested that the petition be withdrawn, without sufficient substantive reference to the serious issues the AAO raised. The petitioner did not challenge the AAO's preliminary findings other than to speculate that others have plagiarized his work. The petitioner, however, failed to submit any documentary evidence of the existences of the proceedings and journals that he asserts published his articles prior to the alleged plagiarism of those articles.

A timely retraction of a misrepresentation can serve as a defense to inadmissibility under section 212(a)(6)(C)(i) of the Act. See *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). For the retraction to be effective, it must be done "voluntarily and without prior exposure of [the] false testimony." *Matter of R-R-*, 3 I&N Dec. at 827; see also *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that recantation of false testimony one year after the event, and only after it became apparent that the disclosure of the falsity of the statements was imminent, was not voluntary or timely).

Here, there has been no acknowledgement of the misrepresentation on the part of the petitioner, nor is a timely and voluntary correction of such misrepresentation present. See *Matter of M-*, 9 I&N Dec. at 119. Without an admission to and correction of the misrepresentation, there can be no retraction or recantation. The petitioner's request to withdraw the petition, without sufficient substantive comment on the misrepresentation with which he AAO confronted him, does not have the effect of a recantation. Even if the petitioner had retracted the material misrepresentation following receipt of the AAO's notice, the retraction would not overcome an adverse finding since the retraction would

have been made when the disclosure of the misrepresentation was imminent or under the threat of being revealed. *See Matter of Namio*, 14 I&N Dec. at 414.

The petitioner's withdrawal of the petition cannot be considered a timely and voluntary retraction of the petitioner's false testimony. As such, the petitioner's withdrawal of the petition does not overcome or nullify the fact that the petitioner has sought to procure immigration benefits by willful misrepresentation of a material fact.

### C. Authority to Enter a Finding of Misrepresentation

A petitioner may withdraw a petition at any time up to the point that a decision is rendered by USCIS or, if the petition is approved, until the petitioner is admitted, adjusts status, or changes status based on the approved petition. 8 C.F.R. § 103.2(b)(6). A withdrawal may not be retracted. *Id.* Once a petition is withdrawn, USCIS may not refuse the withdrawal and may not deny the petition on the merits, but the facts and circumstances surrounding the withdrawn petition shall be considered material to any new petition. *Matter of Cintron*, 16 I&N Dec. at 9; *see also* 8 C.F.R. § 103.2(b)(15).

Although USCIS cannot formally adjudicate a petition once the petitioner has withdrawn it, when the evidence tends to show that a petitioner has engaged in fraud or willful material misrepresentation, USCIS will include in any notice acknowledging the withdrawal a synopsis of any alleged fraud or willful material misrepresentation. The notice will also include a description of the evidence supporting the allegation. While this synopsis may not have the same legal effect as a formal adjudication of fraud or willful material misrepresentation, the synopsis will permit USCIS to preserve the issue for any future petition or application in which the issue may be relevant. *Matter of Cintron*, 16 I&N Dec. at 9, clarified.

However, only a timely and voluntary retraction of a misrepresentation can serve as a defense to inadmissibility; the simple withdrawal of a visa petition will not absolve a petitioner from the attempted fraud or material misrepresentation. A withdrawal will not preclude USCIS from entering a finding of fact on the record, separate and apart from a decision on the merits, based on an attempt to procure a visa, other documentation, admission, any other immigration benefit by fraud or the willful misrepresentation of a material fact.

As immigration officers, USCIS Immigration Services Officers and Appeals Officers may enter a finding of fraud or willful misrepresentation of a material fact whenever it is discovered in the course of their duties. Immigration officers possess the full scope of authority accorded to them by the relevant statutes and regulations. *See* sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a). Additionally, the Secretary of Homeland Security has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, and to make recommendations for prosecution or other "appropriate action." DHS Delegation Number 0150.1 at para. (2)(1) (effective March 1, 2003).

As an issue of fact that is material to an alien's eligibility for the requested immigration benefit, or that alien's subsequent admissibility to the United States, the administrative decision in an immigration proceeding must include specific findings of fraud or material misrepresentation. Outside of the basic adjudication of visa eligibility, there are many critical DHS functions that hinge on a finding of fraud or material misrepresentation. Most critical, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting material fact. Section 212(a)(6)(C) of the Act. For this provision to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.<sup>3</sup>

If USCIS were to be barred from entering a finding of fraud or misrepresentation after a petitioner withdraws the visa petition, the agency would be unable to subsequently enforce the law and find an alien inadmissible for having "sought to procure" a visa by fraud or willful misrepresentation of a material fact. *See* section 212(a)(6)(C) of the Act.

## II. Conclusion

By filing the instant petition and submitting demonstrably false evidence, the petitioner has sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact. This finding of material misrepresentation shall be considered in any future proceeding where admissibility is an issue. While the petitioner has chosen to withdraw its petition, this does not negate the finding that the petitioner has sought to procure immigration benefits through material representation of a material fact, which may render him inadmissible in future proceedings.

**ORDER:** The appeal is dismissed based on the withdrawal of the petition.

**FURTHER ORDER:** The petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS relating to an element material to their eligibility for a benefit sought under the immigration laws of the United States.

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<sup>3</sup> It is important to note that while it may present the opportunity to enter an administrative finding of fraud or material misrepresentation, the immigrant visa petition proceeding is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States.