U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: EAC 99 173 53308 Office: Vermont Service Center Date: APR 13 2001

IN RE: Petitioner:
Beneficiary: [redacted]

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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a newspaper publisher. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability as a medical news reporter. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph 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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award,

the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, the petitioner claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Two articles which the beneficiary wrote for the petitioner's newspaper won National Health Information ("NHI") Bronze Awards in 1998. We note that the beneficiary's name does not appear on the award certificates; the awards were presented to the newspaper itself. The record does not establish the significance of these awards relative to other nationally recognized journalism awards such as the Pulitzer Prize.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The beneficiary is a member of the National Association of Science Writers ("NASW"). John G. Craig, Jr., editor of the petitioning newspaper, asserts that "[n]ew members must be endorsed by two current members" but endorsement is not an outstanding achievement. The initial submission included no evidence at all to suggest that the NASW requires outstanding achievements of its members. If its only requirements are employment in the field of science writing and endorsement by current members, then the NASW does not fall under this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Mr. Craig states that the beneficiary's newspaper articles satisfy this criterion. The beneficiary, however, does not write scholarly articles such as appear in research journals; rather, the beneficiary writes news articles about research conducted by others.

The beneficiary is a newspaper reporter, and therefore it is hardly a sign of acclaim or extraordinary ability that her writings appear in the newspaper, unless one makes the hard-to-defend assumption that the vast majority of newspaper reporters never see their work published.

Given that the beneficiary's field of endeavor presumes the publication of her work, a better gauge of her acclaim in the field would be not the very fact of publication, but the extent to which her work is generally circulated. We note that some of the petitioner's articles have been carried by the Associated Press or other services for wider distribution, but for the most part the beneficiary's work has appeared only in the petitioner's newspaper which, for the most part, serves western Pennsylvania rather than the entire nation. The petitioner submits copies of articles published nationwide via Scripps Howard News Service, but these articles, for the most part, were published with no attribution to the author. Thus, while some articles by the beneficiary have been published nationwide, the beneficiary received no credit and therefore the national publication would not have spread her reputation nationwide.

Some articles which do bear the beneficiary's name have appeared on various web sites. While the World Wide Web is globally accessible, only a small proportion of sites consistently receive heavy traffic. The petitioner submits no statistical information to indicate that the beneficiary's articles have scored "hits" comparable to the circulation of a major national print publication.

The beneficiary is, for the most part, a science correspondent for a regional newspaper rather than for a nationally circulated publication.

Beyond the above criteria, Mr. [redacted] asserts that the beneficiary "is a frequent guest on Pittsburgh and area television news programs dedicated to medical information." The petitioner does not explain how local television coverage is indicative of, or can result in, national acclaim rather than a reputation limited to the Pittsburgh broadcast area.

Mr. [redacted] notes that the beneficiary "has been requested to address health oriented organizations in this and other regions of the United States." He lists only three examples, all in western Pennsylvania; he does not specify what "other regions of the United States" have requested presentations by the beneficiary.

The petitioner submits letters from medical professors and other witnesses, mostly from the University of Pittsburgh, attesting to the beneficiary's expertise in her subject matter and her relationship with local medical professionals. For example, Professor [redacted] of the University of Pittsburgh states that the petitioner "is extraordinarily well-respected in our local community." These witnesses all hold the beneficiary's abilities as a writer in the highest regard, but they offer no indication that the beneficiary has earned any kind of major reputation outside of western Pennsylvania.

Dr. [redacted] political officer with the British Consulate General in New York, New York, states that the beneficiary assisted in raising public awareness to attract donors for a fellowship program between the University of Pittsburgh and various children's hospitals in the United Kingdom. Like the other evidence, this letter essentially limits the beneficiary's recognition to the Pittsburgh area.

Various employees of the Chicago Tribune recall the beneficiary's 1995 summer internship at that newspaper, stating that she is knowledgeable in her field and that her writing is concise and comprehensible. These individuals, however, do not state that the beneficiary is among the most highly acclaimed medical writers in the nation; they merely assert that hers is a promising career.

One of the witnesses at the Chicago Tribune is science writer [redacted], former president of the National Association of Science Writers and winner of a Pulitzer Prize and awards from several national medical organizations such as the American Heart Association and the American Medical Association. The beneficiary's own accomplishments do not appear to approach Mr. Kotulak's level of achievement; Mr [redacted] appears to have a much stronger claim than the beneficiary to be at the top of the field of medical and science writers.

On August 31, 1999, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the beneficiary as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor."

In response to this letter, counsel asserts that "it is clear that the criteria that the Service has enumerated in its interpretive regulations do not easily apply to those who are scientists working in the journalism field." While several of the criteria seem readily applicable to the beneficiary's field (for example, the Pulitzer Prize represents a nationally-recognized prize in the field of journalism), the regulation at 8 C.F.R. 204.5(h)(4) contemplates the use of alternative evidence in instances where the original ten criteria are not applicable to the alien's field. At the same time, a particular alien's inability to satisfy a particular criterion does not necessarily establish that the criterion is inapplicable to the field of endeavor. For example, if significant national or international prizes exist in a given field of endeavor, but a particular alien has never won such prizes, then the criterion pertaining to prizes is in fact applicable to the alien's field, notwithstanding the alien's inability to meet the criterion.

Counsel cites Service documents and a court decision to support the assertion that, once an alien has met three of the ten regulatory criteria, then the alien has established eligibility. At the same time, however, some evidence is simply insufficient to satisfy those criteria. For instance, while the petitioner claims that the beneficiary's NASW membership satisfies the criterion pertaining to membership in associations, it remains that the petitioner has produced nothing to show that the NASW requires anything at all from its prospective members apart from employment in the field and endorsement by two NASW members.

Counsel refers to the two NHI Bronze Awards from 1998, and contends "[t]his alone indicates that [the beneficiary's] 'extraordinary ability' has placed her in the small percentage of medical journalists who have risen to the top of their field." We reject counsel's contention that these awards are, by themselves, sufficient to establish eligibility. By regulation, the only single piece of evidence which is entirely sufficient to establish eligibility is a major, internationally recognized prize. Examples of such a prize include the Nobel Prize and an Olympic gold medal. Unless the petitioner can establish that the NHI Bronze Award enjoys the same level of international prestige as the aforementioned major awards, the NHI Bronze Award is not sufficient to establish eligibility. By the plain wording of the regulation, lesser prizes can only form part of a successful claim, in conjunction with other types of evidence.

Regarding the NHI Bronze Awards, counsel states:

> [I]t should be noted that for the division of the awards in which [the beneficiary] was awarded (Newspaper Articles), it is important to note that her work was the <u>only</u> submission awarded.
>
> Thus, her work was so superior and extraordinary that the NHI chose to award her the Bronze Award twice, with no other submission worthy of recognition. . . . Thus, in 1998, [the beneficiary] was the only medical journalist worthy of recognition with a NHI Bronze Award for her newspaper articles.

Counsel notes that "[t]he total number of submissions for 1998 . . . exceeded 1,100." This figure includes the total number of submissions for all categories, not just newspaper articles. There is no evidence to show how many articles were submitted in the same category as the beneficiary's articles. The petitioner has submitted three pages from the NHI's <u>1998 Winners</u> publication, but from this partial submission we cannot determine how many of the 1,100 entries actually won awards. There are four categories of award: Gold, Silver, Bronze and Merit. The awards are decided by a point system, so that the top-ranked article in a given category does not necessarily earn a Gold Award.

The only page submitted which actually lists award winners shows five categories: Newspaper Article, Newspaper Article - Series, Newspaper/Tabloid, Other/Miscellaneous Material, and Photo/Illustration. The page also lists winners in a sixth category for which the title heading is missing. The page lists a total of 14 Merit Awards, 10 Bronze Awards, and two Silver Awards. As with the award certificates submitted previously, this awards publication does not credit the beneficiary as the author of the two articles which won Bronze Awards for the petitioner.

With regard to the prestige of the NHI awards, the record contains no evidence of the importance of these awards except for a press release from the awarding organization itself.

Counsel maintains that the beneficiary's NASW membership satisfies the criterion pertaining to memberships in associations. The petitioner submits a copy of the NASW constitution which was in effect at the time the beneficiary joined, and copies of other NASW documentation.

An NASW pamphlet states, under the heading "Who Can Join?," that active membership is open to "those such as newspaper, broadcast, freelance, and magazine reporters, who primarily report science to the general public, but who do not promote any specific product or organization." Article II, section 2 of the NASW constitution states, in pertinent part:

> Active membership shall be restricted to those persons principally engaged in the preparation and interpretation of science news . . . ; provided that no person shall be admitted to active membership whose efforts are primarily directed to the promotion of a product or organization.
>
> To be eligible for active membership, an applicant must have been active in the dissemination of impartial science information.

While Article V of the NASW constitution refers to a membership committee which considers nominations of new members, there is no indication of what standards prospective members must meet. Counsel's extrapolations are speculative, conjectural, and entirely unsupported by NASW's own governing documents.

Counsel notes "the association is restricted to <u>journalists</u>." Being a journalist is not an outstanding achievement. Furthermore, the NASW's documents plainly show that membership is open to students and "public information officers and people who write and produce films [and] museum exhibits."

Counsel adds "[t]he new constitution further restricts membership to journalists of 'recognized news media outlets.' Thus, they must

work with nationally recognized media." Employment by "recognized news media" is not automatically indicative of outstanding achievement. Counsel also notes the NASW's requirement (apparently not yet in place at the time the beneficiary joined) that prospective members submit at least five examples of their work. Barring evidence that only a tiny minority of science writers ever produce as many as five published articles, this requirement, like every other requirement cited by counsel, falls short.

The director, in the request for further evidence, had stated "it is the norm for news reporters and journalists in general, to author scholarly articles in professional publications and major media." Counsel condemns the "sweeping generalization that all news reporters [and] journalists author scholarly articles," and asserts that the beneficiary, who holds a medical degree, cannot be compared "with the local 'stringer' at a small town rural daily."

Counsel asserts that the beneficiary's articles differ from articles by other medical reporters because her medical training gives her a deeper understanding of the subject matter. This difference, however, is one of degree rather than one of kind. For example, if two newspapers carry articles about a new surgical procedure, both written for a general audience rather than for medical professionals, and one of the articles is written by a physician, that article is not inherently more "scholarly" than the article written by a reporter without medical training.

At issue here appears to be the operational definition of the term "scholarly article." Clearly the Service did not intend for every published article to qualify as "scholarly"; otherwise, the use of the adjective "scholarly" would be superfluous. There must be some distinction between "articles" in general and "scholarly articles." The only key to this distinction that we can find in the regulatory language is the requirement that the "scholarly articles" must appear "in professional or major trade publications or other major media."

The regulatory criteria were designed to apply as broadly as possible to various fields of endeavor. If we define a "scholarly article" as a mass-market article written by a journalist with professional training in another field, we very narrowly limit the definition, and there is no consideration for the "professional or major trade publications" contemplated in the regulation. A general-audience newspaper is not a professional or trade publication, and articles in such a newspaper are popular, rather than scholarly articles.

Scholarly articles in the field of medicine appear in journals such as the New England Journal of Medicine and the Journal of the American Medical Association. These articles are written by practicing physicians and medical researchers, and utilize highly

technical language intended for a specialized audience. Such articles often include copious bibliographical footnotes or endnotes, citing prior scholarly articles. The petitioner has not shown that the beneficiary has written journal articles of this kind, or that the beneficiary has written technical articles about the art of medical reporting in a trade publication for journalists.

The director, thus, was incorrect in asserting that all journalists write "scholarly articles," but counsel is equally incorrect in asserting that a given journalist's professional training makes that journalist's articles more "scholarly" than those of a less-educated reporter.

The director denied the petition, acknowledging that the beneficiary "is a talented medical new[s] reporter with some notoriety" but finding that the petitioner has not shown the beneficiary to be "one of the very top medical new[s] reporters in the profession."

On appeal, counsel maintains that the petitioner has met three of the regulatory criteria and therefore the director has no discretion to deny the petition. Counsel adds that the director "incorrectly added the requirement of a length of time for national acclaim, as opposed to achievement of such acclaim as specified in 8 C.F.R. 204.5(h)(3)." Counsel states that "neither the regulations nor the Congressional intent . . . indicated that the term 'sustained' meant a period of time as opposed to achievement of acclaim."

This argument collapses upon examination of the statutory language at section 203(b)(1)(A)(i) of the Act, which requires that the alien's extraordinary ability "has been demonstrated by sustained national or international acclaim." The word "sustained" here is obviously an adjective, modifying the noun "acclaim." Counsel does not offer any plausible alternative explanation for the intended meaning of "sustained" in this context.

Counsel offers an implausible, hypothetical argument about "a medical student [who] had discovered a cure for cancer" and become internationally famous so recently that the student's acclaim could not be considered to be "sustained." A "cure for cancer," assuming that one treatment could cure all the many types of cancer, would attract massive media attention and would likely garner the discoverer a Nobel Prize, an international award which would make the winner immediately eligible. Even then, counsel's quarrel here lies more properly with the wording of the statute itself, rather than with the Service's interpretation thereof.

Counsel offers several additional arguments about the precise interpretation of "sustained," but further discussion is moot here

because the petitioner has not shown that the beneficiary has ever achieved, even momentarily, the level of acclaim necessary to place her at the very top of her field. Even if the petitioner had shown the NHI Bronze Awards to be a significant and prestigious award throughout the medical and journalism communities, an award which never identifies the beneficiary in any way cannot inherently contribute to the beneficiary's acclaim; an individual who had never heard the beneficiary's name before the award would, upon review of the award documents, continue not to know the beneficiary's name. The petitioner has not shown that, following its receipt of the Bronze Awards, its offices received inquiries from across the nation requesting the identity of the author of the prize-winning articles.

Counsel contends that, because the director did not specify which of the criteria the petitioner did not fulfill, then the director must have acknowledged, by default, that the petitioner met every criterion that it claimed to have met, or else the director simply rejected the evidence out of hand and refused to consider it. This argument is not persuasive; the petitioner has not addressed key objections which the director had already raised to the petitioner's evidence.

On appeal, the petitioner submits documentation (not mentioned in counsel's brief) pertaining to the 1999 South Asian Journalists Association ("SAJA") Journalism Awards, which "recognize excellence in reporting about South Asia, as well as outstanding reporting by South Asian journalists in the U.S." The beneficiary won a second prize certificate under the category "Journalists of South Asian Origin Working in US/Canada - Outstanding story on any subject (print)." The beneficiary was one of three winners; the third prize winner also received a certificate, while the first prize winner won a certificate and $200. SAJA documents show that the association has "600+" members, and that 33 entries out of a total of 285 won prizes. The petitioner has not submitted any documentation to show that the SAJA Journalism Awards are widely viewed as significant awards in the field of journalism. "South Asian Journalism" is not a field of endeavor distinct from journalism by non-South Asians or journalism about subjects other than South Asia; yet the beneficiary could have written exactly the same article and not been eligible for the award if she were not of South Asian ancestry (the beneficiary herself was born in Canada).

Apart from the above, the press release announcing the awards is dated June 26, 1999, over a month after the petition's May 11, 1999 filing date. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. A June 1999 award cannot retroactively qualify the beneficiary for a May 1999 priority date.

Despite the assertions of counsel, there is no indication that the beneficiary has earned sustained acclaim as a medical reporter outside of the circulation area of the petitioning newspaper. Counsel's arguments about prizes, memberships and scholarly articles are not persuasive, for reasons discussed above. The visa classification rests on comparison with others in the field, and the petitioner has submitted nothing to show that the beneficiary is better known or more widely acclaimed than other medical reporters. The fact, so often stressed by counsel, that the beneficiary attended medical school may well increase bene's understanding of her subject matter but it is immaterial to the issue of whether she has earned sustained national or international acclaim as a medical journalist.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the beneficiary has distinguished herself as a medical news reporter to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the beneficiary shows talent as a journalist, but is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.