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 99 056 50761 Office: Vermont Service Center Date: APR 27 2001

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER: Self-represented

identification 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. The director treated an untimely appeal as a motion, reopened the petition, and again denied it. The matter is now before the Associate Commissioner for Examinations on a new appeal. The appeal will be dismissed.

The petitioner seeks classification 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 in education. The director determined the petitioner had not established that she has earned sustained national or international acclaim.

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). These 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.

This petition, filed on December 7, 1998, seeks to classify the petitioner as an alien with extraordinary ability as a lecturer in the French Department at Barnard College. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which

must be satisfied for an alien to establish sustained national or international acclaim. The petitioner never specifies which of the criteria she claims to have met, but the evidence of record most closely conforms to 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.

The petitioner has received nominal awards from Pennsylvania State University ("Penn State") during the course of her graduate studies there. These awards are limited to graduate students in certain departments of one university and thus are not national or international in character.

According to a Penn State faculty member, the petitioner "won an international fellowship from the American Association of University Women," for which the awarding entity, "receives nearly 1,000 applications each year, but awards only 40 fellowships." The record, at the time of filing, contained no first-hand documentation to confirm this assertion or place it in context. It remains that this award is a graduate student fellowship, and graduate study is not a field of endeavor. The petitioner, who completed her own studies less than two years before filing the petition, has not shown that she has won any awards for professional work in the field as opposed to graduate study.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's 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 petitioner submits two press releases from the College Board's Advanced Placement Program, indicating that the petitioner "was selected to participate . . . in the annual reading and scoring of the College Board's Advanced Placement Examinations." The two press releases, from unspecified years, are largely identical. The press releases focus on the Advanced Placement Program and offers no details about the petitioner except for her name and that of Penn State, the institution with which she was then affiliated. The press releases indicate that "almost 3,600 [increased to 3,700 on one document] faculty consultants from high schools and universities across North America" participated in this review. Given the large number of reviewers, and the absence of specific information about the petitioner, the press release appears to be a "form" document prepared for every participating evaluator.

Apart from the above observations, the petitioner submits no evidence that the above press releases ever appeared in major

national media. A press release is not published material; it merely contains material intended for publication by others.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner has submitted several witness letters, all from faculty members of Barnard College, Penn State, and the Université de Niamey (where the petitioner earned her baccalaureate and master's degrees). These faculty members praise the petitioner's work and attest to her talent, but none of them indicate that the petitioner has earned a major reputation outside of the institutions where she has worked or studied. Discussion of the petitioner's specific talents and aptitudes cannot suffice to fulfill this criterion.

Penn State Professor [redacted] states that the petitioner "has already made a significant impact by presenting papers on her research at two meetings of the African Studies Association . . . and by obtaining acceptances for chapters in books on West Africa now being edited by specialist in the field of African literature." It is too early to assess the impact of chapters which, at the time of Prof. [redacted] letter, had yet to be published; and the record contains no independent documentation to show that the petitioner's conference presentations have had any more national or international impact than other presentations in the same field. The letters accompanying the initial filing show, essentially, that the petitioner has earned the respect and admiration of those who have trained or worked with her first-hand.

In response to a request by the director for further evidence, the petitioner states:

> As for my research it is based on orality in West African societies and it is mostly concentrated on women because most research so far has focused on men. It is research already has tremendous impact on both research and teaching in general. First, it constitutes a pioneering addition to the small but growing corpus of African literature and the world in general. Second, I use these texts in my courses on African literature and Civilizations in order to give a new gender-balanced view of both the oral and the written.
>
> I have already participated to many conferences [sic] in my field . . . and also moderated two main conferences here at Columbia [University, [redacted] sister institution].

The petitioner bears the burden of showing that others throughout her field share her view of her work as "pioneering." The petitioner's use of her own materials in a course that she teaches

does not constitute "tremendous impact on . . . teaching in general"; the petitioner has not shown that other teachers have adopted her materials on a national or international scale.

The petitioner details her plans to publish several books which, according to her comments, do not appear to have been completely written yet, let alone published, and any assertions as to the ultimate significance of these works is, at this early stage, necessarily speculative and conjectural.

We note that, in this same letter, the petitioner questions whether she should have sought classification as an outstanding researcher under section 203(b)(1)(B) of the Act. Pursuant to 8 C.F.R. 204.5(i)(1), petitions seeking that status must be filed by a U.S. employer seeking to employ the alien on a permanent basis. The classification is, by law, unavailable to self-petitioning aliens.

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

The petitioner documents no published work as of the petition's filing date. A list of such publications on her own curriculum vitae represents a claim rather than actual evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In a subsequent submission, the petitioner submits letters from prospective publishers, instructing the petitioner to obtain copyright clearances from quoted authors and informing her that "the text needs a good bit of work." These letters, dated January 28 and April 6, 1999, indicate that these works still had not been published several weeks or months after the petition's mid-December 1998 filing.

The director denied the petition on July 7, 1999. The petitioner filed an appeal on August 16, 1999, which because it was untimely, the director treated as a motion to reopen. In this initial appeal statement, the petitioner stated "I may have filed for the wrong status. Is there a possibility to reintroduce my application under the status you think my application fits in?"

There is no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Furthermore, the petitioner bears the responsibility of specifying what classification she seeks. The director is under no obligation to subject her single petition to multiple adjudications until a classification is found for which the petitioner qualifies. If the petitioner seeks

consideration under multiple classifications, she must file a separate petition, with fee, for each of the classifications sought. We note that most immigrant visa classifications require that a U.S. employer, rather than the alien, file the visa petition.

For the above reasons, on September 7, 1999, the director reaffirmed the denial of the petition. On appeal from this decision, the petitioner contends that she "was wrongly denied the status," despite her own repeated prior assertions that she may have sought the wrong classification.

On appeal, the petitioner submits various documents regarding her activities between 1995 and 1999. The documentation from 1999 concerns activities undertaken after the petition's December 1998 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. If she was not already eligible as of the filing date, the petitioner cannot make herself retroactively eligible through her achievements after that date.

The petitioner submits documentation pertaining to her International Fellowship from the American Association of University Women Educational Foundation. According to this documentation, the fellowship "provides a stipend of $15,065" covering the period from July 1, 1995 to June 30, 1996. The fellowship is intended to offset the costs of ongoing research; nothing in the record shows that the award was given in recognition of excellence in the field of endeavor. Rather, the available evidence suggests that the petitioner was chosen based on the merits of her proposal for future research. For instance, the fellowship contract requires that "[a]ny change in the plan of study or research must be approved by the Chair, International Fellowships Panel."

The petitioner asserts "I may not be a Nobel prize winner yet, but I know for sure that my research, my knowledge of African literature and oral literature of women, and my ability to be among the best teachers and productive researchers unable me [sic] to apply under that status." The petitioner's own opinion of the significance of her work is not a persuasive factor in this proceeding. The petitioner has not submitted any evidence to show that researchers in her field, outside of Barnard and the schools where she studied, regard her work as being among the most important in the field, or that she herself is among the most highly-acclaimed figures in that field. A "Nobel prize winner" has won such recognition, and it is for individuals of that caliber for whom this highly restrictive visa classification exists.

The petitioner shows that she has obtained grants and contracts, and participated in conferences, but nothing in the record indicates that these circumstances are at all unusual, let alone extraordinary, for an active researcher in her field. The petitioner only finished her own graduate studies in 1997, and while it is not logically impossible to achieve sustained national or international acclaim in the space of a year and a half, the record does not show that the petitioner rose to the top of her field between her initial employment in 1997 and the filing of the petition in late 1998.

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 petitioner has distinguished herself as an educator or researcher 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 demonstrates that the petitioner has produced some original topics for study, but the record is not persuasive that the petitioner's achievements set her significantly above almost all others in her field nationally or internationally. 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.