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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



PUBLIC COPY

AUG 29 2001

File: [Redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner: [Redacted]
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 that 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 that 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 that 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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner identifies itself as an "Education Research and Clinical Medical Practice" which seeks to employ the beneficiary as a "Bioenergetic Therapist." 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. 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. We need not enumerate the exact criteria, because the petitioner acknowledges that the beneficiary cannot fulfill them.

The only submission accompanying the initial filing of the petition is a letter from Dr. C. [REDACTED] of the petitioning institution. Dr. [REDACTED] states that the beneficiary "has established himself as an expert in his field but has yet to earn national or international recognition for his extraordinary gifts." Dr. Shealy asserts that another alien had previously been "granted immigration status in order to have us study his abilities," but he offers no documentation from this earlier proceeding.

Subsequently, 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, the petitioner has submitted another letter from Dr. [REDACTED]. Dr. [REDACTED] states that the beneficiary "has demonstrated a remarkable ability to alter the computerized electroencephalographic brain map in two situations from over 100 feet away in a different building, and in three situations, from approximately 160 miles away." Dr. Shealy states that the beneficiary exhibits an unparalleled "healing ability" unknown among any other living persons, and that "it would be extremely valuable for us to do long-term research on the affects [sic] that this type of individual can have upon a variety of physiological parameters and ultimately upon illness itself."

The petitioner has also submitted two certificates from Moscow Educational Centre. One document states that the beneficiary has "passed examinations and tests in the following subjects on a profession of bioenergotherapy." The subjects are identified as "reflexotherapy," "bioenergotherapy," "extrasensories," "astrology," "bioenergetics," and "psychology." The remaining document certifies that the beneficiary has been "given a qualification of bioenergotherapist [and] psychologist." At most, these documents show that the beneficiary has received occupational training.

The director denied the petition, because the visa classification demands sustained national or international acclaim, which the

petitioner has already conceded the beneficiary does not have. On appeal, the petitioner submits additional letters.

An unsigned statement addresses the beneficiary's work, stating in part:

Our world consists of energy fields and their different vibrational frequencies. . . .

We are continually receiving small frequency charges, which are active, coming into our body from the universe. This universal energy must go through our body to the ground. If it has no way to get out, it . . . causes energy blockages which in turn cause many diseases. Proper grounding is very important. Without it, our body deteriorates. . . .

[The beneficiary] appears to have the ability to get information from these energetic fields and be able to diagnose patients. If patients have the desire for bioenergetic treatment, he also has the ability to affect their energy field in ways that bring balance and harmony, which in turn allows the body to heal itself.

The statement suggests that the beneficiary can "effect changes in the brain waves of persons connected to an EEG machine," and "change and balance the hormonal system in the body over a period of time." The record is entirely devoid of empirical evidence to support these claims, as well as the fundamental claim that disease is caused by "blockages" of only vaguely-described "energy."

Dr. Shealy, in his latest letter, states "I am aware that [the beneficiary] does not meet all of your criteria with regard to national and international recognition and awards, but I believe . . . he does have an extraordinary ability that needs to be researched and documented." Dr. Shealy speculates that, if "awards in Energy Medicine" are given in the future, the beneficiary "may very well be its first recipient."

The plain wording of the statute, cited above, demands "extensive documentation" to show "sustained national or international acclaim." Dr. [REDACTED] has now twice admitted that the beneficiary lacks this acclaim. Dr. Shealy's statements suggest that he misunderstands the nature of the visa classification. We simply have no discretion to waive the fundamental requirement of sustained acclaim, simply because the petitioner believes the beneficiary to be "extraordinary" in some way.

Other letters in the record indicate that various researchers are interested in studying the beneficiary's purported abilities, but there is no indication that the beneficiary has earned sustained national or international acclaim. U.S. Representative Karen

McCarthy, in a letter, asks for the Service's "cooperation" and observes the petitioner's "desire for the earlier decision to be reversed [sic]," but offers no new information.

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.

The petitioner has admitted that the beneficiary has not earned sustained acclaim, and therefore the petition simply cannot be approved. The classification sought is an employment-based classification, expressly reserved for the top figures in a given field; it is not a means of obtaining test subjects for scientific experimentation as is plainly stated to be the case here. Furthermore, we cannot ignore the absence from the record of any empirical evidence to confirm or even suggest the very existence of either the beneficiary's purported powers, or the unnamed "energy" he is said to manipulate. 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.