

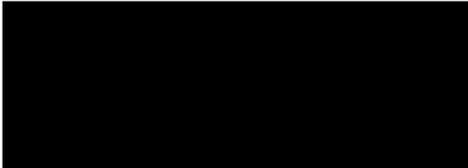


U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



File:

Office: Texas Service Center

Date:

DEC 2001
11 DEC 2001

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)

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER: Self-represented

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, Director
Administrative Appeals Office

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

The petitioner is an electrical installation company. 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 an electrical supervisor. 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).

8 C.F.R. 204.5(h)(3) states:

A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, internationally recognized award), or at least three of the following:

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) Published material 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;

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In a letter accompanying the petition, Errol E. Greenridge, director of the petitioning company, states that the beneficiary possesses "that skill and ability which gives [the petitioning company] the opportunity to satisfy Orange County School Board needs." Mr. Greenridge adds that workers with crucial skills are in short supply. The petitioner's needs, however, are irrelevant to the controlling issue of sustained acclaim.

Submitted with the petition were various documents pertaining to the petitioning company, as well as documents reflecting the beneficiary's employment history and qualifications. These documents establish that the beneficiary is an experienced and qualified electrician, but they address none of the regulatory criteria pertaining to sustained acclaim.

On February 3, 2000, 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." The director also inquired as to how the beneficiary's entry would prospectively benefit the United States.

In response to this letter, Mr. Greenridge states that the beneficiary has "received national and international recognition from the Government of Trinidad and Tobago, National Maintenance Training and Security Company Ltd." Mr. Greenridge asserts that this recognition took the form of several "Employee of the Month" awards. Mr. Greenridge does not demonstrate that these "Employee of the Month" certificates are awards from the national government of Trinidad and Tobago, or even that the company which presented the awards is a government agency rather than a private company.

Mr. Greenridge states that an article about the beneficiary's "Employee of the Month" rating appeared in "the Trinidad national industrial relations bulletin." The publication in the record, In Progress, is identified on its masthead as "A Monthly Publication of the Employees of the National Maintenance Training and Security Co. Ltd." There is no evidence that this company is a government entity, or that In Progress is a widely circulated major periodical rather than simply an employee newsletter.

Mr. Greenridge contends that the beneficiary "performed in a leading capacity through the country of Trinidad and Tobago." Mr. Greenridge states that evidence to support this claim is attached, but he does not specify what evidence supports his claim. None of the documents submitted appear to indicate that the beneficiary has ever had a national leadership role in his specialty. The record shows that the beneficiary has, while working for various employers, performed contract work for some government offices in Trinidad and Tobago, but performing such work is not indicative of national leadership. The beneficiary's various former employers are obviously satisfied with his performance, but by no means does this demonstrate or imply that the beneficiary is nationally recognized as one of the most highly acclaimed figures in his field.

Mr. Greenridge asserts that the beneficiary "commanded and established commercial excellence and successes," but again he cites no supporting evidence. The documentation accompanying this claim contains no financial information whatsoever.

The director denied the petition, stating that the petitioner has not substantiated its claims regarding the beneficiary's eligibility. On appeal, the petitioner submits copies of previously submitted documents as well as new exhibits and arguments from Mr. Greenridge.

Mr. Greenridge asserts that the petitioner has met the regulatory requirements at 8 C.F.R. 204.5(k)(3)(ii); however, that regulation deals with a different visa classification. The petitioner does not address the relevant criteria set forth at 8 C.F.R. 204.5(h)(3), although the director had clearly and repeatedly provided those criteria to the petitioner in full.¹

A newsletter submitted on appeal seems to indicate that the National Maintenance Training and Security Company Ltd., which employed the beneficiary as a "Specialized Maintenance Technician," is in fact a government entity. Still, this evidence is ambiguous at best, and even then it misses the principal issue of national acclaim. Government employment as a technician does not cause, establish, or demonstrate sustained national or international acclaim. None of the evidence submitted on appeal rises to the level of evidence required by the above-listed criteria.

On appeal, Mr. Greenridge makes a number of entirely unsupported claims which warrant no discussion, except to state that 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).

We briefly note an issue not addressed by the director. This highly restrictive visa classification is, by statute, limited to aliens of extraordinary ability in the sciences, arts, education, business, or athletics. The petitioner has not established that the petitioner's occupation as an electrician falls into any of these categories.

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

¹Even then, Mr. Greenridge plainly misrepresents one of the inapplicable criteria, referring to the beneficiary's "seven (7) years experience" when the cited regulation requires at least ten years of experience. See 8 C.F.R. 204.5(k)(3)(ii)(B).

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 himself as an electrical supervisor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. 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.