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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File:

Office: Nebraska Service Center

Date: **DEC 13 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)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

We note that the Form I-140 petition identifies AODA Health Seminary as the petitioner. The petition, however, was signed not by any seminar representative, but by the alien himself. Therefore, we shall consider the alien and not AODA Health Seminary to be the petitioner. The AODA Health Seminar is a drug abuse training institution that trains individuals to be AODA ("Alcohol and Other Drug Abuse") Certified Counselors in Wisconsin.

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 as an AODA counselor. The director determined the petitioner had not established 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 achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. 204.5(h)(3):

Initial evidence: 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, international 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 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;

(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 specification 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.

The initial filing includes evidence that the petitioner has participated in the Minority Training Project of Wisconsin, "designed to assist persons from diverse racial backgrounds in acquiring the knowledge, practice skills and abilities necessary to meet Wisconsin Alcohol Tobacco or Drug Counselor Certification requirements." Rev. James Vojtik, pastor of St. Clement Parish, offers several reference letters on the petitioner's behalf. Rev. Vojtik asserts that the petitioner's "talents . . . are sorely needed in this community" because no other Spanish-speaking drug counselor is available in the area.

Rev. Jesus Ortega, of the AODA Health Seminar Executive Board, states that the petitioner, already "a Certified Prevention Counselor on Alcohol and Other Drug Addictions," is a student at the seminar studying for Wisconsin certification. Rev. Ortega repeats Rev. Vojtik's assertion that the local community is in need of a Spanish-speaking AODA counselor.

The remainder of the initial submission consists of documentation regarding the petitioner's ongoing training. Nothing in this submission relates to any of the ten criteria, or otherwise implies eligibility for the highly restrictive visa classification sought.

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, Rev. Jesus Ortega states in a new letter that the petitioner should "be consider[ed to be] an outstanding special person" who "will be an outstanding person in the community [where] he resides." Rev. Ortega refers to a newly submitted videocassette recording of the petitioner's "graduation as an alcohol and other drugs abuse counselor in Mexico."

Other documents submitted with the petitioner's response discuss the general need for Spanish-speaking counselors in the local area, and the petitioner's ongoing training.

The director denied the petition, because "the evidence in the record does not show that the beneficiary enjoys national or international acclaim." The director acknowledged the importance of drug and alcohol counseling, but the petitioner has not shown that he has earned sustained national or international acclaim as a result of his work in that field.

On appeal, the petitioner states that he has "become an extraordinary outreach [sic] to many Latinos, who otherwise would have received no mental treatment with alcohol or drugs." The petitioner adds that he has worked with Latino veterans as well. The petitioner, however, has not shown that he has reached the top of his field of endeavor, or achieved sustained national or international acclaim. These requirements are fundamental to the visa classification sought, and cannot be waived for any reason. If the petitioner is not acclaimed nationally or internationally as one of the top figures in his field, he cannot qualify for this highly restrictive visa classification, regardless of how much individual clients may benefit from his work. As the director noted, there are other visa classifications available for workers in the petitioner's field, and the denial of this petition is without prejudice to the outcome of a future petition filed in a more appropriate classification.

We note that, on appeal, the petitioner asserts "all of my family lives here, and under the bill S. 2367 thus grant program privileges in the interest of the U.S." The petitioner's family circumstances are irrelevant to the core issue at hand, i.e. the petitioner's eligibility as an alien of extraordinary ability. We note that, in earlier correspondence, witnesses had stated that the petitioner's entire family was outside the United States at the time the petition was filed.

Review of the record, however, does not establish that the petitioner has distinguished himself as an AODA counselor 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 indicates that the petitioner's training as a counselor was incomplete at the time of filing. While the local Hispanic population would benefit from the services of a Spanish-speaking AODA counselor, it does not follow that the petitioner'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.