



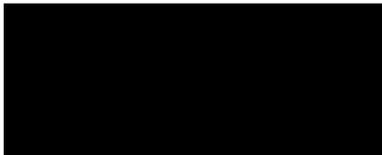
U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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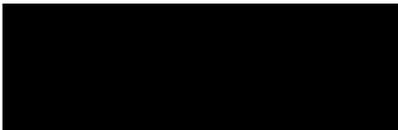
File: [Redacted] Office: Texas Service Center

Date: **DEC 21 2001**

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:



Public Copy

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, 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 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 author. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability or that the petitioner would substantially benefit the United States.

On appeal, counsel argues that the director erred by concluding that, despite meeting three criteria, the petitioner had not established national or international acclaim. Counsel also argues that the petitioner would substantially benefit the United States.

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

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(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). This regulations lists 10 criteria, three of which must be met in order to establish extraordinary ability. The director concluded:

The evidence has established that the self-petitioner has met three of the listed criteria and that he is a reputable Author who has made contributions to his field.

However, merely meeting three of the criteria does not establish that a person is of extraordinary ability. The burden is on the petitioner to establish by clear and convincing evidence that an alien has sustained national or international acclaim and that the individual is one of that small percentage who have risen to the very top of the field of endeavor.

The petitioner has submitted letters of support, which indicate that the alien has made contributions to his field. However, these letters do not establish that the [petitioner's] career achievements are above the achievements of others that work in the same field or that he has achieved sustained national or international acclaim.

These statements are admittedly very poorly worded. It would be nonsensical, however, for the director to conclude that the petitioner was eligible under the regulations but that the petition was not approvable. Thus, a more rational interpretation of the director's decision is that the petitioner submitted documentation which related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence which addresses at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim.

The petitioner submitted evidence which arguably addresses the following criteria.¹

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 petitioner submits a letter verifying his active membership in the Outdoor Writers Association of America. The petitioner, however, failed to submit evidence of the membership requirements. While it is the petitioner's burden to establish the membership requirements, review of the Association's website, owaa.com, reveals that authors and editors must have one book published "per year" to qualify for active membership. The website does not state, however, over how many years an author must publish one book per year. As publishing two books over two years is not necessarily an outstanding achievement, it is not clear that the Association requires outstanding achievements of its members.

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.

¹ Counsel claims that few of the regulatory criteria are applicable to authors and that the petitioner meets those criteria which are applicable. Other criteria not claimed by the petitioner, however, are applicable. For example, there are national and international awards for authors, such as the Pulitzer and the Nobel Prize for Literature and authors can demonstrate high remuneration.

In addition to writing pet care books, the petitioner claims to have also commissioned and edited other pet care books. Rosemary Loro, a bird specialist, asserts that the petitioner commissioned her to write two books on parrots. Malcolm Willis asserts that the petitioner was "instrumental" in the success of Mr. Willis' book and another book in which Mr. Willis had authored a chapter. J.F. Burnett of KSB Publishers' Services writes:

As sub-contractor providing an editorial and design service in respect of books produced for Paradise Press of Australia, we had very close dealings with [the petitioner] and were continually impressed by his encyclopaedic knowledge across the whole spectrum of the field of pet literature. This made our work on the books far easier than it otherwise would have been and undoubtedly contributed substantially to the quality of the contents of the books in question. This latter point was confirmed to us on a number of occasions by the comments made by individual experts in the subjects covered.

These letters do not indicate that the petitioner actually edited work for other authors. Rather, they suggest that, before he began writing his own books, he commissioned and published the works of other authors. Had the petitioner been asked to edit the drafts of other authors based on his national or international acclaim as an author, such requests could serve to meet this criterion. Such is not the case. Rather, the petitioner appears to have begun his career as a proprietor of K&R Publishing.² It is inherent in the job of a publisher to commission and review books. Thus, such duties are not evidence of national or international acclaim. The petitioner later began writing his own books. There is no evidence that, based on the national or international acclaim of those books, the petitioner was requested to edit other works. While the record contains evidence of the petitioner's authorship of numerous books, the petitioner has not submitted any copies of book title pages listing him as the editor.

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

John Coborn, a fellow author, asserts that other publishers have followed the petitioner's "guidelines," and that the series of other authors' pet books published by K&R Publishing in the 1970's, "are still regarded as authoritative." These claims are extremely vague and unverified by the other publishers who were allegedly influenced by the petitioner. Moreover, it is not clear that the petitioner's abilities as a publisher are relevant to his abilities as an author.

Neal Pronek, Managing Editor of T.F.H Publications, Inc., writes:

I sincerely believe that [the petitioner] has made valuable and long-lasting contributions to the body of literature dealing with pet animals of all types. He has made it easier and more pleasurable for hundreds of thousands of pet owners

² The petitioner has not submitted evidence substantiating the claim by Ms. Loro that the petitioner was, in fact, the proprietor of K&R Publishing.

to provide the type of thoughtful, humane care that the animals deserve.

Once again, this general praise is not supported by specific examples of contributions to the field of pet book authorship. The petitioner has not submitted letters from other authors indicating that they have been influenced by the petitioner's books when writing their own books.³

Finally, counsel consistently emphasizes that an upstart publishing company, Anamalia, Ltd., has commissioned a series of books from the petitioner, one for each breed of cat. As these books have yet to be published, their potential influence is unknown. In addition, Anamalia, Ltd., was founded by former employees of T.F.H. Publishing. As such, that they commissioned the petitioner as an author is not evidence of his recognition beyond his previous publisher.

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

The petitioner relies on an article on sugar gliders published in Pet Age, an article on hedgehog temperament in Hedgehog World International, and an article on selling hedgehogs in Pet Age. The petitioner is an author who specializes in pet care. Thus, writing articles about pet care is inherent in the petitioner's occupation. Having his articles published is merely evidence that he is able to make a living as an author, not that he has attained national or international acclaim as an author and pet care expert.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Ms. Loro claims that the petitioner was the proprietor of the British publishing house K&R Publishing, alleged to have been a "pioneer mover in many modern aspects of pet book publishing." The record is absent any evidence to substantiate that the petitioner was the proprietor of this company or that the company had a distinguished reputation.

The petitioner also served as president for the North American Hedgehog Association from 1995 to 1997. Once again, the petitioner has not submitted any evidence to establish that this association enjoys a distinguished reputation.

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

Admittedly, this criterion is not applicable to authors. We would accept, however, evidence of the commercial success of the petitioner's books as comparable evidence for this criterion under 204.5(h)(4). Neal Pronek, Managing Editor of T.F.H Publications, Inc. writes:

³ Letters from authors whose books the petitioner commissioned prior to his own career as an author are not demonstrative of his influence as a writer.

We have published well over 50 titles under [the petitioner's] name and various of his pen names, that number being a testament to his dependability as well as his popularity.

The petitioner submitted examples of some of his many books and a list of the remaining books. While the record contains a letter from A.F.H. Publishing verifying the list, there is no evidence that the list submitted is the one verified by A.F.H. publishing. Regardless, Mr. Axelrod confirms that the petitioner authored more than 90 books and independent review of various websites confirms that the petitioner has authored numerous books. The petitioner, however, has submitted no statistical evidence from his publishers regarding the commercial success of these books as compared with other books.

The petitioner submitted several subjective opinions regarding his expertise. Herbert Axelrod, Chairman of the Board of T.F.H. Publications, Inc., writes:

In 1987 I was given the opportunity to sub-contract [the petitioner's] services as an author. In that capacity he has worked full time for this company. Over the seven years since then he has written some 90 pet books for T.F.H. – a considerable accomplishment, in itself, given the high standards required by this company.

The subject matter he is well versed on ranges from mammals through birds to fish and invertebrates. It is most unusual for an author to be able to write with authority across such a wide range of animals. His knowledge of technical subjects, such as animal classification, genetics and psychology, coupled with an in depth understanding of matters such as nutrition, accommodation, breeding and health matters, is such that he is able to move from one pet subject to another with great ease – a very rare attribute indeed.

He writes with a down to earth no nonsense style that balances very practical advice with thoughtful attention to technical detail. His original research is of very high standard. To round off his ability he is able to draw on many years of production and planning expertise that makes his work very appealing to house editors. He is without doubt one of the world's preeminent experts on the pet book per se.

Peter Sherred, former Vice President of Arco Publishing, Co., Inc., writes:

I had numerous business dealings with [the petitioner] and acquired over 20 book titles from him for sale in the U.S.A.; with the odd exception, they were all successful.

[The petitioner] is an author, editor and producer of fine quality non-fiction books. His expertise is mainly in the pet field (dogs, cats, aquarium [sic] fish ,

etc.). His reputation in this field is known world-wide. In addition, he also has extensive knowledge on the subjects of natural history and zoology.

M.J. Boulding, Director of Dog World, writes:

We have indeed purchased and recommended to readers of our various magazines and newspapers his books over many years. I would consider that he would fit the bill in any venture in the United States of America. His specialized knowledge in this field is rare due to the enormous size of the subject.

The regulations, however, require objective evidence which meets at least three of the ten regulatory requirements in order to relieve the Service from relying on the subjective opinions of others. The only objective evidence provided by the petitioner is the number of books and articles that he has had published. While the evidence clearly demonstrates that the petitioner is a prolific writer, the petitioner has not demonstrated how this one fact establishes national or international acclaim.

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 himself as an author 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 shows talent as an author, but is not persuasive that the petitioner's achievements set him significantly above others in his 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.