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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



File: [Redacted] Office: Vermont Service Center Date: JUL 10 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

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, 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 in business. 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 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 he has sustained national or international acclaim at the very top level.

On the Form I-140 petition, the petitioner identified his occupation as "economist analyst." The petitioner offers this description of his intended work in the United States:

I have worked for the West African States' Central Bank (WASCB) for 10 years. I retired on December 31, 1994 while occupying the position of Deputy Director. . . .

[M]y first and foremost action will be the establishment of a center for exchange between African currencies and the American Dollar with respect to existing exchange rates.

My center (AMEX) will mainly assist Africans in the New York City area to transfer their earnings to the rest of their respective families in Africa. Furthermore, AMEX will also offer services relevant to public relations such as putting in contact African commercial banks or institutions with American investors interested in investing in Africa.

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.

The petitioner's initial submission did not address the ten regulatory criteria. This submission consisted of translated documents relating to the petitioner's past employment. From these documents, we can assemble the following chronology:

- June 1963 - the petitioner completed his third year of study at the *Ecole Supérieure de Commerce de Lille*. The petitioner's resume indicates that he graduated the following year, but the only actual documentary evidence consists of this 1963 letter.
- May 1973 - the petitioner is named "Secretary of Industrial Development and Public Works" of the Republic of Mali. In this capacity, he serves as chair of the "Council of Ministers of the Organization for the Development of the Senegal River" and the "Authority for the Development of the Liptako Gourma."
- May 1978 - the petitioner, identified as "Inspector of Economical Services, 2nd class, 4th grade, previously Secretary of Health and Social Affairs," received a five-year assignment with the Central Bank of Mali.
- January 1984 - the petitioner is named to an unspecified "senior management position" in the Studies and Control Department of the Central Bank of Mali.
- October 1993 - the petitioner becomes "Assistant to the Director-Secretary General in charge of Councils, Courier and Protocols" at the Central Bank of West African States, with total

compensation of "F.CFA 1,900,090." Prior to a reorganization of the bank's management structure, the petitioner had been "Assistant to the Director of the Bureau of Councils and Communications."

The above information establishes that the petitioner has, in the past, held cabinet-level positions in the government of Mali, but it does not establish his reputation as an economist or analyst.

The director informed the petitioner that the documentation submitted with the petition was not sufficient to establish 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 submitted copies of previously submitted documents, as well as the personal statement excerpted above.

The director denied the petition, stating that nothing in the record establishes the petitioner's acclaim as an economic analyst, and that operating a currency exchange is not a function of an economic analyst.

On appeal, the petitioner argues that he studied at "France's most prestigious business institution" and that he has held top positions in Mali's cabinet and the Central Bank of West African States. The petitioner asserts that he earned a monthly salary equivalent to \$4,000, "in a country where the annual per capita income is \$1400 per year."

Subsequently, the petitioner secured the assistance of counsel. Counsel has subsequently provided a brief and additional evidence. In that brief, counsel acknowledged that the initial petition and appeal included minimal documentation.

Counsel states:

[The petitioner's] career of distinguished public service spans three and a half decades and two broad but related phases. In the first phase, he worked in the public sector in Mali, beginning as a presidentially appointed technical advisor to certain government ministers. . . . Further, while retaining ministerial post appointments and responsibilities, he was appointed to chairmanship of multi-national commissions responsible for the oversight of multi-national river valley and industrial development projects. . . .

In the second phase of his career, [the petitioner] was appointed to executive positions in Malian banking . . . and multi-national (or regional) banking organizations. . . .

[H]is achievements have been in the area of providing leadership, among multi-national governmental ministers and directors, for development projects . . . health administration . . . and banking. . . .

[The petitioner's] field of expertise might properly be described as economic development and public affairs administration.

Counsel contends that the newly submitted evidence meets the following criteria from 8 C.F.R. 204.5(h) (3):

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

Counsel asserts that the petitioner fulfills this criterion through his cabinet-level posts in the Malian government, and his high-level positions at the WACB. It is certainly difficult to disagree with the proposition that a ministerial position in a national cabinet readily fulfills this criterion.

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

Counsel asserts that the petitioner "spearheaded several substantial multi-national developmental and public affairs projects. He led large-scale developmental projects that resulted in the construction of two major dams." Counsel adds that the petitioner "also made contribution[s] of major significance in the field of public health administration" by participating in United Nations-funded disease control efforts. The petitioner, however, has not shown that these accomplishments are in the field in which he intends to seek continued employment. The petitioner has created no clear nexus between his past accomplishments as a government official and his intended future work as an economic analyst and operator of a currency exchange.

Counsel states that the "[p]etitioner's appointments to executive posts within quasi-governmental banking organizations may also be regarded as having enabled him to continue making significant business-related contributions." Counsel does not list any specific contributions from the petitioner's banking experience, but simply argues that the petitioner's high position afforded him the opportunity to make such contributions. Counsel states "[g]iven his activities' regional significance, it is therefore not

inappropriate to regard [the petitioner's] executive activities there as business-related contributions of major significance." The appointments themselves constitute leading or critical roles, which have already been addressed in a separate criterion. We cannot infer, from the very fact that the petitioner held high positions, that he must have made contributions of major significance while holding those positions. Otherwise, it is meaningless to separate the two criteria.

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 Historical Dictionary of Mali contains a two-sentence entry which identifies the petitioner as an "[a]dministrator who has served in a variety of posts," the most recent one then being Minister of Public Health and Social Affairs.

The petitioner also submits several articles [redacted] a daily newspaper published in Mali. One 1973 article contains brief biographical sketches of the then-newly appointed presidential cabinet. Other articles from mid-1973 feature the petitioner's efforts "to finance the overall program to develop the Senegal River." The record does not show that the petitioner has attracted any subsequent media attention after these four articles, which were all published within a three-month period nearly 30 years ago.

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.

Counsel asserts that the petitioner's various high-ranking positions "required him to supervise the work of others." Again, the petitioner's leadership role fulfills a separate criterion, already addressed. To assert that all supervisors "judge" the work of their subordinates renders this criterion so broad as to be essentially meaningless. Furthermore, many of the cited positions are outside of the field of economics.

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.

Under this criterion, counsel cites the petitioner's government posts and ancillary appointments, such as his role as "a delegate to the World Health Assembly." Counsel contends that "[s]uch

appointments are tantamount to membership in associations requiring outstanding achievement."

Here, counsel attempts to use the petitioner's leading roles in organizations to fulfill a fourth criterion. Certainly, the petitioner's involvement in government at the cabinet level, and at top levels of an international organization, carries significant weight; but it is not permissible to hold that the very fact that he held these positions represents *prima facie* evidence that the petitioner was a member in exclusive organizations, a judge of the work of others, and responsible for original contributions of major significance. Counsel appears to argue, in effect, that the very fact that the petitioner held these top positions should be sufficient to establish eligibility. Such a finding would be contrary to the statutory demand for "extensive documentation," reflected in the regulatory requirement for a broad variety of documentary evidence.

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

Counsel amplifies an earlier argument by the petitioner, stating that the petitioner earned roughly \$3,589 per month in late 1993 and 1994, which "is astronomically greater than the average per capita income" of Mali. The regulation, however, requires comparison of the petitioner's compensation "in relation to others in the field." The per capita income for the entire country is, therefore, not a valid ground for comparison because only a tiny segment of Mali's population consists of cabinet ministers and banking officials. Also, as counsel acknowledges, the petitioner was paid the above salary in Senegal, not in Mali, and "salaries in Senegal . . . tend to be higher than salaries for similarly situated Malian workers by a factor of about 8 to 10." It is absurd to hold that an alien can satisfy this criterion simply by working in a country that routinely pays higher salaries than the alien's native country. Counsel also acknowledges that "West African salaries in banking tend to be higher than salaries in general government service in the region."

Despite counsel's various disclaimers, counsel maintains that the petitioner earned "a level of remuneration high even for highly compensated government workers." The petitioner submits a chart showing the range of compensation for "selected civil servants" in Senegal. The petitioner offers no comparable evidence to show the income of top banking figures in Senegal; the petitioner was a banking official, rather than a government minister, during the 1993-1994 period for which he has documented his salary. Certainly the figure earned by the petitioner - nearly two million CFA francs per month - is much higher than the figures listed in the charts

submitted by the petitioner, but the petitioner has not presented persuasive evidence that the charts in question are truly on point.

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, certainly, held important positions in government and in banking, but he has not established a pattern of sustained national or international acclaim in the area in which he intends to work in the United States. Indeed, the petitioner has not shown any experience, let alone major success, in the principal types of activities which the petitioner has stated he intends to pursue. While his planned activities and past experience both somehow involve banking and economics, this does not create a sufficient nexus between the petitioner's past and his future plans. The petitioner's very considerable success in one realm does not necessarily translate into acclaim or accomplishment into another. Also, the petitioner's accomplishments were in governmental or quasi-governmental settings (even the petitioner's media coverage was in a government-controlled newspaper); the petitioner's planned exchange center would be in a wholly private setting, in which the petitioner's abilities appear to be comparatively untested. 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.