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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

File:

Office: Texas Service Center

Date: JUN 18 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

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, 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 in the social sciences. 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 sustained national or international acclaim at the very top level.

8 C.F.R. 204.5(h)(5) states:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification are required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s),

evidence of pre-arranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

On Part 5 of his Form I-140 petition, the petitioner indicated his occupation as a "marketing manager." In a letter accompanying the petition, the petitioner again identified himself as a "Marketing Manager, Johnson Corporation . . . Conducting a syndicated study on floor care products." The petitioner also submits a detailed autobiographical statement, primarily concerning the difficulties his family encountered in Vietnam after the end of that country's devastating war in the 1970s, and the efforts which the petitioner has made to improve his circumstances. While the petitioner's earnestness is readily evident from a reading of this statement, the statute clearly and narrowly defines the class of eligible aliens as those who can produce extensive documentation of sustained national or international acclaim.

The petitioner states that his "future career goal is to advance to senior-level management positions dealing with strategy and international management for a multinational corporation," and that his "knowledge of Russian culture, its people and the country would greatly enhance [his] chances of finding employment in corporations doing business with Russia."

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.

In his initial submission, the petitioner did not specify which of the ten criteria he claims to have satisfied. Of the five exhibits cited by the petitioner in support of the petition, four are awards. The fifth is a graduate degree in Business Administration. A college degree is not evidence of sustained national or international acclaim. The petitioner has since stated that the documentation of his degree was submitted "for reference."

The petitioner won the national third prize in the Vietnam National Russian Language Competition in 1988, 1990 and 1991. The petitioner also states that he won a gold medal in 1991 at the International Olympic Competition in Russian, held in Moscow. The petitioner documents his participation in the last event, but the documents do not confirm that he won the gold medal as claimed.

On February 10, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish him 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 additional copies of the same documents which had accompanied the initial filing. All of the described competitions were at the high school level; the documents of record show that the petitioner was in the 9th, 11th, and 12th grades. The petitioner's performance in these competitions establishes his abilities relative to other high school students, but high school study is not a field of endeavor. The petitioner must show that he is at the top of the field as a whole, rather than simply a group of students who have yet to enter the field. The petitioner has not established any professional accomplishments at all in the Russian language field, let alone that he has risen to the top of that field.

The director denied the petition, stating that the petitioner has not that he "has distinguished himself . . . as a Marketing Manager to such an extent that he . . . may be said to have achieved sustained national acclaim." On appeal, the petitioner states:

I did not seek to classify myself as a Marketing Manager with extraordinary ability. . . . I merely find myself as an alien of extraordinary ability in Russian language & culture (social science) who is currently working as a Marketing Manager and who wishes to enter the U.S. to continue to work on and utilize his expertise as an effective means to the end of brilliantly performing in a management position with a U.S. corporation doing import-export with Russia.

The petitioner has not demonstrated any plan or intention to work as a linguist or researcher in the social sciences. From his statements, he clearly intends to continue working as a marketing manager. The fact that the petitioner hopes to work for an employer that conducts business in Russia does not establish that he intends to work in the field of Russian language and culture.

The petitioner asserts on appeal that his previously submitted evidence establishes his receipt of a major international award, and satisfies five of the other regulatory criteria set forth in 8 C.F.R. 204.5(h) (3).

As noted above, we can find nothing in the documentation to establish the petitioner's receipt of a gold medal in 1991. Even if the petitioner were to establish his receipt of the medal, he has not shown that this medal has the universal recognition and prestige of, for instance, a Nobel Prize, an Academy Award, or a gold medal from the Olympic Games (although the word "Olympic" appears in the name of one language competition, there is no evidence that the competition was sanctioned by the International Olympic Committee). Nothing in the record suggests that this high

school-level award represents the top prize in the study of the Russian language and culture.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner asserts that his prizes from 1988, 1990 and 1991 satisfy this criterion. As noted above, the petitioner was not yet an adult when he won these prizes, and the prizes recognize academic rather than professional achievement. The prizes may show that he was among Vietnam's top students of high school-level Russian, but they say nothing of where the petitioner ranks among, for example, tenured linguistics professors with decades of experience and scholarly accomplishments.

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 observes that his performance in the various competitions entitled him to "enroll into the University without having to take the regularly required entrance exam." The petitioner asserts that this exemption "comes really close" to a membership in an association. This argument is not persuasive. A waiver of an entrance examination is not a membership in an exclusive association.

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 selection of participants in the 1991 International Olympic Russian Language Competition was the subject of an article which, the petitioner states, was published in Youth, which the petitioner describes as "a government-run nationwide weekly mass circulation newspaper." As above, this article concerns the petitioner when he was a teenage high school student. We cannot conclude from this single, partial article that the petitioner has attracted more media coverage than almost anyone else in his field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner states that his gold medal "has been hanging in the Hall of Tradition of Vietnam Ministry of Education . . . since 1991," and thus his work has been on display. Display of medals and trophies in this manner is not an artistic exhibition or showcase. Furthermore, any medals won by the petitioner would fall

under the separate category pertaining to prizes and awards. Such prizes do not fulfill a second criterion simply because they are available for public viewing.

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

The petitioner observes that he received a substantial scholarship when he entered college. Financial aid is not a salary or remuneration for services. The petitioner has not demonstrated that he has ever been paid for work (rather than study) related to the Russian language or culture.

The petitioner performed exceptionally in language competitions while he was a high school student. While this is a noteworthy achievement, it cannot suffice to show that the petitioner has risen to the top of a particular field, and remained there. The petitioner's employment activities have been unrelated to his scholastic accomplishments, and his future plans are at best tangentially connected. From the minimal evidence submitted, we cannot conclude that the petitioner is among Vietnam's most highly acclaimed scholars of the Russian language and culture.

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 expert on Russian language and culture 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 that field. The petitioner's success when competing against high school students does not compel the inference that he would perform similarly well against individuals who, unlike the petitioner, have devoted their careers to the study of Russian language and culture. The petitioner seeks to enter the U.S. to continue to work in marketing, rather than primarily engaging in research concerning his claimed area of expertise. 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.