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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

[redacted]

Public Copy

File: WAC 99 009 51313 Office: California Service Center Date: MAY 24 2001

IN RE: Petitioner: [redacted]
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:

[redacted]

Identifying 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, California 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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a senior corporate development manager. Counsel observes that the director has already approved an O-1 nonimmigrant visa petition which the petitioner had filed

previously. Counsel returns to this observation on appeal, and we will address it in that context.

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 has submitted evidence which, counsel claims, meets the following criteria.

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

The petitioner received various awards while a graduate student at the Australian Graduate School of Management ("AGSM"). These awards amount to student scholarships; an AGSM faculty member states that the petitioner "received numerous honours and awards in recognition of her outstanding performance in academia." Graduate study, however, is not a field of endeavor; it is advanced training for future employment. The record does not show that the petitioner has received any significant national or international awards since receiving her M.B.A., when her achievements are judged against those of the top business figures in her field, rather than against university students.

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.

Counsel asserts that the petitioner "is a former Senior Associate at McKinsey & Company, one of the world's most prestigious management consulting firm[s]. . . . [The petitioner] is also a graduate of the Australian Graduate School of Management, probably the finest and most highly regarded business school on the Australian continent." Neither employment nor graduate study constitute membership in associations. A petitioner cannot satisfy this requirement merely by working for a well-known employer or attending a prestigious university.

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.

Counsel identifies exhibit 14 of the initial submission as "evidence of this [media] coverage." Exhibit 14 consists of printouts from searches of an internet database. The searches appear to have centered around the names of corporations with which the petitioner has been connected. There is no indication that a search was conducted using the petitioner's name as the key phrase, which would seem to be the best way to filter out articles that do not pertain to her. The articles themselves are not in the record, and therefore there is no evidence that the petitioner's name appears in the articles at all, let alone is the principal subject of those articles.

The plain wording of the regulation requires submission of the published materials themselves, rather than simply evidence that such coverage exists. This is because, without the materials themselves, we cannot determine to what extent a given published article is about the petitioner. Articles that merely mention the petitioner in passing are not about the petitioner in any meaningful way, and an article about a corporation is not about the petitioner merely because she used to work there.

One of the petitioner's former employers notes that the company "has received substantial media attention for its progressive management thinking." The evidence of this media attention consists of magazine articles about [redacted] which predate by several years the petitioner's employment at the firm.

For the above reasons, we must conclude that the record contains no published materials about the petitioner.

> *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 "is regularly called upon to review the work of other top-notch business people in her professional capacity." If the petitioner's consulting work involves judging the work of others as a fundamental job duty, then such work is typical for her field and thus is not evidence of extraordinary ability or sustained acclaim; it does not elevate the petitioner above other consultants who, to some degree, evaluate the work of their clients and their clients' competitors.

The record shows that, while employed at McKinsey & Company, the petitioner "actively participated in the company's recruiting efforts to undergraduate and business school students. . . . [The petitioner] assisted in the screening and interviewing of approximately 100 to 150 students." In this capacity, the petitioner was not judging the work of others in the field, but rather evaluating students who hoped to enter, but had not yet

entered, the field. To include interviewing job applicants under the category of judging the work of others makes the category so broad as to be meaningless. Virtually every business interviews its prospective employees, and it is not a mark of national or international acclaim that the petitioner participated in what appears to be an entirely routine process.

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

Counsel cites several of the petitioner's contributions, stating among other things that the petitioner "developed a distribution strategy for the largest retail bank in New Zealand," "played a major role in restoring the profitability of the Australian subsidiary of one of the world's largest oil companies," and "performed ground-breaking research on the role of women in the business world in both Australia and Japan."

The petitioner submits letters from past and present clients and employers. While these individuals have high praise for the petitioner, the range of witnesses does not show that the petitioner has earned any sort of recognition or acclaim outside of the employers and clients with whom she has personally dealt. Also, the record does not show that the petitioner's consulting projects have generally been of greater importance than those undertaken by most other consultants.

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

Counsel states that the petitioner "is responsible for numerous contributions to the field's collection of scholarly literature," including The Alchemy of Growth, "Staircases to Growth," Australian Career Women: First-Hand Glimpses, A Breath of Fresh Air: Women Offer a New Paradigm for Japanese Business, and "various McKinsey & Company internal training and conference materials."

Internal documents are, by nature, not widely published, and the creator of such internal documents cannot expect recognition outside of the single company in which such materials circulate.

While counsel attributes "Staircases to Growth" to the petitioner, the article itself, contained in the record, credits five authors, none of whom is the petitioner. In a footnote, the authors "acknowledge the contribution of the McKinsey Growth Team to the ideas in this article." The petitioner is one of 14 team members credited in this footnote. The petitioner evidently contributed background information to the article, but she is plainly not an author thereof, and it is misleading to assert that the petitioner

is "responsible" for the article. Furthermore, the article appeared in what appears to be an internal publication, The McKinsey Quarterly, rather than a generally-distributed magazine or journal.

An official of McKinsey & Company refers to the Alchemy of Growth as a "forthcoming publication." If the work had not yet been published as of the petition's filing date, it is not clear how substantial acclaim could already attach to its creators.

A Breath of Fresh Air and Australian Career Women appear to be papers which the petitioner prepared in partial fulfillment of her master's degree requirements. There is no evidence that these papers have been published.

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

Under this criterion, counsel observes that the petitioner "served as the President of the M.B.A. club" at the Australian Graduate School of Management. The petitioner has not shown that a graduate student club represents a distinguished organization.

Counsel asserts that the petitioner was the "expert on growth strategy" at McKinsey & Company, and cites a letter from that company's principal, Mehrdad Baghai. Mr. Baghai lists the petitioner's duties and asserts that the petitioner "contributed to the success of our growth practice and have distinguished her within the firm." Any competent employee contributes to the success of his or her employer. Merely listing the petitioner's specific projects accomplishes little, because other associates of McKinsey & Company may well have handled a comparable volume of tasks.

Other witnesses praise the petitioner's skill and work ethic, but again one does not play a leading or critical role simply by doing one's work well and with enthusiasm. The subjective opinion that the petitioner ranks among the best in her field does not necessarily establish that this opinion is shared throughout the field at a national or international level. A reputation which is largely confined to one's employers and clients is too narrow to constitute national or international acclaim.

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

Counsel states "at McKinsey & Company, [the petitioner] earned $128,000 AUS annually, which is three times the average of adult wage earners in Australia and ranked her among the most highly-paid

consultants in the country." The comparison between the petitioner's wage and that of "the average of adult wage earners in Australia" is misleading and irrelevant because the regulation demands "a high salary . . . in relation to others in the field." The vast majority of "adult wage earners in Australia" presumably work in fields other than corporate consulting.

The only evidence cited with regard to the petitioner's salary is a letter from Mehrdad Baghai, who never refers to the petitioner as "among the most highly-paid consultants in the country." The petitioner offers no evidence to demonstrate that she has earned substantially more than most other people employed in comparable positions.

The director denied the petition, discussing the evidence in the record and concluding that while the record shows that the petitioner is a respected and successful consultant, the record does not establish the sustained national or international acclaim which, by law, the petitioner must have earned in order to qualify for this highly restrictive visa classification.

On appeal, counsel offers no response to the director's specific evidentiary findings, relying instead on a procedural issue. Counsel's primary argument on appeal is that the director's denial is improper, because the director did not afford the petitioner the opportunity to submit additional evidence, as required by 8 C.F.R. 103.2(b)(8). While we concur that the director did not follow this regulatory requirement, we do not agree with counsel's contention that the only remedy for this error is to remand the matter to the director so that the director can issue a request for further evidence.

In Matter of Soriano, 19 I&N Dec. 764 (BIA 1988), the Board of Immigration Appeals ruled:

> Where a visa petition is denied based on a deficiency of proof, the petitioner had not been put on notice of the deficiency and given a reasonable opportunity to address it before the denial, and on appeal the petitioner proffers additional evidence addressing the deficiency, the record will, in the ordinary course, be remanded to allow the Immigration and Naturalization Service to initially consider and address the new evidence.

Note that the above ruling applies only when "on appeal the petitioner proffers additional evidence addressing the deficiency." In the matter at hand, no additional evidence accompanies the petition and thus the above holding does not apply here.

Counsel asserts that the petitioner should have had the opportunity to submit additional evidence, but counsel never indicates the nature of the additional evidence that the petitioner would have

submitted in response to such a notice. There is no indication that the undescribed additional evidence even exists.

Counsel implies that the petitioner would have submitted additional evidence in response to a notice from the director, and that the petitioner would submit such evidence in the future if the director were to request it pursuant to a remand order. Counsel fails, however, to explain why this very same evidence was evidently not available for submission on appeal. The Form I-290B Notice of Appeal clearly informed the petitioner of her right to submit additional evidence on appeal, and the decision notice itself listed some of the deficiencies in the record. If any evidence exists which more clearly demonstrates the petitioner's eligibility, then withholding it at this stage would not appear to be in the petitioner's interest. If no such evidence exists, then there is nothing to submit and to demand an opportunity to submit it would represent nothing more than a frivolous delaying tactic as described in 8 C.F.R. 3.102(j)(1).

In sum, although we find that the director erred in failing to request additional information as required by 8 C.F.R. 103.2(b)(8), we also find that the most appropriate and expedient remedy is to consider, on appeal, any evidence which the petitioner would have submitted in response to such a request. Upon being informed by the director, via the decision, of specific deficiencies in the record, the petitioner has offered no further evidence, nor even described what further evidence might be available. Therefore, we cannot conclude that the petitioner would have offered a substantive response to a request for further evidence, had the director made such a request.

Counsel observes on appeal that the director had approved an O-1 nonimmigrant visa petition for the petitioner in August 1998. Thus, counsel maintains, the director "has already deemed [the petitioner] to be an alien of extraordinary ability. . . . [w]e urge the approval of this petition based on the approval of [the petitioner's] O-1 visa." Despite counsel's assertions regarding "contradictory adjudications for the same category," the immigrant and nonimmigrant visa classifications are not identical, and we do not have sufficient documentation before us to rule out Service error in the approval of the nonimmigrant visa petition. There is no statute, regulation or case law to indicate that prior approval of an O-1 nonimmigrant visa petition is presumptive evidence of eligibility for classification under section 203(b)(1)(A) of the Act.

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 herself as a business consultant or development manager to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent in her field, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field nationally or internationally. 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.