



B2

U.S. Department of Justice  
Immigration and Naturalization Service

*Id.* Any data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC 01 112 51236

Office: Vermont Service Center

Date: **AUG 11 2002**

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

AUG1102\_02B2203

**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. 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 petitioner is a bilingual teacher. In a letter accompanying her initial filing, the petitioner states "I am aware of the established guidelines to be classified as an alien of extraordinary ability. In lieu of those guidelines, I am submitting the following documentation below as evidence of my eligibility." The petitioner then lists the documents submitted with the petition. The evidentiary guidelines set forth at 8 C.F.R. 204.5(h)(3), however, are not optional, and if they apply to the alien's field of endeavor, then the petitioner has no discretion to submit unrelated material "[i]n lieu of those guidelines."

The documents submitted with the petition establish her college degrees and other professional training, but they do nothing to establish the required national or international acclaim that an alien

must have to qualify for the highly restrictive visa classification sought. One does not reach the very top of one's field simply by obtaining degrees in that field.

The director instructed the petitioner to submit further evidence to establish sustained national or international acclaim, as the statute and regulations require. The director discussed the regulatory guidelines at 8 C.F.R. 204.5(h)(3) in detail. In response, the petitioner submits letters from an immigration consultant and various witnesses. The consultant (whom we cannot recognize as a formal representative, owing to the lack of an executed Form G-28 Notice of Entry or Appearance in the record) states that the petitioner's diploma (the consultant does not specify which diploma) constitutes an award because it was "awarded to the petitioner . . . after demonstrating her excellence in the field of teaching." The record contains nothing to show that "excellence in the field" was a requirement for obtaining any of the petitioner's degrees. The diplomas from Queens College state that the petitioner "has completed the requisite course of study" for the degrees she obtained. We cannot consider a college degree, or other certificate of professional training, to represent a national or international award.

The consultant contends that the petitioner's diploma is also evidence of the petitioner's membership in associations that require outstanding achievements, and that "experts" have compiled the requirements for the awarding of the petitioner's degree. This argument fails, not only because a degree is not a membership in an association, but also because graduating from college is not such a rare achievement that it constitutes an outstanding achievement. Rather, it is the predictable outcome of a course of study.

To establish that the petitioner has played a leading or critical role for distinguished organizations, the petitioner submits several witness letters. Elaine M. Maroulis, identified as "an eighth grade English teacher at Steinway Intermediate School 141Q," states that the petitioner's "scholastic expertise has created new dimensions to the multidisciplinary units we have employed, and further enriched the educational experience of our students." Miranda Pavlou, assistant principal of Steinway Intermediate School 141Q, states that the petitioner "is an active member of our staff" whose "vast studies and considerable research in Education, as well as in Second Language Acquisition, enables [sic] her to provide our school with much needed services." The record contains no evidence that Steinway Intermediate School 141Q is an establishment with a distinguished reputation.

Professor Hermann W. Haller of Queens College, City University of New York, states that the petitioner's "professionalism and educational skills exceeded expectations" and that the petitioner received awards and scholarships while studying at Queens College. Prof. Haller does not indicate that the petitioner played a leading or critical role for the college. The petitioner's association with the college appears to be limited to her studies for her bachelor's and master's degrees.

The fourth letter is from Professor John Spiridakis of St. John's University, who states that the petitioner's skills made "our selection of a graduate assistant . . . an easy task." Prof. Spiridakis states that the petitioner's "excellent multilingual skills became an invaluable asset," but there is no

indication that the petitioner's work had an institutional effect throughout the university, or that her efforts had significantly more impact than the efforts of countless other graduate assistants.

The director denied the petition, stating that the petitioner's submission does not establish sustained acclaim or extraordinary ability. On appeal, the petitioner asserts that many teachers in the U.S. under nonimmigrant visas "are often not fluent" in English, but are allowed to teach American students nonetheless "because of our current crises in the education system in the form of an extreme lack of teachers." The petitioner asserts that she is much more qualified to teach in the U.S. because her training took place here. Be that as it may, four reference letters and copies of the petitioner's diplomas do not constitute "substantial documentation" of sustained acclaim as the plain language of the statute demands. The existence of a teacher shortage, however serious, does not demonstrate that the petitioner has won national or international recognition as one of the best in her field, and fluency in English is not a sign of extraordinary ability, however deficient some other teachers may be in this regard. The requirement of sustained acclaim is integral and essential to the regulations and to the underlying statute, and cannot be waived or disregarded for any reason. The petitioner has submitted evidence of professional competence, but there is no evidence that the petitioner has earned any kind of reputation outside of a small portion of the New York metropolitan area.

The documentation submitted in support of a claim of extraordinary ability must demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished herself as a teacher 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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. The denial of this petition is without prejudice to the filing of a new petition by a United States employer, under a more appropriate immigrant classification, accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.