

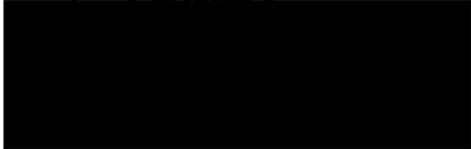


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC 01 180 54276

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

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

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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 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.

Angela Khashafyan, vice-president of the petitioning entity, describes the company and the beneficiary's role therein:

We provide educational and scientific consulting services to businesses and customers.

The company is engaged in educational research and development of proprietary methods of instruction and cultural adaptation. The company is well-known internationally and we have contacts with more than 20 countries. . . .¹

¹ Given the petitioner's claim of international prestige, it is relevant to note that many translations prepared by the petitioner (doing business as [REDACTED]) contain multiple grammatical errors.

[The beneficiary] is a talented researcher and proprietary programs developer. [The beneficiary] has been recommended as one of the most talented analyst[s] by his professors and peers.

In denying the petition, the director stated:

[The petitioner claims that the beneficiary is] one of the top education researchers in the world. [The beneficiary] has just been in F-1 [nonimmigrant student] status since 1993. [The petitioner] needs an education researcher and the position only pays \$40,000 per annum. The letters from City College [of New York, where the beneficiary studied until 1996] just state that [the beneficiary] has the makings in the future to be a good teacher. In fact it appears that [the beneficiary] just has a B.A. degree which was obtained in 2001. The letters from Russia do not appear to be stating that [the beneficiary] is one of the very top of his field.

On appeal, Alexandre Korsounski, president of the petitioning company, states "it was mentioned in our correspondence with [the beneficiary] that the starting salary was \$50,000. . . . Our company is able to pay [the beneficiary] a much higher salary, but of course we needed a start[ing] figure to begin our negotiations with [the beneficiary]." Correspondence in the record suggests that the \$50,000 figure was first proposed by the beneficiary (in a letter dated April 2, 2001), rather than by the petitioner (which responded in an April 10 letter that "\$50,000 is a right number"). The director derived the \$40,000 figure from the Form I-140 petition itself, which unlike the aforementioned correspondence was signed under penalty of perjury as being accurate to the best of the petitioner's knowledge. That same petition form indicates that the petitioner's gross annual income (before expenses) is \$300,000, and that the petitioner employs 11 people. These figures do not readily suggest that the petitioner is in fact "able to pay [the beneficiary] a much higher salary."

Regarding the bachelor's degree that the beneficiary received in 2001, it appears that the beneficiary completed his studies for that degree several years earlier but the degree was withheld for unexplained reasons. [REDACTED] states that the beneficiary "also obtained [a] Master's degree in 1995, having completed more than 6 years of studies in People's Friendship University of Russia. . . . There is nothing unusual in the fact that for two years, 1993-1995, as [the beneficiary] was working towards his Master's degree in People's Friendship University, he was also studying in City College on a BA program, towards a degree in Comparative Literature."

Contrary to [REDACTED]'s assertion, there is something unusual regarding the beneficiary's simultaneous studies. The petitioner asserts that the beneficiary entered the United States on August 22, 1992; that his visa expired in June 1998; and that the beneficiary has been out of status ever since, and will thus need to avail himself of provisions of the LIFE Act. If the beneficiary has been in the United States continuously since 1992, it is eminently reasonable to inquire as to how he completed a master's degree in 1995 at a university in Moscow.

The record contains a substantial quantity of evidence which similarly appears to require the beneficiary's presence in Russia after 1992. The petitioner has submitted certificates which purport

to document the petitioner's participation at conferences and on jury panels in Russia and Ukraine during the late 1990s. Some of the conference documents indicate that the beneficiary was the sole presenter of particular presentations, raising the question of how these presentations were made if the sole presenter was thousands of miles away in New York. None of these documents indicate that the beneficiary participated *in absentia*, and some of the documents provide specific locations where the committees and panels were to convene, indicating actual physical presence. The petitioner claims that the beneficiary participated in a conference in Russia that took place between September 14 and September 17, 2001. The petitioner's ability to travel to that conference would have been seriously impaired by the total closure of all U.S. air travel for much of that week owing to the terrorist attacks of September 11. The petitioner has also submitted copies of immigration documents which appear to corroborate the assertion that the beneficiary has never left the United States after his 1992 arrival.

The petitioner asserts that the beneficiary holds two Russian patents, and submits translations of the purported patent certificates and related documents. The patents are #2146066, submitted November 30, 1998 and #2158964, submitted June 15, 1999. The documents submitted by the petitioner identify the beneficiary as the sole inventor, applicant, and assignee, and they list the beneficiary's address as [REDACTED] Bryansk is approximately 200 miles south-southwest of Moscow. Therefore, the petitioner's documents, on their faces, contain contradictory information which necessarily raises questions of overall credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).²

The issue of the beneficiary's location is a significant one because all of the documentation purporting to establish the beneficiary's acclaim as an educator and researcher derives from in or near Russia, such as conferences taking place in Russia, Russian-language scholarly publications, and significant cash grants supposedly awarded in U.S. dollars by Russian authorities in Russia. The petitioner claims that the beneficiary has earned a major national reputation in Russia without leaving the United States. Despite his continuous presence in the U.S. since 1992, however, the beneficiary has not earned anything remotely resembling acclaim in the U.S. itself. As the director

² Russian patent information is publicly available via www.fips.ru, the official web site of the Russian Agency for Patent and Trademarks ("Rospatent"). This site offers English-language searches of its database going back to 1994. According to this official source, the sole inventor, applicant, and assignee of patent #2146066 is Aleksandr V. Rudkovskij. Patent #2158964 names four inventors, M.P. Karpenko, O.M. Karpenko, A.N. Chmykhov and E.V. Chmykhova. The assignee is an institute in Moscow. The inventions described in the patent documents are the same as the inventions described in the beneficiary's purported patent documents. A search for the beneficiary's name did not return any listings. In the face of this first-hand evidence, we must conclude that the beneficiary's patent documents are forged, with his name substituted in place of the names of the actual inventors. Pursuant to Matter of Ho, *supra*, we cannot be assured of the authenticity of any other documentation in the record. As we have discussed above, the petitioner's documentation on its face raises grave questions of credibility, and the information from Rospatent, freely available to the public, shows that the Service's misgivings are entirely justified.

observed, the petitioner's U.S. evidence consists primarily of favorable but unremarkable reference letters from the beneficiary's former professors at City College. These witnesses appear to be entirely unaware of the beneficiary's supposed national acclaim in Russia. When weighing the credibility and sufficiency of the evidence, we cannot ignore the beneficiary's palpable lack of recognition in the country where he has lived since 1992.

We also note that the petitioner claims that the beneficiary has received tens of thousands of dollars of grant money and prize money, in addition to widespread demand for the beneficiary's services, but a bank statement in the record reflects a balance of \$3.80 as of November 22, 2000, followed by two deposits totaling \$150.00. An electric bill from December 2000 states that the beneficiary's "service will be turned off unless an overdue amount of \$61.97 is received by JAN 18, 2001." The beneficiary's student visa documentation indicates "severe economic hardship." The petitioner asserts that the record contains a bank statement showing a deposit of nearly \$15,000, but we can find no such document. Even if the bank statement were in the record, it would not be primary evidence of the source of that money.

The documentation submitted in support of a claim of extraordinary ability must clearly 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 persuasively or credibly establish that the beneficiary has distinguished himself as a language researcher 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. 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.