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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



AUG 27 2002

File: WAC 01 242 57988

Office: California Service Center

Date:

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:



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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the alien filed the I-140 petition with the California Service Center on April 30, 2001, listing Forrest Interior Trim as the petitioner under Part 1 of the form. The petition, however, was signed not by a representative from Forrest Interior Trim, but by the alien himself. The Service regulation at 8 C.F.R. 103.2(a)(2) states: "An applicant or petitioner must sign his or her application or petition." Therefore, the alien shall be considered to be the petitioner.

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 seeks classification as a foreman/finish carpenter. The petitioner has submitted Form ETA-750, Form ETA-750B, his birth certificate, and a letter from Doris Herdman, President of [REDACTED]. Her letter describes the petitioner as a "dedicated, accommodating, and motivated worker" and notes that her company has "tried other workers by advertising in the paper," but found them to be less dependable than the petitioner. While this documentation appears more relevant to classification under section 203(b)(3)(A)(i) of the Act, Part 2 of the I-140 and

statements from counsel confirm that the classification sought for the petitioner is that of an alien of extraordinary ability.

The director denied the petition, stating:

The [petitioner] is performing a general labor position. General labor positions were not contemplated in the definition of sciences, arts, education, business or athletics. As such, the [petitioner] cannot provide the appropriate documentation to establish [his] qualifications for this very restrictive classification.

On appeal, counsel argues that the petitioner is “a highly skilled finish carpenter” and that “craftsmanship should be recognized within the categories of art and business.”

The petitioner submits two witness letters. Chuck Bommarito, Vice President of Pinn Brothers Construction, states:

I am writing this letter in regards to the [petitioner's] bid for a work permit. The petitioner is an employee of [REDACTED] and has been working on our projects for the past three years. His abilities exceed by far, the average carpenter. His attention to detail, quality and work attitude, along with his excellent attendance, makes him an invaluable asset to his employer and their ability to perform our projects.

Elaine Biser also refers to the petitioner's bid “for a work permit.” She adds: “We have found [the petitioner's] work to be very high quality finish carpentry and consistent with the look of expensive homes.”

Counsel argues that the two letters should be considered as comparable evidence under 8 C.F.R. 204.5(h)(4). The regulation at 8 C.F.R. 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria “do not readily apply to the petitioner's occupation.” Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to his field. It has not been shown, for example, why commanding a high salary in relation to others in the carpentry field is not a relevant criterion. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

Even if we were to accept the letters as comparable evidence under 8 C.F.R. 204.5(h)(4), the petitioner would remain ineligible for this highly restrictive visa classification. The petitioner cannot demonstrate eligibility under this classification by submitting only brief witness letters attesting to his talents as a carpenter. Section 203(b)(1)(A)(i) of the Act demands extensive documentation of sustained national or international acclaim. The opinions of two construction industry experts, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition would carry greater weight than the new materials prepared especially for submission with the petition. We note that the record reflects little formal recognition or awards for the petitioner's work, arising from various groups

taking the initiative to recognize the petitioner's work, as opposed to private letters solicited from two selected witnesses expressly for the purpose of supporting the visa petition. Independent evidence that would have existed whether or not this petition was filed would be more persuasive than the subjective statements from two individuals selected by the petitioner. It should be noted that the Service is not questioning the credibility of the petitioner's witnesses, but looking for evidence that the petitioner's work has earned him acclaim beyond those who directly utilize his services. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. In this case, the petitioner's notoriety is limited to those who employ him and businesses that sub-contract his carpentry services.

In sum, the petitioner has submitted no evidence to satisfy the Service regulations at 8 C.F.R. 204.5(h). Furthermore, while there could conceivably be a petitioner who might demonstrate sustained national or international acclaim in the petitioner's field of finish carpentry, and that such a field falls within the sciences, arts, education, business or athletics as required by the statute and regulations, the petitioner's evidence fails to show either.

A review of the record does not establish that the beneficiary has distinguished himself as a foreman/finish carpenter 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. The evidence is not persuasive that his achievements set him significantly above almost all others in his 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.

**ORDER:** The appeal is dismissed.