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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-01-211-52647

Office: Vermont Service Center

Date: AUG 30 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 to classify the beneficiary 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 beneficiary's 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 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) as follows.

(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 material 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 specialization 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.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as an "entertainment artist / student." 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, quoted above, 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. Initially, the petitioner asserted that the beneficiary played a leading or critical role for Howard University as an exchange student at Laurentian University in Canada, that she won an award for her communications internship with the Department of Commerce Minority Business Affairs, and that she contributed to her "field" by inventing a shorthand method of the alphabet for note taking and a doll resembling a computer. Finally, the petitioner asserted that the beneficiary has written a book about the Internet and that she is a talented singer who would like to put out a compact disc some day. The petitioner submitted the beneficiary's transcripts from Howard University reflecting A's, B's, some C's, and a D in physical education; a letter from the Copyright Office confirming that the

beneficiary has obtained copyright protection for her doll; and a certificate from the Southeastern Institute of Computer Technology certifying the beneficiary as a network specialist.

On October 18, 2001, the director advised the petitioner of the ten criteria and requested evidence that the beneficiary meets at least three of those criteria. In response, the petitioner resubmitted the previously submitted evidence and a photograph of an "Alphabetty" pillow picturing a doll with the alphabet on her dress copyrighted by the beneficiary. The petitioner asserts that the beneficiary recently performed at the opening of a small business in Brooklyn and lists 50 possible uses for "Alphabetty."

The director concluded that the petitioner had not submitted objective evidence of the beneficiary's extraordinary abilities.

On appeal, the petitioner reiterates that the petitioner performed at the opening of a minority-owned store in Brooklyn and that her performance was videotaped. He indicates that he would like the beneficiary to perform in London where her father received a silver weight-lifting Olympic medal. The petitioner submits a photograph of the beneficiary performing.

First, whether or not the beneficiary participated in an exchange student program, her grades, while fair, are not reflective of extraordinary ability as a student. Regardless, while the statute includes the field of education, academic study is not a field of endeavor. Rather, it is training for a future career. By including the field of education, we understand Congress to mean those who work in the field, such as professors and educational researchers. The beneficiary's accomplishments as a student at Howard University, even if considered extraordinary, are not indicative of extraordinary ability in the field of education. Moreover, the petitioner must demonstrate that the beneficiary seeks to enter the United States to continue work in the area of extraordinary ability. The record does not suggest that the beneficiary intends to continue as a career student. Nonimmigrant student visa are available to aliens wishing to complete their studies.

Finally, the statute requires extensive documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate sustained national or international acclaim. Assuming that the beneficiary is a talented singer or inventor, the record does not reflect that she has attained any national acclaim for either talent. Specifically, the petitioner has not submitted documentation that relates to any of the ten criteria in the fields of entertainment or inventions. Singing on the subway and performing at the opening of a local small business is not evidence of national acclaim. The fact that the beneficiary's performance was taped is not evidence of national media coverage. Regarding her inventions, copyright protection is not a competitive award and is issued based on originality, not importance or significance. The record contains no evidence that the beneficiary's doll or "Alphabetty" pillow have attracted attention at national toy fairs. The petitioner's personal interest in forming a corporation to market the beneficiary's inventions is not evidence that the beneficiary already enjoys national acclaim.

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 establish that the beneficiary has distinguished herself as an entertainer or inventor 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. Therefore, the petitioner has not established the beneficiary's 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.