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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

[Redacted]

File:

[Redacted]

Office: Nebraska Service Center

Date:

AUG 30 2002

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:

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, Nebraska Service Center. The Associate Commissioner for Examinations summarily dismissed a subsequent appeal. The matter is now before the Associate Commissioner on motion. The motion will be granted, the previous decision of the Associate Commissioner will be vacated, and the petition will be denied.

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.

On appeal, the petitioner requested an additional 30 days in which to submit a brief and/or additional evidence. On January 18, 2002, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, summarily dismissed the appeal, concluding that the petitioner had failed to submit additional documentation.

On motion, the petitioner asserts that he did submit additional evidence and resubmits this evidence. As such, we will reopen this matter to consider the petitioner's appeal on its merits.

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 he 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 an historian, interpreter. 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, he claims, meets the following criteria.

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.

Initially, the petitioner submitted three articles published in the "Living" section of the Omaha, Nebraska *World-Herald* recounting his history as an electrician in Communist Czechoslovakia who fled to Canada, returned after the revolution, ran unsuccessfully for office, returned to Canada, and ended up as a cook for a hotel in Wilber, Nebraska. One article announces that the petitioner has organized a celebration in Wilber to commemorate Czechoslovakia's independence in 1918. These articles were in a local paper for the community where the petitioner resides and do not discuss his acclaim as a historian or interpreter, although one article does mention that he teaches Czech and helps people translate letters into Czech.

On appeal, the petitioner submits a 1992 story in a Czech newspaper announcing the petitioner's presidential nomination by parliament member J. Konopac. The petitioner also submitted additional newspaper stories from Czechoslovakia in 1992 and 1993. Many of those articles lack full translations as required by the above quoted regulation, 8 C.F.R. 204.5(h)(3)(iii). While the petitioner certainly gained national attention in Czechoslovakia for his presidential nomination, there is no evidence that the petitioner has sustained any acclaim he might have had during the seven years between the publication of those articles and the date of filing the instant petition.

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.

On appeal, the petitioner asserts that he is judging the American-Czech cultural competition of Nebraska. First, a petitioner must demonstrate eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Regardless, judging a local cultural competition is not evidence of national acclaim as an historian.

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

Initially, the petitioner asserted that his articles published in *The Wilbur Republic* are evidence of his scholarly contributions of major significance. As discussed below, the articles are news items and political editorials. They were published in a local Czech-American paper. The petitioner has not established that this paper has a national circulation beyond Czech-Americans in Nebraska. The petitioner has not provided any evidence that his articles have influenced other historians or that his views have been adopted at major universities. The petitioner's unsuccessful campaigns for office in the Czech Republic is not evidence of the petitioner's national acclaim as an historian in that country or the United States.

The petitioner refers to a letter from Alan Scholl at the John Birch Society as evidence that he has given speeches on communism. The letter is a response to the petitioner's submission of a resume and video of his talk at a local chapter meeting to that society. While Mr. Scholl thanks the petitioner for his "stand against communism," Mr. Scholl further states that he is unable to offer the petitioner a speaking slot in the society's national tour. Mr. Scholl does not indicate that he was aware of the petitioner's reputation prior to receiving the petitioner's request to be a speaker for the society.

In response to the director's request for additional documentation, the petitioner asserted that he had also contributed to the field of teaching. He submits his newsletter article in the *South Omaha* praising the achievements of the six students he tutored in the Czech language at his "school."

The petitioner further states:

I am cooperating with Philips/Carlyle International - professional career management, marketing and consulting firm to find suitable employment for my extraordinary abilities. One of [my] possible careers could be independent associate and group benefit specialist of Pre-Paid Legal Services, Inc. to help all the people to have equal access to the legal system where is Justice for all. I used to represent people at the courts and that's one of my capabilities to help people and this way I am finding answers to their legal needs.

The petitioner submitted his business card for Pre-Paid Legal Services, Inc. and a brochure for the corporation. The petitioner has not submitted any evidence that he has a law degree or other certification to practice law in the Czech Republic or in the United States. Moreover, assuming the petitioner is even working for this company, having a job with a legal services company is not evidence of national acclaim as an historian or interpreter.

On appeal, the petitioner submits his personal letter describing the project he wishes to pursue. While the petitioner claims to be an interpreter of extraordinary ability, his letter is so poorly written that it is difficult to understand exactly what he intends to do. It appears that the petitioner is forming an organization to repeat the events of 1918 where the United States assisted Czech professor Thomas Masaryk in declaring Czech independence, an event which took place in Philadelphia.

The petitioner submits a 1990 letter from Don Blenkarn, Chairman of the Standing Committee on Finance in the Canadian Parliament advising the petitioner to seek a meeting with Otto Jelinek. There is no evidence Mr. Jelinek agreed to meet with the petitioner. The petitioner also submitted a 1990 letter from himself to Prime Minister Mulroney. Anyone can write a letter to an elected official. While such a letter is evidence of the petitioner's political interests, such a letter is not evidence of the petitioner's sustained national acclaim in Canada or the United States, where he has resided for the past five years. The petitioner also submitted a 1992 letter from himself as the manager of external affairs for the Republican Party of Czechoslovakia to NRIIA requesting a meeting. The record also includes a 1992 response from the International Republican Institute (IRI), formerly the National Republican Institute for International Affairs (NRIIA), expressing interest in a meeting if the representatives of the Czech party travel to the United States and requesting additional information about the Czech party. This letter suggests that IRI had never heard of the petitioner or his party prior to his letter requesting a meeting. The record contains no evidence that such a meeting took place, or, if it did, the significance of the meeting. The petitioner also submitted letters from him to U.S. officials with the Nebraska State Legislature, U.S. Senators from Nebraska, and Senator Bob Dole. Once again, anyone can write to their elected officials. Doing so may be evidence of political activism, but is not evidence of national acclaim. The petitioner did submit an unsigned reference letter from State Senator John Hilgert. Senator Hilgert, however, while praising the petitioner's character and fight for political freedom, makes no mention of the petitioner's extraordinary ability as an historian and does not indicate that the petitioner has national acclaim. Moreover, not only is the letter unsigned, but the petitioner's letter to the Nebraska State Legislature is on Senator Hilgert's letterhead, suggesting that the petitioner has access to this letterhead. In his letter to Senator Dole, the petitioner states that Senator Dole has "chosen me as a representative of voters in Omaha." He further states:

I could obtain one million votes for you (I have [a] lot of experience in it) and I would like to contribute to [the] Republican National Committee one million dollars but to do so, I need a little help from you.

I know [the] liberal agenda quite well and there is some case [sic] which could be uncovered in an other [sic] scandal.

Please don't hesitate to contact me at [phone number omitted]. My view might be interesting for you.

The petitioner sent courtesy copies of this letter to Senator Chuck Hagel and Jon Christensen. The petitioner submitted a handwritten letter which appears to be from Senator Hagel thanking him for the letter and indicating that he hoped to see the petitioner soon. The record does not, however contain any evidence from Senator Dole that he appointed the petitioner to any position in his presidential campaign. Even if the petitioner worked on Senator Dole's campaign, such work is only evidence of political activism. There are many people active in politics who have not attained national acclaim.

Finally, the petitioner submits a letter he wrote to the Republican Party Chairman congratulating the party on the election of George W. Bush and discussing his "project" to build a strong relationship with the Czech Republic "who are seeking ways to change the liberal politics as [people in the] U.S. are doing in common sense ways and practical experience." The petitioner did not submit any response to this letter. As stated above, writing letters to party officials is not evidence of national acclaim, but political activism.

It remains, the petitioner has not submitted any evidence that he is known throughout the historian community and has influenced that community. The petitioner has no degree in the field of history and has never taught history at a major university. The record contains no reference letters from historians or politicians who know of the petitioner only through his national reputation and/or have adopted the petitioner's views. Rather, the petitioner appears to be a failed Czech politician who expresses his political opinions in a local paper and in correspondence with politicians and political organizations who do not appear to be particularly responsive other than to acknowledge receipt of his letters. While political activism is commendable and important in a democracy, every opinionated person active in politics cannot demonstrate that he is a nationally acclaimed historian.

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

The petitioner submitted several of his articles published in *The Wilber Republic*, a Czech weekly newspaper published in Wilber, Nebraska. The articles are news articles about Czech heritage celebrations and editorials attributing "the fall of the iron curtain," to Presidents Reagan, Bush, and Gorbachev alone, attacking the current government in the Czech Republic as communist sympathizers, and calling for a reunited Czechoslovakia. While some of these articles discuss Czechoslovakia's past, they cannot be considered scholarly articles in the field of history. Moreover, they are published in a local Czech-American political paper with limited circulation. As such, they are not evidence that the petitioner enjoys national acclaim as an historian within the United States where he has resided since 1995. It remains, the petitioner has not authored any scholarly articles on the history of Czechoslovakia or Eastern Europe published in any peer-reviewed, scholarly, nationally circulated journal in the field of history.

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

In response to the director's request for additional documentation, the petitioner claimed to play a leading or critical role for the John Birch Society. As stated above, the petitioner appears to have given a "talk" at a local chapter meeting and was denied a speaking slot on a national tour. Giving a talk for a local chapter is not a leading or critical role.

On appeal, the petitioner indicates that he is now the first Vice President of the Nebraska Czechs Inc. and will become president. As stated above, a petitioner must be eligible as of the date of filing. See *Matter of Katigbak*, *supra*. Regardless, the petitioner has not submitted evidence that this organization enjoys a national distinguished reputation.

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 petitioner has distinguished himself as an historian or interpreter 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 the petitioner's achievements set him significantly above almost all others in his field, which includes esteemed historical scholars, leaders of political organizations and prominent politicians. 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be vacated, and the petition will be denied.

ORDER: The Associate Commissioner's decision of January 18, 2002 is vacated. The petition is denied.