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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: [Redacted] Office: Nebraska Service Center

Date: JUL 19 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, 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 landscaping firm that seeks to employ the beneficiary as a supervisor, mechanic, and crew leader. With the initial filing of the petition, the petitioner has submitted information about the company; a Form ETA-750B Statement of Qualifications of Alien, and an unsigned explanatory statement indicating that the beneficiary "is especially needed for superb supervisory skill." [REDACTED] president of the petitioning company, states in a letter that the beneficiary is a certified mechanic and "also a[n] excellent Welder, Landscaper and Supervisor." The petitioner submits photographs of some of the beneficiary's past landscaping jobs.

The director denied the petition, stating that the petitioner has not submitted the evidence demanded by the pertinent regulations, and that "[f]rom the information presented, there is no reason to infer

that such evidence is available but missing from the record or that there is otherwise any basis for eligibility.”

On appeal, [REDACTED] states “[w]e can not find qualified workers in the United States. [The beneficiary] is an excellent mechanic & crew foreman.” While the beneficiary may excel at his job, his skill does not demonstrate or imply sustained national or international acclaim, which is a fundamental and essential requirement for the extremely restrictive immigrant classification that the petitioner has chosen to seek on the beneficiary’s behalf. There exist other employment-based visa classifications for which a worker shortage is a relevant factor; such is not the case in this matter.

[REDACTED] also states “[w]e will need 30 days because we are hiring a[n] immigration lawyer to represent [the beneficiary]. The lawyer needs 30 more days to review the case.” To date, ten months later, the record contains no further submission. The record also contains no evidence that the unnamed immigration lawyer has formally declared representation of the petitioner by submission of Form G-28. Because the record does not reflect any further action by the petitioner or by any attorney, and because (as the director has noted) the record does not contain any evidence at all that would even vaguely suggest that the beneficiary might qualify as an alien of extraordinary ability, we hereby render our decision based on the record as it now stands. Further delay would serve no relevant purpose.

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 himself as a landscaping supervisor/mechanic 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. From the evidence presented, it is not clear that sustained national or international acclaim is possible in the beneficiary’s field of landscaping, or that such field falls within the sciences, arts, education, business or athletics as required by the statute and regulations. The petitioner has submitted no evidence to satisfy any of the regulatory criteria set forth at 8 C.F.R. 204.5(h)(3). 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.