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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 01 181 51262

Office: Vermont Service Center

Date: JUL 19 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 as a truck driver. 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.

Service regulations at 8 C.F.R. 204.5(h)(3) state:

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.

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). By law and by regulation, the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top level.

The petitioner's initial submission consisted only of the Form I-140 petition and a letter in which [REDACTED] president of the petitioning company, states that the beneficiary "is a hard working employee" who "follows instructions well." [REDACTED] describes the beneficiary's duties consist of "driving tractor trailer(s) and export containers for the company."

The director notified the petitioner that "[t]he requirements for classification as an alien of extraordinary ability are extremely difficult to meet," and that therefore "it is very unlikely that [the petitioner] would qualify for such classification." The director suggested that the petitioner seek a lesser classification on the beneficiary's behalf.

In response to this message, the petitioner has submitted further letters from [REDACTED] (one of these letters was also signed by the beneficiary), verifying the beneficiary's employment and salary. The record also contains, for reasons not explained, similar employment verification materials indicating that another alien works as a driver for a trucking company in New Jersey [REDACTED]. The new letters do not address any of the concerns raised by the director, and the materials regarding the other alien are without any discernible relevance to this matter.

The director denied the petition because the petitioner has submitted no evidence to show that the beneficiary has earned sustained national or international acclaim as an alien of extraordinary ability in the sciences, arts, education, business, or athletics. On appeal, the petitioner states that a brief is forthcoming within 30 days. To date, over four months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands. In any event, it is not clear what argument the petitioner could possibly make at this point that would establish the beneficiary's eligibility for this extremely restrictive visa classification.

The only document accompanying the appeal is yet another letter from [REDACTED] stating that his company is "very satisfied with [the beneficiary's] performance." The petitioner's satisfaction with the beneficiary's work is not in dispute; indeed, it is virtually the only fact documented in the record. The director's decision listed the regulatory guidelines and statutory requirements shown above, but [REDACTED] does not address them in any way. His satisfaction with his employee's performance does not constitute 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. The record of proceeding contains no evidence at all that even remotely suggests that the beneficiary may qualify for classification as an alien of extraordinary ability. 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 (or even apparently attempted to meet) that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.