

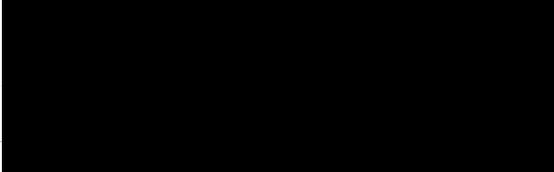


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-00-244-50237 Office: California Service Center Date: JUN 17 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, California 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 petitioner operates a business manufacturing jewelry and seeks to employ the beneficiary as an "assistant manager in training." 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). The relevant criteria will be addressed below. 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 a stone analyst and gem expert, although the proposed employment is as an assistant manager in training. 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. Those criteria are set forth in 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.

Initially, the petitioner submitted copies of the beneficiary's passport reflecting that she entered the United States on March 26, 2000 as a visitor for pleasure, her social security card marked "not valid for employment," and her California driver's license. On December 28, 2000, the director advised the petitioner of the ten criteria listed above and requested additional evidence. Specifically, the director requested that the petitioner specify the beneficiary's field of endeavor and submit evidence establishing that the beneficiary meets at least three of the regulatory criteria.

In response, the petitioner submitted a letter from [REDACTED] advising the petitioner that the Congressman had forwarded an inquiry to the Service regarding the instant petition and a letter from the petitioner. In his letter, the petitioner asserts that the beneficiary has 25 years of experience as a stone analyst and gem expert and that she was "tested" in 1988. He further states, "she has had an extraordinary ability to produce models to express her talent and skill in precious metals and suitable to all gemstones."

The director denied the petition, concluding that the petitioner had not submitted evidence relating to any of the ten criteria quoted above. The statement on appeal, in its entirety, is as follows (grammar as it appears in original):

I am confident, that I have not been discriminated or humiliated, since every time an application is denied how often is a person in profession of practice and experience to have had awards or scholarship. Our work is based on honest word of production and trust of quality special work, we have had tried and examined her sincerity and honesty in fulfilling her truly trusted work[.] Please help us in your approval to support our appeal.

The petitioner also indicated that he would send a brief and/or evidence to this office within 30 days. As of this date, 10 months later, the Service has received nothing further. The appeal will be adjudicated on the evidence of record.

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 petitioner's apparent argument on appeal that professionals do not often receive awards is not persuasive. This classification is extremely exclusive and the regulations intentionally require evidence of rare accomplishments. The regulations list national awards as evidence of acclaim precisely because most individuals in the field do not receive them. Thus, those who do receive such awards have a higher level of acclaim than those who do not. Finally, assuming awards are not routinely given in the beneficiary's field, the petitioner need only establish that the beneficiary meets three criteria. The regulations include nine other criteria besides awards. The petitioner has not submitted any evidence relating to any of the nine other criteria.

The petitioner's unsupported assertion that the beneficiary has extraordinary talent is insufficient, especially in light of the fact that the petitioner intends to employ the beneficiary in a trainee position. 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. National acclaim necessarily requires evidence that others in the field besides the beneficiary's employer are aware of the beneficiary's accomplishments. Assuming that the beneficiary is a talented stone analyst and gem expert, the record does not reflect that she has attained any national acclaim for that talent. Specifically, the petitioner has not submitted documentation that relates to any of the ten criteria.

Review of the record does not establish that the beneficiary has distinguished herself as a stone analyst and gem expert 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. The evidence is not persuasive that the beneficiary's achievements set her significantly above almost all others in 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.

This denial is without prejudice to the filing of a new petition in a different classification by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.