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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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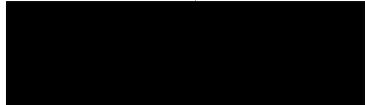
17 JUN 2002

File: EAC 01 211 52912

Office: Vermont Service Center

Date:

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

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 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 in business. 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.

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 appear in the Service regulation 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 initially indicated that he seeks classification as an alien with extraordinary ability as an entrepreneur. The petitioner did not indicate which of the criteria from 8 C.F.R. 204.5(h)(3) he claims to have satisfied; he merely submitted copies of several documents, specifically:

The petitioner's Social Security card and Employment Authorization card

Documentation of other immigration proceedings

Business documentation pertaining to the petitioner's sole proprietorship, H.M.

Construction, indicating among other things that H.M. Construction had \$124,978 in assets as of December 31, 2000, and earned a net income of \$25,443 during calendar year 2000

The petitioner's High School Equivalency Diploma

A Certificate of Training from the U.S. Department of Commerce, indicating that H.M. Construction had successfully completed "the Global Diversity Initiative/Export Trade Assistance Program 2000"

Numerous other certificates from various entities, reflecting the petitioner's training in various areas pertaining to his construction business

A plaque from the New York Immigration Coalition, presented to the petitioner in 2000 "in honor of his loyalty and steadfast support in promoting the empowerment of New York's immigrant and refugee communities"

A certificate, also from the New York Immigration Coalition, recognizing the petitioner's service "as a volunteer in the NYC's New Citizen Voter Registration Project"

The petitioner's Home Improvement Contractor's License, issued by the City of New York Department of Consumer Affairs

Contracts and other documentation showing various projects that the petitioner's construction company has undertaken

The petitioner did not explain the significance of any of the above documentation. The petitioner cannot show that he is at the very top of his field simply by demonstrating that he owns a viable business and engages in community volunteer work.

The director informed the petitioner "[i]t does not appear that your petition is approvable to classify the beneficiary as a first preference alien under section 203(b)(1)(A) of INA because the beneficiary is not considered to be an alien of extraordinary ability." The director suggested that the petitioner seek a lesser classification.

In response to the director's notice, the petitioner observed that he had filed the petition on his own behalf rather than on behalf of another beneficiary. The petitioner stated that, in addition to being "an entrepreneur [who] started this business from zero," he is also "a social worker" and "a poet." The petitioner also observed "I have resided in . . . New York City since March 1981 and have been involved in no criminal or otherwise dishonest life style." The petitioner did not explain how any of the foregoing assertions establish sustained national or international acclaim or extraordinary ability.

With his statement, the petitioner submitted copies of previously submitted documents as well as additional documents to establish the petitioner's new claim to be a social worker and poet. Regarding the petitioner's "social work," the record shows that the petitioner has acted as a volunteer at various charitable events, voter registration projects, and the like. While these activities are commendable, there is no evidence at all that the petitioner's volunteer work has attracted any notice outside of metropolitan New York, much less national or international acclaim. Also, it is highly doubtful that volunteer work entirely outside of one's paying occupation constitutes a field of endeavor. Participating in volunteer activities in one's spare time does not make one a "social worker." A social worker is a licensed professional with a college education and specialized training. The petitioner has documented no such training or licensure, nor any formal education beyond the high school equivalency diploma that he earned at the age of 41.

Regarding his poetry, the petitioner submits copies of several poems that he has submitted to poetry.com, an online service which publishes (via the Internet) every poem that is submitted to it. The appearance of the petitioner's poems on the web site confirms the petitioner's submission of those poems but does not establish extraordinary ability or sustained acclaim.

The director denied the petition, stating that the petitioner has failed to specify "the type of work the beneficiary will pursue as an alien of extraordinary ability" and that "[t]he record contains no evidence of the beneficiary's national or international recognition as an entrepreneur or in any other field."

On appeal, the petitioner submits copies of three documents: (1) a previously submitted training certificate; (2) a previously submitted plaque from the New York Immigration Coalition; and (3) documentation from the International Library of Poetry (which operates poetry.com) indicating that one of the petitioner's poems has been selected for inclusion in a hardbound volume and, as a recitation, a compact disc.

The certificate of training does not indicate that the petitioner has been recognized as an extraordinary businessman, or that the training in question is available only to the top entrepreneurs. The plaque from the New York Immigration Coalition shows that the petitioner has been active in assisting "New York's immigrant and refugee communities," but it does not establish any recognition for that work outside of metropolitan New York. A local award such as this is neither national nor international.

The documentation from the International Library of Poetry indicates that a recitation of the petitioner's poem is to be included in a compilation entitled *The Sound of Poetry* as well as an unnamed "hardbound anthology." The documentation is dated November 2001, several months after the petition's June 2001 filing date. Therefore, this publication cannot retroactively establish that the petitioner was eligible as of June 2001. We also note that the petitioner had made no mention at all of his poetry when he first filed the petition. He first mentioned his poetry after the director had informed him that the petition was not approvable. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Regardless of the poem's publication date, the petitioner has not shown that publication in an anthology from the International Library of Poetry constitutes a nationally recognized honor that places him among the nation's top poets. The petitioner has not shown that the International Library of Poetry's books sell a significant number of copies, rather than being essentially "vanity" publications marketed to the poets whose work appears in the books.

The petitioner has not established that his poems have sold more copies, or attracted more national attention from literary critics, than the works of almost any other poet in the United States, nor has the petitioner otherwise shown that he is among the nation's best-known poets. The petitioner has not shown that he is among the most successful entrepreneurs in the United States, or that his volunteer work has earned any recognition apart from the gratitude of local immigrant aid organizations in New York. The record contains nothing to suggest that the petitioner has earned sustained national or international acclaim in any field of endeavor. 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.