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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-01-141-50471

Office: Vermont Service Center

Date:

19 JUN 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)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

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 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 --

(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 a financial advisor. 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.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner received a National Quality Award from the National Association of Insurance and Financial Advisors (NAIFA). The petitioner submitted the first page of a brochure which states that it contains, "full descriptions of, and the requirements for, each of NAIFA's recognition awards." The part of the brochure which included these descriptions and requirements, however, was not included in the record. The information, however, does reveal that awardees must be members of NAIFA. In response to the director's request for additional information about the significance of the award, the petitioner submitted a letter from Jennifer White, Industry Award and Event Manager. She states, "The National Quality Award was created in 1944 and recognizes those agents and financial advisors whose persistency records indicate competence and dedication to the insurance industry and their clients." Competence and dedication are not traits limited to those very few at the top of the field. She further indicates that candidates are selected from the 100,000 members and that an applicant must achieve 90% persistence over at least 13 months on a minimum of 40 policies. She does not assert, however, how many national quality awards NAIFA issues annually. Finally, she asserts that the award is only given to a "very small percentage of all insurance agents and financial advisor[s] nationwide." This information is reiterated by Leonard Brevik, Chief Marketing Office and Vice President of Business Development at NAIFA on appeal.

The official website for NAIFA, www.naifa.org, includes the award requirements for the National Quality Awards. From the website, one can download information about the award and the award application. The award application is completed by the individual seeking the award and includes an application fee of \$15. As such, it is not clear that all 100,000 members compete for the award. The application provides the eligibility requirements as follows:

1. Be a member of a local insurance and financial advisors association.
2. Be full time in the insurance business or other closely related financial services profession.
3. Provide the \$15 application fee (check made payable to NAIFA)
4. Write a minimum of 40 life policies. 10 policies may be individual disability income policies or long term care (LTC). If qualifying for the 21st year or more, you are "grandfathered" and can qualify with 25 policies, 10 of which may be disability income policies or long term care (LTC).
5. Achieve 90% persistency for a minimum of 13 months.

Nothing in the awards information or on the application indicates that awardees are narrowed down beyond these requirements. As such, it appears that every member who applies for the award and meets these requirements receives the award. The website does not provide the number of winners for 2001, but permits a search for specific awardees by name, company, or state, suggesting that there were many awardees.

Moreover, the award information includes the requirements for the National Sales Achievement Award. This award, initiated in 1966, is designed to recognize “local association members who write large numbers of life and health insurance policies, thereby demonstrating their abilities in client building and their success as an insurance agent.” To qualify for the National Sales Achievement Award, one must have sold a minimum of 100 paid policies. This is a significantly higher requirement than the 40 necessary to win the National Quality Award. Moreover, even this higher award only recognizes “success” in one’s field. As such, even this award is not evidence that the winner is one of the very few at the top of the field.

In light of the above, the award issued to the petitioner is not evidence that he has national acclaim or that he is one of the very few at the top of his field. The award is only available to NAIFA members, does not distinguish between the applicants who meet the production requirements, and is not the top award issued by NAIFA.

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.

The petitioner submitted a certification verifying that he is a “qualifying member” of the Million Dollar Round Table (MDRT). In response to the director’s request for additional documentation regarding the membership requirements for this organization, the petitioner submitted a letter from Debra L. Oprechak, membership supervisor for MDRT. She asserts that membership is “an exclusive honor” and indicates “outstanding achievement.” On appeal, Jill Meyer reiterates this information in her own letter. Ms. Oprechak also states that membership is based on production, ethical and professional criteria. The membership requirements also appear on the organization’s official website, www.mdr.org/memreq.html. Ms. Oprechak provides that the requirements for membership were commissions of \$57,000 in 2000 and \$60,000 in 2001. The website, however, indicates that there are membership categories above qualifying, specifically Top of the Table and Court of the Table. The commission requirements for 2003 are \$65,000 for qualifying, \$195,000 for Court of the Table, and \$390,000 for Top of the Table. The record contains no evidence that the petitioner qualified for these top two membership categories. Evidence for each criterion must be evaluated as to whether it demonstrates national or international acclaim as one of the very few at the top of one’s field. As Top of the Table and Court of the Table members have demonstrated significantly higher production and commissions, it is clear that the petitioner’s membership as a qualifying member is not evidence that he is one of the very few at the top of his field.

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.

On appeal, the petitioner claims to meet this criterion. The petitioner appears to base his claim to eligibility under this criterion on the letters of support from others in the field. Letters to the Service in support of the petition are not published material. The record does not include any *published* materials written by others about the petitioner.

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

The petitioner initially submitted "brief" translations of two articles allegedly written by him. He provided no evidence where these articles were published and failed to provide copies of the original articles themselves. In his notice requesting additional evidence, the director specifically requested that the petitioner submit information regarding the selection criteria used by the publications and their circulation. In response, the petitioner submitted three articles published in the *World Journal*, the translations of those articles, and a letter from [REDACTED], Director of the Editorial Department at *World Journal* who confirms that the newspaper published three of the petitioner's articles providing financial advice. She asserts that the publication is a Chinese-language publication with a national distribution in the United States of 750,000 readers. The *World Journal* is a general news publication, not a professional or major trade publication. Moreover, as it is published in a language that the majority of the national population cannot comprehend, it cannot be considered major media.

The petitioner also submitted a copy of the cover of his book, *Financial Engineering*, published in February 2001 in China. The petitioner asserts that the book is a college textbook widely used in China, but provides no evidence of that assertion other than a letter from his former professor at Shaanxi Financial Institute, [REDACTED]. The translation of the printing information reveals that only 1,000 copies were printed. The record contains no attestations from any individuals independent of the petitioner who have high level positions at Chinese universities confirming the adoption of the petitioner's book as one of their text books. As stated above, the evidence submitted relating to a specific criteria must reflect national or international acclaim.

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

While the petitioner does not claim to meet this criterion, the record contains letters from Metropolitan Life Financial Services (MetLife) where the petitioner works praising his leadership skills. They assert that he has qualified for the company Leaders' Conference three times. That the petitioner may lead a team or program within MetLife is not evidence that he performs a leading or critical role for the entire company. The petitioner has not established how he has played a leading or critical role for such a large company as one of numerous financial sales representatives working for the company.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner initially submitted his Form W-2 wage and tax statement for 2000. The W-2 reflects wages of \$122,074. In his request for additional documentation, the director noted that the record contained no evidence of salaries with which to compare the petitioner's. In response, the petitioner submitted a letter from [REDACTED] Managing Director of Metropolitan Life

Financial Services in New Jersey confirming the wage information on the W-2 and asserting that the petitioner is “one of the most highly paid financial service representatives in the company.” The petitioner has not submitted any evidence regarding the salaries of others in his field, including those at the top. As stated above, Court of the Table members of MDRT must demonstrate commissions of \$195,000 and Top of the Table members must demonstrate commissions of \$390,000. As such, the petitioner has not demonstrated that his income, including commissions, is significantly high.

In addition to the evidence relating to the criteria above, the petitioner submitted several letters in support of his petition. Richard Bai, Agency Director for MetLife in New Jersey, provides general praise of the petitioner’s dedication and professionalism. Edward Tooma, a certified financial planner at MetLife, also provides general praise, noting that the petitioner has created more than 500 new clients for MetLife. Both MetLife employees assert that the petitioner won the company’s Quadruple Crown based on his knowledge in the field. Another MetLife employee, Brian Bushwell, provides general praise of the petitioner. It is noted that Brian Bushwell is a Top of the Table member of MDRT. This accomplishment, while reflecting well on Mr. Bushwell’s reputation, demonstrates that the top of the petitioner’s field is higher than the level he himself has attained.

██████████ a professor with the Department of Asian Studies at Seton Hall University asserts that he knows the petitioner from Seton Hall prior to the petitioner’s entry into the financial planning industry. It is not clear that ██████████ is an expert in the financial planning field. In his letter, he merely chronicles the petitioner’s career and asserts that he has risen to the top of his field.

██████████ a senior financial planner with the Olson Financial Group, an office of MetLife, and regional vice president for the New Jersey State Association of Insurance and Financial Advisors, provides general praise of the petitioner, asserting that he “has distinguished himself among the very best in the field.” ██████████ assertion that the petitioner is a well known author and speaker internationally is unsupported by the record. There is no evidence that the petitioner’s book has been published in any language other than Chinese. Having a book published in one’s country of origin while working in the United States is insufficient to establish an international reputation. The record contains no evidence that the petitioner is a highly paid speaker internationally.

██████████ the senior director of sales at The American College, notes that he won the Life Underwriter of the Year award and the Ernest E. Cragg Ambassador Award. While these awards reflect well on ██████████ reputation, they also reflect that the top of the petitioner’s field is much higher than the level he has attained. ██████████ further asserts that MDRT has recently appointed the petitioner as a “mentor.” The record contains no evidence that this appointment occurred before the date of filing. As such, it cannot be considered evidence of the petitioner’s eligibility at the time of filing.

The above letters are all from current and former colleagues and professors. While such letters are important in providing details about the petitioner’s role in various projects, they cannot by

themselves establish the petitioner's national acclaim, which necessarily requires that the petitioner be known outside his immediate circle of colleagues. Moreover, section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that 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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a financial advisor 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 indicates that the petitioner shows talent as a financial advisor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.