



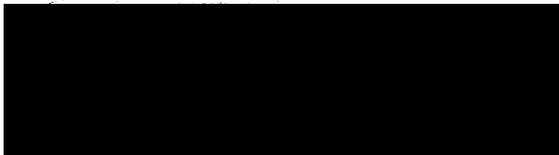
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U.S. Department of Justice

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: 19 MAR 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 which 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 which 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 which 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

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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.

On the Form I-140 petition, the petitioner indicated that the beneficiary intended to work as an adult educator in the United States. In a separate letter, however, the beneficiary suggests that he intends to research a new book. As a petitioner must establish that the beneficiary seeks to work in his area of alleged expertise, the director requested clarification of the petitioner's area of expertise. In response, the petitioner submitted a letter from the beneficiary asserting that he had reached the top of three fields: diplomacy, journalism, and writing; further asserting that his application is based on his "knowledge and experience as a lawyer/author."

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 fails to clarify which three or more criteria the beneficiary allegedly meets. The petitioner, however, has submitted evidence which appears to address 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.

On a list of "works and achievements" the beneficiary indicated that he received the International Relations Award in November 1997 from the Black Mahogany Foundation, Chicago. The record does not contain independent confirmation of this award. Moreover, the petitioner has not established that the award is a national award, as opposed to a local award from a Chicago foundation or the Chicago section of a national foundation. Finally, the record contains no evidence the award was a literary award.

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 beneficiary claims to be a fellow of the Royal Society of Arts, a member of the Royal Society of Literature, a voluntary advisor to the Black Mahogany Foundation, Chicago, a member of the Society of Professionals in Dispute Resolution, and a patron of the Chicago Council on Foreign Relations. The director concluded that the petitioner had not established that the beneficiary had "distinguished himself from other members." On appeal, the beneficiary correctly notes that the regulation does not require anything other than general membership in qualifying associations. Nevertheless, the petitioner has not provided any evidence of the beneficiary's membership in these organizations. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, serving as a "volunteer advisor" or a "patron" is not the type of invitational membership contemplated by the regulation. Further, the petitioner has not provided any evidence that any of these organizations require outstanding achievements of their members. Specifically, the record contains no official materials from these associations which provide their membership requirements.

Finally, the petitioner submitted a letter verifying the beneficiary's membership in The Honourable Society of the Middle Temple. The record, however, contains no evidence regarding the membership requirements, goals, or purposes of this society.

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.

The beneficiary claims to have appeared in Who's in the World, Who's Who in Europe, Who's Who in Africa, Men of Achievement, and the Writers Directory. The petitioner, however, only submitted a photocopy of the beneficiary's biography in one of these directories. Regardless, evidence submitted in support of each criterion must be evaluated as to whether it demonstrates national or international acclaim. Appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim.

The petitioner also submits reviews of the beneficiary's book published in *New African* and the *Malta Times*. While these reviews constitute published material about the beneficiary, the record contains no evidence of the circulation of either publication. As such, the petitioner has not established that these publications constitute "major media." While the *Evening Standard* published London's best sellers list which includes the beneficiary's book, The Chocolate Lady, as a "dark horse," a list of best sellers cannot be considered published material primarily about the beneficiary personally.

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.

The beneficiary asserts that from 1967 to 1969 he was the editor of the *Ghanaian Times*, Ghana's leading newspaper. The record contains no confirmation of this claim from the publication. Regardless, the petitioner must demonstrate that the beneficiary has sustained national acclaim. Serving as editor 30 years prior to filing the petition is not evidence of sustained acclaim. Moreover, reviewing the work of others is inherent in the job of editing. The record contains no evidence as to the significance of his editing position. For example, the petitioner has not established whether the beneficiary was the chief editor or that his selection for the job reflected national or international acclaim. The record also includes a copy of *African Review*, listing the beneficiary as the editor and publisher. The petitioner has not established the significance of this publication. Moreover, this appears to be the beneficiary's own publication. As such, his selection of himself to edit the publication is not evidence of national or international acclaim.

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

The beneficiary claims that his non-fiction book, The New Ghana, published in 1958, was a best seller in London and was used in colleges and schools in Great Britain. The record contains no evidence of these claims, and authoring a best selling book 30 years ago is not evidence of sustained acclaim. The beneficiary also claims to have authored two additional non-fiction books, Constitutional Proposals for Post-Coup Africa in 1967 and The Ghanaian Revolution in 1989. Without independent evidence that any of these books were influential, the petitioner cannot

establish that the beneficiary sustained national or international acclaim based on his authorship of these books. The petitioner's fictional books cannot be considered "scholarly."

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

The beneficiary claims that he was Ghana's first ambassador to Hungary and later their ambassador to the International Atomic Energy Agency in Vienna. He further claims that he was subsequently a member of the "constituent assembly" which drafted Ghana's constitution, the editor for the *Ghanaian Times* and that he served as Deputy Minister of Health and Lands and Mineral Resources. The director concluded that the beneficiary's ambassadorship was evidence of a leading role, but that the beneficiary was not seeking to continue as a diplomat in the United States.

We concur that the beneficiary does not meet this criterion, although we do not agree that serving as an ambassador is a leading or critical role for a national government. While ambassadors are high level diplomats, most countries have hundreds of ambassadors, with one stationed in most countries around the world. It is not clear that every ambassador from every country has attained national or international acclaim. Similarly, the beneficiary's role as deputy minister for two government agencies does not appear to reflect national or international acclaim.

In addition, as stated above, the record contains no evidence regarding the significance of the beneficiary's role with the *Ghanaian Times* or as a member of the constituent assembly. Finally, the record contains no documentation from the Ghanaian government or the *Ghanaian Times* verifying that the beneficiary served in any of the claimed positions.

While the record contains a copy of *African Review*, identifying the beneficiary as the publisher and editor, the petitioner has not established the reputation of *African Review*.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Book sales can be considered comparable evidence for this criterion. The Maltese newspaper refers to the beneficiary as a best selling author and the *Evening Standard* lists one of the beneficiary's books as a "dark horse" best seller. The evidence submitted to address each criterion must demonstrate national or international acclaim at the very top of one's field. The record does not include any evidence regarding how well a book must sell to be considered a "dark horse." Simply selling better than expected is not evidence of national or international acclaim.

On appeal, the petitioner asserts that the director erred by failing to consider the beneficiary's hardship growing up and his 15-month detention allegedly as a political prisoner. While it is commendable to achieve success in one's field after overcoming hardship, alleged obstacles do not elevate mere success to sustained national or international acclaim. The petitioner seeks to classify the beneficiary as an author of extraordinary ability, a classification which requires that one has comparable acclaim to those few at the top of this field, such as Pulitzer Prize winners. The

beneficiary conceded in response to the director's request for additional documentation that he was not at the level of a well-known fiction writer.

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 an author 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 an author, 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.