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U.S. Department of Justice

Immigration and Naturalization Service

Decision data deleted to protect clearly unwarranted invasion of personal privacy.

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

[Redacted]

File: [Redacted]

Office: Nebraska Service Center

Date: 5 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:

[Redacted]

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, Nebraska Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is an insurance agency. It 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 in business. The director determined the petitioner had not established that the beneficiary qualifies for classification as an alien of extraordinary ability. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal.

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.

In a letter dated January 18, 2000, counsel offers several arguments and states that he will submit a memorandum to support the motion within 30 days. The petitioner's supplement to the motion is dated February 2, 2000; the Service received it the next day. The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-

submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation to allow a petitioner to submit new evidence in furtherance of a previously filed motion. By filing a motion, the petitioner does not guarantee himself an open-ended period in which to supplement the record. Any consideration at all that we give to the petitioner's later submissions is entirely discretionary. In this instance, we will examine the untimely submission only to the extent that it clarifies the arguments made in counsel's initial motion letter of January 18, 2000.

The petitioner, an insurance agency, seeks to employ the beneficiary as vice president of its Ethnic Sales Divisions. 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. On motion, counsel maintains that, despite the AAO's prior finding, the petitioner has met at least three of these criteria.

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

Counsel asserts that the beneficiary "twice won awards from his employer for having had the best sales performance." The AAO had previously addressed these prizes, concluding "[t]he record contains no evidence that these internal, corporate awards are nationally recognized as significant." Counsel states, on motion, "[w]e are now submitting additional evidence that does show and prove that these two corporate awards were Nationally recognized and relevant." Despite counsel's assertion (on January 18, 2000) that the petitioner was "now submitting" this evidence, no such evidence accompanied the January submission, nor did counsel describe the evidence at that time.

In the later submission, counsel states that the petitioner had previously "submitted the Industry press news cutting regarding [the beneficiary's] achievement in his field on national level. Apparently no one saw this evidence." A copy of a previously submitted document does not constitute "additional evidence" because it adds nothing of substance to the record. The clippings to which counsel refers are from internal corporate newsletters rather than major media circulated outside of those companies. The petitioner has still not demonstrated that any of the beneficiary's sales awards have any significance or relevance outside of the company where the beneficiary was working when he earned those awards.

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 AAO had previously found that "[t]he petitioner's initial submission consisted almost entirely of copies of brief articles about the beneficiary, mostly attributed to Poultry Punch, Poultry Reporter and Poultry Guide. . . . The record contains no evidence about the standing of these publications, or

to indicate that the level of coverage the beneficiary received in this publications is significantly beyond what is expected for executives in India's poultry industry." On motion, counsel disputes this conclusion and submits additional copies of the same news clippings. The new copies feature handwritten notations regarding the significance of the publications, but these notations (in an unidentified hand) do not represent evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

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

Counsel states on motion that "[w]e strongly believe that we have already submitted evidence that [the beneficiary] was employed by a number of leading companies in India." This claimed evidence consisted of a "career summary sheet," essentially the beneficiary's resume. The AAO found "[t]he 'career summary sheet' constitutes a personal claim by the beneficiary rather than 'evidence'" and that the petitioner had not established the distinguished reputations of the entities for which the beneficiary had purportedly played leading or critical roles.

The petitioner's initial filing on motion includes no evidence of the beneficiary's past employment. The subsequent supplement includes letters from the beneficiary's past employers, demonstrating that the beneficiary held management positions, but not establishing distinguished reputations as the regulation requires. The petitioner did not submit these letters with the original motion during the time permitted, nor did the initial submission on motion even specify that such letters would be forthcoming. Counsel repeats the claim that the beneficiary's career represents "a classic success story," but the evidence offered on motion shows only that the beneficiary had risen to high management positions at several companies where he worked. Successful the petitioner may be, but success is not synonymous with sustained national or international acclaim.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of December 22, 1999 is affirmed. The petition is denied.