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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:



Office: Nebraska Service Center

Date: 27 MAR 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)

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, 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 in the sciences. 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.

The petitioner seeks employment as a research associate at Michigan State University. 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). The petitioner claims to have won such an award.

Documentation in the record shows that the petitioner won a silver medal at the 19th International Chemical Student Olympiad in Budapest, July 1987. The petitioner was 16 years old at the time.

The petitioner's initial submission contained nothing to establish the significance of the medal or of the International Chemical Student Olympiad.

We interpret the one-time achievement clause in an extremely restrictive manner. The statute demands "extensive documentation" of sustained acclaim, and if the petitioner intends to establish eligibility based on a single document, then that document must carry enormous weight. In this instance, the petitioner has not shown that his silver medal, awarded to him when he was a high school student, carries the immediate, universal recognition of (for instance) the Nobel Prize. We cannot ignore that this medal is obviously intended for high school students, rather than for professional researchers who have already completed their training and established their own careers. Thus, in competing for his medal, the petitioner faced other high school students rather than the most experienced, established, and acclaimed figures in the field of chemistry.

The director instructed the petitioner to submit further evidence. The director stated that the evidence submitted with the initial filing "is not sufficient to warrant favorable consideration." The director outlined the pertinent regulations regarding the type of evidence required to establish eligibility. In response, the petitioner has submitted a new translation of the previously submitted prize certificate, and a photograph of the original certificate and silver medal. The record does not show that the petitioner's response contained any other evidence.

The director denied the petition, finding that the petitioner has not established sustained acclaim in his field. On appeal, the petitioner asserts "I still believe that my extraordinary ability is proved by a one-time achievement (i.e. the major, international recognized award)." To qualify for the extremely restrictive visa classification that he seeks, the petitioner must show that he is among the very top chemists, not merely the top chemistry students. High school and college study are not fields of endeavor, but rather academic training for future entry into such a field. The petitioner has submitted nothing to show that the prestige of his award even remotely approaches that of the Nobel Prize (which would certainly qualify as a major internationally recognized award).

The petitioner submits additional evidence on appeal. Before denying the petition, the director had notified the petitioner that his original evidence was insufficient, and the director specified the type of evidence necessary to establish eligibility. In response to this notice, the petitioner had merely submitted variations of his original evidence. Because the petitioner had not availed himself of the opportunity to submit new evidence before the denial of the petition, we need not consider at length the petitioner's new evidence submitted for the first time on appeal. Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the Service. Matter of Soriano, 19 I&N Dec. 764 (BIA 1988).

In the interest of thoroughness, we will briefly review the petitioner's newly submitted evidence. The petitioner submits a letter from his research supervisor at Michigan State University, Professor James L. Dye. Prof. Dye is complimentary of the petitioner's skills, and states that the petitioner "is already co-author of a breakthrough paper," but Prof. Dye does not indicate that the petitioner has

won lasting acclaim in his field. We note that, as a member of the U.S. National Academy of Sciences, Prof. Dye himself stands among the elite in the U.S. scientific community. While this expertise gives weight to Prof. Dye's statements, his authorship of a letter on the petitioner's behalf does not establish that the petitioner himself enjoys a reputation comparable to Prof. Dye's own.

The petitioner submits further evidence regarding awards he had won in high school. The petitioner asserts that he won "the highest scholastic award" in the former Soviet Union. The petitioner did not submit any evidence to establish how this evidence affects his standing among trained, established scientists (as opposed to high school chemistry students). The petitioner also submits documentation regarding his performance on the Graduate Record Examination, a standardized graduate school admission test. While the petitioner scored highly on the subject examination for chemistry (99th percentile), his percentile scores were lower on the quantitative (83^d), analytical (62nd) and verbal (13th) sections. The petitioner has not shown that national or international acclaim attaches to standardized test scores.

The petitioner was the fourth of seven credited authors of an article that appeared in the Journal of the American Chemical Society in 1999. The article appears to have been published in late October 1999, several months after the petition's March 1999 filing date, and therefore it cannot retroactively have any bearing on the petitioner's eligibility as of March 1999. See 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. The same reasoning applies to a short article that appeared in the Chemical and Engineering News on November 22, 1999, reporting the findings in the above article. The latter article mentions Prof. Dye but the petitioner's name does not appear in this article; therefore, it cannot significantly contribute to the petitioner's acclaim.

In recent correspondence, the petitioner has stated that he provided some information to the Federal Bureau of Investigation ("FBI"), which may have had some relevance to the ongoing investigation of the terrorist attacks of September 11, 2001. The petitioner states "I wonder if the information I have provided was useful enough to affect my case." The record does not contain any FBI documentation to show how useful the petitioner's information was. Even if such information was in the record, the eligibility requirements for the extraordinary ability visa classification are plainly stated in the pertinent regulations. The petitioner's cooperation with a criminal investigation (launched years after the petition's filing date) has no bearing at all on the relevant question, which is whether or not the petitioner has achieved sustained national or international acclaim as a chemist.

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 chemist 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 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.