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U.S. Department of Justice  
Immigration and Naturalization Service

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prevent identity information

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



File: EAC 00 257 50556 Office: Vermont Service Center Date: 03 MAY 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 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 Service regulation at 8 C.F.R. 204.5(h)(3) sets forth 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:

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 is an accountant. At no point has he specified which of the above criteria he claims to have met. With his petition, the petitioner has submitted the following documents:

- A letter dated April 2, 1998, from the New York State Society of Certified Public Accountants, indicating that "as one of the top scorer [sic] of the Uniform CPA Examination in New York States, you are the recipient of the New York State Society of CPAs (NYSSCPA) Charles Waldo Haskins Memorial Award."
- Reference letters from various employers, attesting to the petitioner's qualifications, experience, and competence as an accountant.

- Documentation of the petitioner's educational background and professional certification
- The petitioner's resume
- Miscellaneous identification documents

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director listed the criteria set forth at 8 C.F.R. 204.5(h)(3) and stated that, to qualify, the petitioner must show that he is at the very top of his field. In response, the petitioner has submitted copies of previously submitted documents and two new letters, as well as a photograph of a plaque indicating that the petitioner won "The Charles Waldo Haskins Honorable Mention."

Leith E. Yetman, president of the New York Institute of Business Technology, states that the petitioner "is a non-compensated member of the Board of Directors of two non-profit educational organizations." Among the petitioner's duties on these boards are "leading the audit committee in dealing with external auditors" and "review [ing] the operating and internal control procedures . . . in the implementation of the educational grant programs funded by the State of New York and federal grants." Samuel Estabillo, partner in the accounting firm of Gutierrez & Estabillo, states that the petitioner "conducted financial and compliance audits of youth programs in non-profit community-based organizations funded by the New York City Department of Youth and Community Development for the fiscal years 95-96, 96-97 and 98-99."

The director denied the petition, stating that the petitioner has not shown that any of his evidence demonstrates extraordinary ability or sustained national or international acclaim. For example, the director observed that "the Charles Waldo Haskins Honorable Mention does not appear to be a National award."

On appeal, the petitioner discusses his credentials and asserts "[t]hrough hard work and perseverance, I consistently advance in my profession." The petitioner's competence as an accountant is not at issue. The petitioner has chosen to pursue an extremely restrictive immigrant visa classification, which by law is limited to aliens who can provide extensive documentation of sustained national or international acclaim.

With regard to the Charles Waldo Haskins Honorable Mention, the petitioner states:

Though the Boards of Accountancy (state licensing body for CPAs) are organized by state (there is no federal board), the Uniform CPA Examination is a national examination for CPAs in the United States. Recognition by [the] New York State Board of Accountancy [for] excelling in the Uniform CPA Examination in New York State has the same degree as excelling nationally since there is no national recognition except on state level.

While the Uniform CPA Examination may be a national examination, it remains that the New

York State Board of Accountancy is in a position to recognize only those test scores registered in New York State. Any award from the state board is necessarily a state award rather than a national one, and there is no evidence that the petitioner earned any kind of recognition outside of New York for his test scores. Even then, the award plaque states "honorable mention" which suggests the petitioner did not receive the top tier of award even within the state.

The petitioner states that he has made a contribution to the United States, for example by serving on the boards of two non-profit educational institutions. While the petitioner's work in this area is praiseworthy, the petitioner has not shown that this work has earned him sustained acclaim at a national or international level. The requirement pertaining to such acclaim is a fundamental and essential element of the statute, which we cannot waive or otherwise disregard. If the petitioner is not nationally or internationally acclaimed as a top accountant, then he is simply ineligible and cannot qualify for classification as an alien of extraordinary ability.

On the notice of appeal, which the Service received on August 16, 2001, the petitioner states that a brief is forthcoming within 30 days. The only subsequent submissions, however, have consisted of copies of previously submitted documents and a letter dated August 27, 2001. This letter is essentially identical to the letter submitted with the initial appeal; the only differences are the date, and a new paragraph indicating that the petitioner has enclosed copies of documents submitted with the original petition.

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 earned any distinction outside of New York, and even then the evidence does not place the petitioner at the very top of 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.