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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: WAC-01-057-51239

Office: California Service Center

Date: OCT 01 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration .

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.

On appeal, the petitioner asserts that the director failed to consider evidence relating to several of the regulatory criteria. For the reasons discussed below, we concur. As such, while we concur with the director's conclusion regarding contributions to the field, we cannot uphold the director's decision. In addition to the director's failure to consider the evidence discussed below, we also note that the record contains photocopies of six reference letters, two each from Anthony Coxon, David Skidmore, and John Moses. The signatures on these letters appear to be digitally reproduced. Thus, prior to issuing a new decision, the director shall request the original letters not previously submitted to the Service¹ pursuant to 8 C.F.R. 103.2(b)(5).

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.

¹ The petitioner submitted an earlier petition which was also denied, WAC-99-132-51484. It is unknown whether the initial letters from Dr. Coxon, Mr. Skidmore, and Dr. Moses were submitted in support of that petition. The subsequent letters, however, were prepared for this petition and there is no indication the originals of these later letters were previously submitted to the Service.

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 an executive director of a future technology ethics department. 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.

We note that on June 6, 2001, the director advised the petitioner of the ten criteria and offered the petitioner another opportunity to submit evidence addressing the criteria. The petitioner responded with a request that the director issue a decision on the evidence of record.

In her final decision, the director stated:

[The ten regulatory criteria are] meant to offer petitioners guidance in the types of evidence that can be submitted. Even if the alien fulfills three of the criteria, it does not necessarily mean that the alien has achieved sustained national or international acclaim and recognition and, therefore, mandate a finding of eligibility. Rather than focusing on submitting documentation that "fits" at least three of the criteria, it is important to look upon the evidence in its totality. Extraordinary ability is a level that others in the field recognize as being the very best that your field has to offer. Any submitted evidence must show that the individual is one whose work is looked upon as being the pinnacle of work in the field.

While we may not agree with the exact wording of the above statements, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director's decision is that the petitioner submitted documentation which related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim. Nevertheless, while the director was justified in considering whether evidence relating to a specific criterion reflected national or international acclaim, the director failed to even consider evidence relating to several criteria, stating, "mainly the petitioner submitted documentation information under 'Evidence of your original scientific, scholarly, artistic, athletic or business-

related contributions of major significance in the field.” As will be discussed below, while we concur with the director’s conclusion that the petitioner does not meet this criteria, the petitioner submitted evidence relating to several other criteria which the director either failed to discuss or specifically stated was not in the record.

The petitioner has submitted evidence which, he claims, meets the following criteria.

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.

While the petitioner did not claim to meet this criterion, his curriculum vitae lists “memberships and positions held” with the Society for the Study of Christian Ethics (member); Society for the Study of Theology (member of a seminar); Council of the William Temple Foundation (member); the Chemsford Diocesan Synod (bishop’s nominee); Council of the Royal Foundation of St. Katharine, Butcher Row (member); Friends of the University of Leeds, Department of Theology and Religious Studies (chairman); Bermondsey and Rotherhithe Churches HIV/AIDS Group (co-founder); Saltley Community Mental Health Project (founder); Yardley Deanery Social Needs Commission (chairman); Law Center Subcommittee of Saltley Action Center (chairman); Birmingham Diocesan Family and Society Committee (member); Southmead Forum (founder); Sidney Stringer School and Community Association (secretary); Murray Lodge management Committee (member); Northern Ireland Children’s Holiday Scheme (secretary); College of the Resurrection (senior student).

The petitioner submitted a prospectus for the William Temple Foundation, a copy of *Foundations*, published by the foundation, which lists the petitioner as a member of the consultative panel and a February 14, 1997 letter from the Foundation requesting that he join the “Council” of the foundation. This documentation, however, does not indicate what the membership requirements for the foundation are. The petitioner also submitted evidence of his membership with the Society for the Study of Christian Ethics, which he asserts is the main professional body in Great Britain for Christian ethicists. He asserts that membership requires nomination, seconding, and formal approval by existing members of the society at the annual meeting. Finally, the petitioner submitted a letter to Reverend Richard Crowson regarding the Society of Black Lawyers’ launch of the Black Legal Agenda indicating an interest in inviting “senior members” of the society’s board, especially the petitioner, to the launch. Once again, the petitioner has not submitted documentation of the society’s membership requirements.

The director failed to even acknowledge that evidence was submitted regarding this criterion. As such, the director did not discuss whether the petitioner can meet this criterion in the absence of objective evidence regarding the membership requirements of the above associations, such as the bylaws of these associations.

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.

While the petitioner did not claim to meet this criterion, he submitted a certificate confirming his inclusion in *Who's Who in the World*, 17th Edition 2000. Curiously, as noted by the petitioner on appeal, the director failed to address this certificate and instead focused on a letter which appears to be evidence of published material by the petitioner. As such, the director did not discuss whether appearing as one of thousands, or even hundreds of thousands of other successful individuals in a frequently published directory is evidence of national acclaim.

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.

Anthony Coxon, a professor at the University of Essex, indicates that the petitioner was the editor of *Crucible*, the journal of the Church of England's Board for Social Responsibility. Dr. Coxon asserts that the publication is highly regarded and that in this position, the petitioner coordinated and formulated Church policy on sensitive issues. David Skidmore, secretary of the board, confirms that the petitioner served as editor for *Crucible* and the petitioner's name appears as the editor to whom articles should be submitted on copies of *Crucible* in the record. While Mr. Skidmore asserts that the petitioner's editorial pieces "regularly provided admiration for their originality and wisdom" he does not explain how the editor for this publication is chosen. The record does not contain any evidence of *Crucible*'s circulation.

As noted by the petitioner on appeal, the director states that the petitioner did not submit evidence relating to this criterion. Thus, the director does not appear to have considered whether the petitioner's editorial position is evidence of national acclaim.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner asserts that as the Assistant Secretary to the Board for Social Responsibility he wrote background papers and briefing papers on issues before the parliament. He further asserts that bishops speaking before parliament quoted his briefing papers "verbatim." The petitioner submits background papers on criminal justice and Sunday trading which are not credited to any one person.

The petitioner submitted several letters submitted in support of a previous petition and new letters affirming the contents of the previous letters. In his February 23, 1999 letter, Anthony Coxon, a professor at the University of Essex and a professor emeritus at the University of Wales, indicates that he has known the petitioner "as a colleague and friend" since the petitioner first came to the University of Essex as Anglican Chaplain and Director of the Center for Theology. Dr. Coxon continues:

First, [the petitioner] is a theologian, and his doctorate was supervised by one of the U.K.'s leading theologians (Professor Denys Turner, recently appointed as the Norris-Hulse Professor of Divinity at Cambridge University). For some years he has had a lively concern for issues of ethics and social responsibility, and was for five years the editor of *Crucible*, the journal of the Church of England's Board for Social Responsibility -- a highly regarded publication aimed at those with a professional interest in these areas. Nor is this interest merely academic; during his period as editor he coordinated and formulated the Church of England's official response to parliamentary debates and legislative initiatives in a number of sensitive areas, including the reform of the criminal justice system, Sunday trading, and the prosecution of alleged war criminals.

His role as Anglican Chaplain to the University of Essex has been both challenging and demanding, and he has fulfilled its requirements with dedication and flare. In addition to his pastoral and priestly responsibilities, he has maintained and extended the well-known and highly-regarded Open Seminars Programme, and played a leading role in developing a new and innovative Master of Arts Scheme designed to integrate theological and social scientific disciplines.

In his second letter, David Skidmore, secretary of the Board for Social Responsibility, discusses the petitioner's work for the board, asserting:

[The petitioner] made a very substantial contribution to the Board for Social Responsibility's [sic] during the period 1988-1993[,] especially in connection with the Board's submission to the Royal Commission on Criminal Justice as well as national debates on private sector involvement in prisons, the prosecution of alleged war criminals and the deregulation of Sunday trading.

In his initial letter, Dr. Skidmore asserts that the petitioner's editorials in *Crucible* "provoked admiration for their originality and wisdom which combined great depth with a striking simplicity of expression. Mr. Skidmore continues:

I was pleased that [the petitioner] was able to build on the enormous amount of work he had done for the Board in developing thinking in relation to criminal justice issues - at a time when the field [sic] was changing fast and politicians were tempted to court popularity by ignoring the complexity of many justice issues. He was also able to develop more of his thinking on the ethical implications of developments in science and technology than had been possible during his time with my Board. I am pleased that he has continued to work on the ethical issues arising from Information Technology.

In his initial letter, The Very Reverend Dr. John Moses provides general praise of the petitioner's work in the area of social ethics. In his second letter, Dr. Moses reiterates that praise. Rowan

Williams, the petitioner's former teacher, provides general praise of his abilities as a priest and educator.

The director listed all of the above evidence and concluded:

The petitioner submitted seven reference letters. While the letters highlight the petitioner[']s abilities and expertise in the said field, a review of your letters show that they are from academics, colleagues and peers in your field. These letters are more akin "reference letters" than to testimonials of your individual contribution to the field. Moreover, your claims of original scientific contributions and achievements were completed in collaboration with other professionals in the field and not by you alone.

On appeal, the petitioner argues the director discounted the authoritative status of the witnesses and that "applied social ethics necessarily involves substantial collaborative patterns of working."

On this issue, we concur with the director. The ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

In addition, while we acknowledge that contributions can be made as a collaborative effort, the petitioner in this case has not established that he contributed to the collaboration. For example, while the petitioner may have authored briefing papers, the record contains little supporting evidence of his role in establishing the positions represented in those papers. It is the nature of briefing papers to be quoted and relied upon during testimony. The petitioner has not, however, established that his authorship of these papers represents positions he helped establish.

While we concur with the director on this issue, a petitioner need only meet three of the ten criteria to establish eligibility. As discussed above and below, the director failed to sufficiently consider the evidence submitted which relates to other criteria.

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

On his curriculum vitae, the petitioner listed the following authored publications: "Submission of the Church of England Board for Social Responsibility to the Royal Commission on Criminal Justice," "Prosecution of Alleged War Criminals," a response to the HFEA Consultation Paper on Ovarian Tissue Donation and Assisted Conception, and a review of John Kekes' *The Morality of Pluralism*. The petitioner also indicated that he contributed to *Living Faith in the City*, *Theology*, *Contact*, *The Times*, and *The Independent*.

The petitioner submitted an April 24, 2000 letter to the petitioner from Katie Worrall, the commissioning editor of the publishing company Darton, Longman & Todd, Ltd., confirming that the publication date for *The Situated Soul: Wisdom and Identity in an Information Culture* was scheduled for July 2001. In addition, he submitted a database printout regarding his thesis which does not reflect that it was published in a nationally circulated, peer-reviewed journal. The petitioner also submitted copies of *Crucible* and *Essex Papers in Theology and Society* containing the petitioner's commentary. Finally, the petitioner submitted a copy of "Submission of the Church of England Board for Social Responsibility to the Royal Commission on Criminal Justice," "Sunday Trading" and "Prosecution of Alleged War Criminals." These articles are not attributed any one individual, but were published as the opinions of the Board for Social Responsibility, although the petitioner submitted a letter from Robin Brookes, Publishing Manager of Church House Publishing, requesting that the petitioner prepare an article on the Church's position on Sunday Trading. The petitioner also submitted a piece on "How Much is Enough" where several writers, business representatives, psychologists, and the petitioner for the Church of England, responded to that question. The publication in which this appears is not provided. The petitioner also authored a piece on criminal justice and a book review in *Foundations*, a newsletter published by the William Temple Foundation.

Once again, the director not only failed to consider this evidence, but specifically stated that no evidence regarding this criterion was submitted. If, by her broad statement, the director concluded that these commentaries and opinion pieces do not constitute "scholarly articles" in "professional or major trade publications or other major media," then more discussion of the basis of that conclusion is necessary in order for the petitioner to prepare a meaningful appeal.

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

While the petitioner did not claim to meet this criterion, he discusses his position as director of the Center for the Study of Theology at the University of Essex, where he asserts that he established a Masters program in theology at this traditionally secular school. The petitioner submitted a pamphlet for the Masters program listing him as the Director for the Center for the Study of Theology.

The petitioner also submitted a University of Leeds Newsletter announcing the formation of Friends of the Department of Theology and Religious Studies at the University for which the petitioner had agreed to serve as the first Chairman. The primary aim of the group was to create a fund to help students with special projects, students in need, reading weeks, and special lectures.

The petitioner further submitted a list of members of the executive committee of the Society for the Study of Christian Ethics (SSCE). The list indicates the petitioner became a member of the committee in 1997. The petitioner indicates that the SSCE is the main professional body in Great Britain for ethicists working in the Christian tradition. The petitioner indicates that the executive committee plans the annual conference and provides "critical support" for the editor of *Studies in Christian Ethics*, a semi-annual publication of the society. As stated above, the petitioner

submitted a letter indicating that he was a "senior member" of the board of the Society of Black Lawyers.

The director stated:

Letters submitted on behalf of the petitioner indicate that the petitioner has been a main contributor for certain projects; however, evidence to substantiate the contents was not submitted.

As stated above, the petitioner submitted a brochure from the University of Essex indicating that he was the director of the Center for the Study of Theology at that university, a newsletter from the University of Leeds regarding his position there, and evidence of his board membership for SSCE. The director did not discuss whether these positions constitute a leading or critical role for the organizations and whether the organizations have a distinguished reputation nationally.

Therefore, this matter will be remanded for consideration of the evidence not previously considered and a request for the original letters with original signatures from Dr. Coxon, Mr. Skidmore, and Dr. Moses. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which is to be certified to the Associate Commissioner for Examinations for review regardless of outcome.