

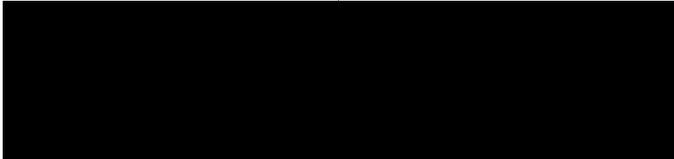


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-01-242-54221 Office: California Service Center

Date: OCT 07 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)

PUBLIC COPY

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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 appeal will be dismissed.

The petitioner 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 the sciences. The petitioner is a physician-in-training¹ who seeks to employ the beneficiary as a research assistant. The director determined the petitioner had not established the beneficiary's 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) as follows.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

¹ While the petitioner lists his business address at a prestigious university and research institution, he indicates on Part 5 of the petition that he is an "individual US citizen, in conjunction and with support of an organization." The record does not reflect institutional support for this petition.

- (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 material 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 specialization 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.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a research assistant. 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, quoted above, 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.

Initially, the petitioner submitted a letter from the petitioner to the beneficiary thanking her for her voluntary assistance on his project and expressing an intention to involve her in a "formal capacity"

in a future project; an uncertified Form ETA-750A; a certificate of competency issued by the Los Angeles Unified School District to the beneficiary relating to her successful completion of English as a Second Language requirements; the beneficiary's foreign school records for first through third grade; a copy of a slide presentation presented by the petitioner on undocumented immigrants; a concept for a future project to document income taxes paid by undocumented workers; evidence that the beneficiary traveled from her home in California to Baltimore; and the beneficiary's tax return and bank statements. The slide presentation argues that undocumented immigrants should be entitled to healthcare, education, and free choice of work because immigration laws are not "laws" but "policy" and because undocumented workers pay taxes, sometimes excess taxes because they cannot obtain a refund of their withheld income. While the petitioner asserted that he was submitting the uncertified ETA-750A because the beneficiary qualified for Schedule A, Group II certification, that certification is not relevant to the classification sought.

On January 2, 2002, the director advised the petitioner of the ten criteria and requested evidence that the beneficiary meets at least three of those criteria. In response, the petitioner argued that the slide presentation constituted the equivalent of published material in a major media, that the beneficiary's "insights about the undocumented immigrants community that few of us know about" is an important contribution, and that the beneficiary's voluntary assistance on the project for the petitioner's employer, a major university and leading research institute, constitutes a leading or critical role.

The director concluded that the petitioner had failed to submit evidence of the beneficiary's sustained national or international acclaim. Specifically, the director questioned the beneficiary's role in the petitioner's research project and the recognition received by this project. On appeal, the petitioner argues that the beneficiary did assist with the project and submits the beneficiary's personal tax documentation as evidence of the data collected by the beneficiary regarding the payment of taxes by undocumented workers. The petitioner states:

Without [the beneficiary's] experience in the undocumented Hispanic immigrant community, her familiarity and relationship with public health researchers like myself, and her unique ability to serve as a liaison between the two sides, these documents would not have been available.

The petitioner further argues that presentation at a major research institution is sufficient recognition for the project. The petitioner notes that it can take years for a project to be published.

The statute requires extensive documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate sustained national or international acclaim. Assuming that the beneficiary can even be considered a research assistant, the record does not reflect that she has attained any national acclaim in the field of science or any other field.

The plain language of 8 C.F.R. 204.5(h)(3)(iii) requires published material. A presentation by the petitioner, even at a prestigious university, does not constitute published material in major media.

Moreover, simply because the petitioner incorporated data collected by the beneficiary from her community does not indicate that the presentation was about the beneficiary and her work in her "field." Rather, the presentation focused on the analysis of data, however collected, by the petitioner. Beyond the plain wording of 8 C.F.R. 204.5(h)(3)(iii), the evidence simply does not reflect the beneficiary's national or international acclaim. Even if we concluded that a presentation attended by international health experts² constituted major media, the beneficiary did not gain any personal acclaim from the presentation. The acclaim for significant research projects goes to the researchers, not the individuals who volunteer to collect data, necessary as that job may be. Were this project to be published, it is doubtful that the beneficiary would be listed as a co-author.

In addition, the beneficiary's contribution to the project appears to be that she was a bilingual undocumented worker who, at best, was able to obtain evidence that her fellow undocumented workers are paying taxes. It is not clear how her ability to serve as a bilingual liaison with undocumented workers is evidence of extraordinary ability in the sciences, arts, business, education or athletics. While the lack of evidence of the beneficiary's scientific ability is grounds enough for denial, there is also no evidence that the data gathered by the beneficiary has already contributed to the field of public health nationally. Specifically, the record is absent any evidence that it was previously unknown to public health officials that undocumented workers, many of whom have a portion of their wages withheld like everyone else, pay taxes or that this "discovery" is generally viewed in the field as a major breakthrough. The petitioner's claim that it can take time to be published and gain acclaim is not persuasive. It is precisely because one must go through the time-consuming peer-review process to get published that it is considered evidence of one's abilities. Even published work, if not extensively cited, is not necessarily evidence of a contribution to the field at the national level.

Finally, while it was vital that someone collect the data for the petitioner's project and it helped to have it done by someone who was bilingual and had ties to the undocumented community, it is not clear that the data collector as an individual plays a leading or vital role for a research project. The evidence submitted for each criterion must reflect national or international acclaim for the alien's extraordinary ability in her field. For example, it was essential that someone volunteer for the first heart transplant. Thus, that patient played a "critical role" for heart transplant surgery. While that person may have gained "acclaim," however, it was not for his own extraordinary ability as a doctor. Moreover, while the petitioner's employer, a prominent university and research institution, may enjoy a distinguished reputation nationally, the beneficiary did not play a critical role for the university as a whole by collecting data for a single project initiated by a physician-in-training. There is no evidence that the petitioner's project in and of itself enjoys a distinguished reputation.

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. In the field of science, this

² The record contains no evidence to support the petitioner's contention that his presentation was attended by international experts, or, in fact, that the presentation was even given. The record also contains no evidence regarding the response to the presentation.

percentage is represented by those who have won Nobel Prizes or achieved similar acclaim. A research assistant with no scientific training does not compare with those at the top of the scientific research field. The beneficiary's work does not appear to fit into the other statutory fields of art, education, business, or athletics.

Review of the record does not establish that the beneficiary has distinguished herself as a research assistant to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. Therefore, the petitioner has not established the beneficiary's 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.