



BA

U.S. Department of Justice
Immigration and Naturalization Service

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

File: [REDACTED] (LIN-01-268-52666)

Office: Nebraska Service Center

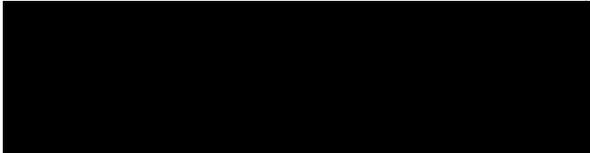
Date: **OCT 08 2002**

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:



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 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 petitioner is a women's specialty apparel retailer. It seeks to hire the beneficiary as its vice president of sourcing. In a detailed decision, the director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel reiterates his previous arguments but fails to specifically address the director's concerns.

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 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 vice president in the fashion industry. 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. While counsel has asserted in response to the director's request for additional documentation and on appeal that the petitioner has "provided at least three different types of evidence," only two of the "types" specified by counsel, performing critical roles and receiving a high remuneration, relate to the regulatory criteria in 8 C.F.R. 204.5(h)(3). The final "type," characterized by counsel as evidence that the beneficiary "is considered to be an executive with extraordinary ability by recognized and highly regarded experts in the fashion executive field," is not one of the ten regulatory criteria. On appeal, counsel does refer to the beneficiary's "impact" on the fashion industry. Insofar as this assertion is meant to claim that the beneficiary has made a major contribution to the field, we will discuss this claim below. It is noted that the ten criteria are listed on the instructions to the Form I-140 and the director specifically advised the petitioner and counsel of the ten criteria in his request for additional documentation. Despite being fully advised of the ten regulatory criteria and notified that meeting three of those criteria is required, the petitioner and counsel have chosen to address in detail only two. Nevertheless, we will discuss all the evidence below. The petitioner has submitted evidence that, it claims, meets the following criteria.

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

As stated above, counsel asserts on appeal that the beneficiary "has had a wide impact in the retail-clothing world." The "Report on Extraordinary Ability" by Educated Choices, LLC, an education consulting firm, includes the following:

[While Vice President for Warnaco Manufacturing:]

1. Set up world-class manufacturing units, approved by major customers such as Marks & Spencer in Great Britain, in third world locations. Some of GJM's main customers stated that their factory in south China was one of the most advanced manufacturing and development operations they had ever seen.
2. Trained 45 university graduates in industrial engineering across Asia to operate manufacturing facilities to world class standards. Some of these has [sic] gone on to work in Great Britain or have become senior merchandisers for GJM.
3. Reduced the Hong Kong trading office by over 200 employees, by transferring the workload to lower cost locations, saving \$5 million over a 12-month period.
4. Significantly improved access by junior staff to vital business data through participating in new management information system development.
5. Managed manufacturing operations simultaneously in Asian [sic] Great Britain, Central America, and North America.

[While Senior Vice President of Operations Worldwide for the same company:]

1. Increased customer service level from 55% to 82%.
2. Reduced total inventories by \$50 million over a 12-month period.
3. Implemented new products at a 97% on-time hit rate.
4. Reduced cost per standard hour produced by \$1.32.
5. Worked with Mexican government to set up new cutting, sewing, and distribution facility, with 6,500 new employees.

The authors of the report provide no explanation for their knowledge of these alleged accomplishments. While the petitioner makes similar assertions, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The record does not include any letters from Warnaco or its customers regarding the beneficiary. Moreover, while these accomplishments may have benefited Warnaco, there is no evidence that they impacted the fashion industry as a whole. The record does not include objective evidence regarding the beneficiary's impact on the industry (such as articles in trade journals) or even letters from disinterested fashion companies identifying specific contributions by the beneficiary and explaining how those contributions have become the standard to which others in the industry aspire. In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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

Counsel, the petitioner, and the "report on extraordinary ability" from Educated Choices, LLC, an education consulting firm, all discuss several of the beneficiary's purported prior positions. None of this information is supported by letters from the beneficiary's prior employers. Without direct evidence from these employers, the petitioner has not established that the beneficiary held any of these positions. Nevertheless, at the time of filing, it appears that the beneficiary was the Vice President, Sourcing, for [REDACTED]

The director concluded that this criterion is only relevant to the performing arts. We disagree. The regulations do not specify a leading or critical role in a performance, but for an organization. We find that an alien can meet this criterion outside the field of performing arts if the alien plays a leading or critical role for the organization as a whole and if the organization has a distinguished reputation nationally.

We do not question that [REDACTED] is a large corporation known nationwide. Moreover, in general, an executive officer clearly plays a leading or critical role for his corporation. As such, we find that the beneficiary meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In response to the director's request for additional documentation, the petitioner submitted its job offer letter to the beneficiary dated April 30, 1999. The letter is purportedly from Grace A. Nichols, President and CEO of [REDACTED] but she did not sign the letter. The letter indicates that the beneficiary's base salary would be \$350,000. The petitioner also submitted a printout from the Foreign Labor Certification Online Wage Library indicating that for area "1840," private sector executives have a level one annual wage of \$61,381 and a level two annual wage of \$127,566.

The director appears to have concluded that the beneficiary meets this criterion. We disagree. The level one and two wages appear to be prevailing wages for a specific geographic area. In order to meet this criterion, a petitioner must establish that the beneficiary is earning a significantly high wage when compared with the top wages in the field nationally, not when compared with the prevailing wage in a specific geographic area. As the petitioner has not established what the top five or ten percent in the field nationally are earning, it has not established that the beneficiary's salary is comparable. Thus, the petitioner has not established that the beneficiary meets this criterion.

Other evidence

Counsel and the petitioner rely heavily on a "Report on Extraordinary Ability," compiled by Educator Choices, LLC. The authors of this report are Dr. David Sirota, president of the education consulting firm and Dr. Ellen Lent, a psychologist, purportedly with advice from Sylvette Long, design director for Calvin Klein Jeans, and Mark Chernichaw, the former Vice President of Promotions and Advertising for the Home Shopping Network. The report is signed by Dr. Sirota and Dr. Lent only.

The report gives an overview of the beneficiary's alleged experience which is not supported by letters from the beneficiary's former employers. The report then analyzes the job responsibilities for General Managers and Top Executives as listed in the Occupational Outlook Handbook. Finally, the report quotes Ms. Long as concluding that the beneficiary has "the highest level of ability in the fashion executive arena" and Mr. Chernichaw as asserting that the beneficiary "is highly skilled when compared to others of his kind worldwide." The report concludes that the "totality of circumstances" indicate that the beneficiary is an alien of extraordinary ability.

In discussing this "report," the director stated:

The Service has no reason to question these conclusions [about the beneficiary's knowledge and abilities], which appear consistent with the demands and

requirements of a senior manager or executive position such as that held by the beneficiary. The alien of extraordinary ability visa classification, however, is not based on unique skills, however valuable, or in holding senior corporate or other office, but requires a showing of sustained national or international acclaim in the field of endeavor as established by objective evidence.

The statute requires "extensive documentation" of sustained national or international acclaim, a requirement reflected in the regulatory requirement for a variety of different kinds of evidence. The petitioner cannot compensate for failure or inability to submit such evidence simply by submitting evaluations or affidavits from evaluators or witnesses who attest that the beneficiary is widely recognized as an outstanding figure in his field. While witness statements may be of particular use in presenting and assessing the value of the alien's work, the regulations demand objective, verifiable evidence. Title 8, Code of Federal Regulations, Part 204.5(h)(4) permits the submission of "comparable evidence" when the ten criteria do not readily apply to the alien's field, but it appears that several of the ten regulatory criteria might be applicable to the field of business. Moreover, no objective comparable evidence has been submitted. The Service can and does give favorable evidentiary weight to the beneficiary's senior corporate office as a measure of his standing in the industry. The inferred significance of the beneficiary's corporate positions cannot, however, substitute for or overcome a lack of direct, documentary evidence to support claims of sustained national or international acclaim for which objective evidence ought to be readily available.

On appeal, counsel continues to quote from the report, but fails to specifically address the director's well-articulated concerns regarding the report's evidentiary value. We concur with the director's discussion of this issue. The regulations are extremely specific and unambiguous regarding the type of evidence required for this classification. Under the regulations a petitioner cannot rely on a subjective report evaluating the alien's skills, but must provide objective evidence of the alien's sustained national or international acclaim that meet at least three of the regulatory criteria.

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 vice president 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 indicates that the petitioner shows talent as a vice president, but 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.