

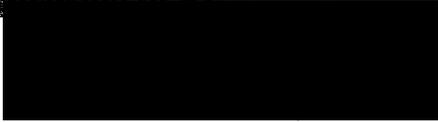


BA

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

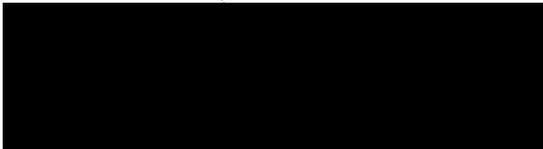
File: EAC 01 225 57330 Office: Vermont Service Center

Date: OCT 29 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:



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, Vermont Service Center. The matter 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 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 in business. The director determined the petitioner had not established that he qualifies 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).

In support of the initial petition, the petitioner submitted his resume, school record, and a letter from the Commonwealth of Virginia Marine Products Board. This evidence was insufficient to establish the petitioner's eligibility for the classification sought.

The Service regulation at 8 C.F.R. 103.2(b)(8) provides, in pertinent part:

Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the

missing initial evidence, and may request additional evidence, including blood tests. In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:

- (i) Submit all the requested initial or additional evidence;
- (ii) Submit some or none of the requested additional evidence and ask for a decision based on the record; or
- (iii) Withdraw the application or petition.

On October 4, 2001, the director issued a request for evidence citing the regulatory criteria at 8 C.F.R. 204.5(h)(3).

In a letter dated December 28, 2001, counsel for the petitioner requested additional time "to provide [the Service] with additional documents that will support [the petitioner's] I-140 petition." We note, however, that the Service regulation at 8 C.F.R. 103.2(b)(8) specifically states: "Additional time may not be granted." The regulation contains no provision requiring the Service to grant an extension beyond the twelve-week period.

On January 22, 2002, the petitioner responded to the director's request for evidence, but the evidence submitted does not appear to have immediately been placed in the record of proceeding.

On January 25, 2002, the director acknowledged counsel's request for additional time by issuing a second request for evidence that granted the petitioner an additional twelve weeks in which to respond. This letter granted the petitioner an extension until April 22, 2002.

On February 11, 2002 and March 16, 2002, counsel submitted letters in response to the second request for evidence indicating that the petitioner had already responded with the requested documentation.

The petitioner submitted evidence on January 22, 2002 that, counsel claims, satisfies several of the lesser regulatory criteria under 8 C.F.R. 204.5(h)(3). The petitioner's evidence includes, but is not limited to, the following: a certificate of recognition from the [REDACTED] evidence of the petitioner's participation in the 7th International Meeting on Radiation Processing, two books the petitioner did not author, numerous seafood invoices and inspection certifications, and several letters. Given that the director provided written notification granting the petitioner an additional opportunity to provide this evidence, we find that it must be considered in determining the petitioner's eligibility for the visa classification sought.

On April 5, 2002, the director denied the petition. The director's decision, in addressing the evidence provided by the petitioner, mentioned only the petitioner's resume and the letter from

the Commonwealth of Virginia Marine Products Board. The director's decision has not addressed the evidence submitted by the petitioner on January 22, 2002.

In this case, the petitioner claims eligibility under five of the lesser criteria. While much of the petitioner's evidence does not carry the weight imputed to it by counsel, the director's decision has failed to consider the supplemental evidence and clearly specify its strengths and weaknesses with regards to the criteria set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). Accordingly, this matter will be remanded for the purpose of a new decision. The director shall then render a new decision addressing the supplemental evidence under the pertinent regulatory criteria.

ORDER: The director's decision is withdrawn. The matter is remanded for further consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.