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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

[redacted]

1 7 SEP 2002

File: [redacted] Office: Vermont Service Center Date:

IN RE: Petitioner:
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:

[redacted]

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 initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on September 28, 2001. 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 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 in the arts. The director determined the petitioner would not be able to pursue his career in the United States as required by law.

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 achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. 204.5(h)(3):

> Initial evidence: 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 actor and announcer. Subsequent to the approval of his petition for classification as an alien of extraordinary ability in the arts, the petitioner applied for adjustment of status. On that application, dated November 1998, the petitioner indicated that he had been unemployed ever since his June 1997 entry into the United States. On June 24, 2000, the director instructed the petitioner to submit additional documentation in conjunction with the aforementioned

adjustment application. Among other documents, the petitioner submitted a letter from a restaurant manager, indicating that the petitioner "is currently being employed by our company on a part-time and permanent basis as a busser. He works 20-25 hours a week at the rate of $200.00 every week."

On July 16, 2001, the director informed the petitioner of the Service's intent to revoke the approval of the petitioner's immigrant petition. The director stated:

> A review of the evidence in the record of your Form I-140 [immigrant petition] does not indicate you would be able to purs[u]e your [acting] career as in Nepal.
>
> The evidence you provided with your application to adjust status confirms this. It is also noted prior to your adjustment you have been employed as a bus boy and waiter for a minimum wage with no evidence of any activity within your claimed acting announcing in film or TV or your cultural and social activities.

The record contains a copy of the notice of intent, stamped "NO RESPONSE." The petitioner, however, did in fact submit a timely response to that notice. That response consisted of various documents showing that the petitioner has worked as an actor and announcer for various Nepalese cultural entities in the New York Metropolitan area. Many of the documents are dated after July 16, 2001, the date of the director's request, but some are dated prior to that date. None of them are dated 1997 or 1998, the period in which the petitioner had earlier claimed total unemployment.

The director subsequently revoked the approval of the petition, stating "[o]n July 16, 2001, you were notified of this Service's intent to revoke the petition you filed for the beneficiary on May 27, 1998. The approval of your petition is revoked." The remainder of the revocation notice concerns the petitioner's appeal rights.

On appeal, counsel correctly protests that the "[d]enial [notice] did not specify reasons for that decision." There is no evidence that the director gave any consideration to the evidence submitted in response to the notice of intent to revoke, and the "NO RESPONSE" stamp is evidence that the director was entirely unaware of that submission. The director must give due consideration to the petitioner's timely submission. If that submission is found to be insufficient, the director must explain those insufficiencies in a new notice of revocation.

We note that, while the petitioner has documented some degree of acting activity in recent years, there is no indication that this activity is consistent with extraordinary ability, i.e. that the petitioner ranks among the very top actors in the nation. Because the petitioner has been in the United States since 1997, it is entirely appropriate to judge the petitioner's recent work by U.S. standards. The petitioner's recent work appears to have been limited to the Nepali-speaking community, primarily in the vicinity of New York City, and there is no evidence that the petitioner has earned any kind of significant reputation or acclaim outside of that community. The statute and regulations demand sustained acclaim at the national or international level, rather than at some arbitrary sublevel; acclaim within a local community is neither national nor international. Furthermore, if the petitioner had not done any work at all from June 1997 to

November 1998 (as he specified under penalty of perjury on his Form G-325A Biographic Information sheet submitted with his adjustment application), it is not clear how the petitioner was able to maintain a level of sustained acclaim during that time. The director should afford the petitioner the opportunity to address these issues.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.