



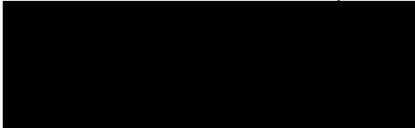
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U.S. Department of Justice

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: EAC-01-224-53782

Office: Vermont Service Center

Date: **SEP 24 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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 sciences. 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.

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.

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;

(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 an inventor, researcher. 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 U.S. patent 6,109,023 issued to the petitioner and Shlomohai Niyazov for a "device for cleaning exhaust gases" for vehicles and several letters that appear to be bulk mailings sent to all patent recipients. Patent Awards sent the petitioner a "special offer" which appears to be a discount for the purchase of a patent certificate printed by Goes and signed by the Acting Commissioner of Patents and Trademarks. Inventors Express Services, Inc. offered the petitioner a "risk free agreement" to represent the petitioner's invention to manufacturers. Inventors' Legal Resources urges the petitioner to purchase their book. U.S. Patent Certificate, Inc.

offers inventor's certificates and plaques from \$36.50 to \$239.50. United States Patent Services offers a "commemorative collection" of plaques from \$15 to \$229. Finally, Kessler Corporation offers licensing and sales assistance to inventors.

On October 4, 2001, 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 submitted his patent applications which were rejected based on similarities to inventions patented by other researchers and patents issued to unrelated researchers.

The director concluded that the petitioner had failed to submit evidence of the petitioner's sustained national or international acclaim. The director noted the lack of national or international prizes or awards, published material about the petitioner and his invention, memberships in exclusive associations, or high salary.

On appeal, the petitioner asserts that the scientists worldwide need two to three years to study his device. He requests 600 days (more than a year and a half) to submit new documentation. A petitioner must demonstrate eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Petitions seeking the classification sought by the petitioner require evidence that the alien already enjoyed sustained national or international acclaim at the time of filing the petition. A petitioner cannot request on appeal an additional year and a half to demonstrate future national or international acclaim that he personally speculates will occur. As such, the petitioner's request for additional time is denied.

The petitioner further asserts:

Meanwhile, the [sic] President Bush has already checked the engine of the first experimental automobile, invented by me (see the enclosed proof). The military administration of the Ministry of Defense in [the] Pentagon has showed a great interest to my invention and currently is studying the technology of the device. . . . So far I've earned already 2 million dollars by selling the first experimental automobile, which has the engine invented by me.

The petitioner submits a photograph of President Bush with a Russian language caption. The uncertified translation indicates that Susan Sishke, a representative of Ford Motors, is showing the President an experimental engine that saves oil. The petitioner also submits a photograph of himself behind a vehicle with an unidentified tool, a photograph of him and, according to the handwritten caption, Larry Schrock of Ford, with a Ford logo behind them, and two photographs of car tailpipes and engines. The petitioner also submitted his identification for the Soviet American Conference on Trade and Economic Cooperation and his alleged membership card with the Association of Engineers and Scientists for New Americans (AES). The card has no member identification number, years of membership, or expiration date. The petitioner also submitted his bankcard.

A patent is not an award or prize. The patent office does not issue patents as the result of a competitive contest. Rather, the U.S. Patent Office issues a patent to any original concept regardless of importance or significance. The bulk letters received by the petitioner appear to be the type sent to all patent recipients and do not reflect corporate or manufacturer interest in his invention.

The petitioner's claims on appeal are utterly unsupported. The caption of the photograph of President Bush makes no mention of the petitioner. The petitioner has not submitted any evidence that he ever worked for Ford or that they licensed his invention. The petitioner's AES membership card omits so much information that it is poor evidence of his membership. Regardless, the record contains no evidence that AES requires outstanding achievements of its members. The petitioner does not submit any contract reflecting the sale of a car or engine for \$2,000,000 as claimed. Nor has the petitioner submitted a check issued to him for that amount with a letter of explanation from the payor. Even if we could confirm a deposit of that amount in the petitioner's account through the account number that he provides, we could not confirm the source of that deposit or that it was compensation for a car or engine.

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 petitioner is a talented inventor, the record does not reflect that he has attained any national acclaim for that talent. Specifically, the petitioner has not submitted documentation that sufficiently relates to any of the ten 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 an inventor 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. 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.