

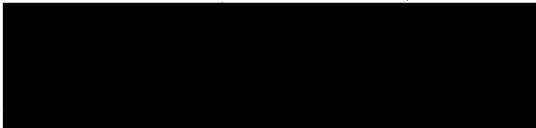


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-02-103-51491

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-REPRESENTATION

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. 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.

On appeal, the petitioner asserts that her new book, Reality, will soon be available and requests 180 days to submit reviews. The petitioner submits an unpublished "review" consisting of a letter from Vivian Vican of Nerd World Productions. While Ms. [REDACTED] asserts that she likes the book, she does not provide her credentials for evaluating poetry.

On appeal, the petitioner requests additional time to submit reviews of an upcoming publication. A petitioner must demonstrate eligibility at the date of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). As the reviews could not be considered evidence of the petitioner's eligibility at the time of filing, the petitioner's request for additional time is denied and the petition will be adjudicated on the evidence already in the record.

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). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a writer and poet. 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. The criteria are discussed individually below.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a letter from the International Society of Poets requesting that she attend their Spring Convention and Symposium where she will be inducted as a member and will be considered for the \$20,000 Poet of the Year prize. There is no indication in the record that the petitioner actually won that prize.¹

The petitioner also submitted a 1999 certificate for outstanding achievement in Poetry from the National Library of Poetry. The record contains no evidence regarding the significance of this organization or the award.²

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.

The petitioner submitted a certificate confirming that she is a "distinguished member" of the International Society of Poets. The petitioner failed to submit any documentation regarding the

¹ Poetry.com's website indicates that, in order to attend the awards ceremony, contestants must pay a huge registration fee, \$595 for nonmembers, \$570 for members. These fees do not cover travel and hotel accommodations. These fees raise concerns regarding the prestige of these awards.

² An internet site, www.crimes-of-persuasion.com, suggests that the National Library of Poets is the same organization or affiliated with the International Society of Poets and that all contestants are semi-finalists and offered publication in an anthology, for which the poet must pay if she wants a copy. The site also asserts that Dave Barry, 20/20, and major newspapers have all investigated the National Library of Poets by submitting intentionally bad poems, some even written by second-graders. All submissions were highly praised and offered inclusion in anthologies. Windpub.org indicates that Consumer Reports has also investigated the National Library of Poets and raised concerns regarding the legitimacy of their "contests."

membership requirements for this organization.³ As such, the petitioner has not established that she meets the plain language requirement of this criterion.

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.

The petitioner did not submit any evidence regarding this criterion.

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.

The petitioner did not submit any evidence regarding this criterion.

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

The petitioner does not specifically claim to meet this criterion. We simply note that any successful poet publishes her poems. Mere publication of one's work is not evidence of a contribution of major significance to the field of poetry.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As stated above, any successful writer or poet writes and publishes his or her work. That the petitioner's poems have appeared in anthologies is not evidence that she has authored scholarly work regarding the field of writing or poetry. Moreover, the director concluded that the anthologies are "vanity publications, which enable writers of modest talent to see their work in a professionally bound volume." The petitioner does not contest this conclusion on appeal and we concur.⁴

On appeal, the petitioner asserts that her book, *Reality*, will soon be available and that she intends for it to serve as a textbook. As of the date of filing, *Reality* was not available. As such, it cannot be considered evidence of the petitioner's eligibility at the time of filing. See *Matter of Katigbak*, *supra*.

³ This Society is affiliated with Poetry.com, whose website indicates that a "distinguished membership" can be obtained simply by paying \$120 for a two-year membership in the Society. Poetry.com's website indicates that all poems submitted are printed on the website and www.petitiononline.com indicates that every poet who submits poems to the website is nominated for membership.

⁴ Sfwa.org asserts that while the anthologies are published, they are not available in bookstores, but only by order over the publisher's website. Most are sold to the contributors and their families.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

This criterion is not relevant to the petitioner's field.

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

On appeal, the petitioner indicates that she is a member of the leadership team at her daughter's school. The petitioner has not established that she plays a leading or critical role for the school as a whole or that the school enjoys a distinguished reputation nationally. Moreover, it is not clear how this role is evidence of her national acclaim as a writer or poet.

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

The petitioner has not submitted any evidence regarding this criterion.⁵

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion does not relate to the petitioner's field, although the commercial success of the petitioner's published works, including, to a lesser extent, the success of compilations including the petitioner's work, could be considered comparable evidence under 8 C.F.R. 204.5(h)(4). As discussed above, there is no evidence that the vanity anthologies in which the petitioner's works appear have been commercially successful. In addition, while asserting that her book, *Reality*, will be available soon and a novel is forthcoming, the petitioner has not submitted any evidence that, as of the date of filing, her book had already enjoyed commercial success. The petitioner's claim on appeal that *Reality*, a book that, according to the contract, will only be marketed by the petitioner and her small publisher's website, will be a best seller is insufficient.

In summary, the petitioner has submitted awards that are not nationally recognized as prestigious, evidence of membership in a non-exclusive society, and published work in anthologies available only by special order from the publisher. The company with which the petitioner has contracted to publish her upcoming book only indicates that it will prepare the book for distribution on its website. There is no indication that it is a major publishing company or that the agreement to publish the book is indicative of the petitioner's acclaim.⁶ The "review" submitted on appeal is not a published review and simply represents the opinion of the letter writer, who has not indicated her credentials for evaluating poetry.

⁵ While the petitioner does not claim to meet this criterion, we simply note that www.crimes-of-persuasion.com asserts that the National Library of Poetry, also known as the International Library of Poetry, does not pay contributing authors or even provide a free copy of the anthology.

⁶ The company's website, www.1stbooks.com, indicates that it never rejects a book.

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 herself as a writer and poet 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. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.