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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[redacted]

APR 16 2003

File: EAC 02 067 50670 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)

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Elizabeth Hayward
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 Administrative Appeals Office (AAO) 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. 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 --
> >
> > > (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 pertinent 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 a non-profit organization that seeks to employ the beneficiary as an HIV/AIDS youth consultant. The petitioner's initial submission did not directly address the regulatory criteria listed above. In a letter submitted with the petition, [redacted] volunteer coordinator with the petitioning organization, states:

> We are requesting the INS [now the Bureau] to allow [the beneficiary] to stay and work as a volunteer in the US for approximately two years. [The beneficiary] is a renowned HIV/AIDS campaigner, educator and speaker. As a volunteer, he will work with [the petitioner] to promote word to the global community that the HIV/AIDS epidemic is destroying African families, communities, and without immediate outside intervention, will eventually eliminate entire African cultures. [The beneficiary] will help [the petitioner] develop effective HIV intervention programs and other media

materials targeted at children and young adults. He will also assist in the translation of AIDS materials into African languages.

[The beneficiary] has Life related experience as an AIDS orphan and campaigner. He has received global recognition for his work that include[s]: 1) [participation] as a panelist at the National Summit on Africa, in Washington, DC, 2000. 2) Selected as the only African youth to represent Africa together with 6 other talented young people from around the world in developing an international Youth Website, (YouthActionNet.org) sponsored by the International Youth Foundation and 3) as a panelist at the International Society of Women Against AIDS Conference, 2001. He has appeared on major TV networks including CNN, Voice of America radio and has presented several AIDS papers at different international conferences.

Ms. [redacted] asserts that the petitioner "will provide housing and a stipend during the two-year period." Evidence submitted with the petition includes letters from the International Youth Foundation, detailing what is expected of YouthActionNet Task Force members including attendance at an August 2000 conference in Baltimore, Maryland, and brochures from the National Summit on Africa, which took place in February 2000 in Washington, D.C. At the latter event, the petitioner organized a session entitled "Focus On Africa's Future: Saving Africa's Children Orphaned by HIV/AIDS," at which the beneficiary was one of five speakers. The petitioner offers no evidence to corroborate or clarify the nature of the beneficiary's claimed television appearances.

The director instructed the petitioner to submit further evidence to satisfy at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3). In response, Ms. [redacted] asserts that the petitioner "needed a youth consultant who is keenly aware of the problems faced by youth in Africa and had experience in helping them avoid HIV and AIDS," and that the petitioner selected the beneficiary after "a diligent search for an individual with life experiences to assist us [to] develop relevant youth targeted AIDS programs." Ms. [redacted] states that the beneficiary possesses the necessary "qualifications and talents" for the position, such as "real life HIV/AIDS experience" and willingness "to return to work and study in Africa." However difficult it may have been for the petitioner to locate a young African who met all the qualifications, those qualifications are not tantamount to sustained national or international acclaim.

Ms. [redacted] observes that AIDS kills thousands of Africans every day, and that "[u]nless an emergency response is actuated immediately, an estimated 40 million African children will be orphaned by 2010." The AIDS crisis in Africa is, without a doubt, an international emergency that is both tragic in its consequences and enormous in scale, and nothing can be gained by understating the significance of the epidemic. We also recognize the importance of educational outreach activities because an informed populace has a potent weapon against the further spread of one of the most dreaded diseases in modern history. That being said, however, the petitioner has chosen to pursue an employment-based immigrant classification, the requirements for which rest on the sustained acclaim of the beneficiary. Regardless of the nature of the work that the beneficiary intends to perform, the petitioner must establish the beneficiary's sustained national or international acclaim as one at the very top of his field.

Ms. [redacted] has indicated that the petitioner requires the beneficiary's services for only two years, and that the beneficiary "will return to Uganda as soon as he completes his volunteer assignment" with the petitioning organization. Given these circumstances, Ms. [redacted] does not explain why the petitioner seeks a permanent immigrant visa for the beneficiary, rather than a temporary nonimmigrant visa. If an immigrant petition were to be approved on the beneficiary's behalf, the beneficiary's ability to leave the U.S. would be somewhat restricted during any adjustment proceedings. If the beneficiary becomes a permanent resident of the U.S., extended absences from the U.S. could result in abandonment of his permanent resident status. If the beneficiary indeed intends to return to Africa after his two-year assignment with the petitioner, then it is not clear what the petitioner or the beneficiary stand to gain by seeking a highly restrictive immigrant classification instead of a nonimmigrant classification.

The petitioner's response to the director's notice includes letters and other exhibits. The beneficiary states his strong personal motivation to fight HIV/AIDS, which took the lives of "more than 20 members of my immediate family" including his father. The beneficiary states "I would like to use my real life experiences to help organizations that work in Africa to develop programs that can reduce the incidences of HIV in Africa. . . . I have no intentions of remaining in the USA beyond my assignment with the Ark Foundation." The AAO disputes nothing in the beneficiary's letter, but the statute and regulations are very clear about the requirements one must meet in order to qualify as an alien of extraordinary ability.

[redacted] director of Media Affairs at the U.S. Africa Development Consortium (USADC), states that the beneficiary's "gracious participation in programs in Africa and the USA about HIV/AIDS and its effects on youth are far reaching." Ms. [redacted] states "USADC plans to work with [the beneficiary] to produce a series of informational and educational videos," which indicates that these educational materials have not yet been made. Ms. [redacted] mentions a documentary "produced by film students at American University," implying but not stating outright that the beneficiary was involved in the documentary. She adds that the beneficiary "is the main subject on another documentary focusing on AIDS orphans." There is no indication that the first film has been widely shown outside of American University or that the second film has even been completed. Other documents and videocassettes in the record show that the beneficiary spoke at several conferences and forums in May and June of 2002.

The director denied the petition, stating that while the record shows that the beneficiary has had some success and visibility in his endeavors, the petitioner has not submitted evidence of sustained international acclaim as required by the statute and regulations. On appeal, counsel asserts that the beneficiary is highly sought after as a speaker and that the beneficiary's "status is equivalent to that of one who has risen to the top of his field of endeavor. He has experienced and continues to experience recognition and acclaim of a national and international level." Counsel discusses some of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3):

> *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.*

Counsel states:

> [The regulation] refers to 'documentation of the alien's membership in the field for which classification is sought [sic].' To begin with, [the beneficiary] is a member of the [petitioning entity], an organization that enjoys a longstanding reputation in the field of concern. Additionally, [the beneficiary] is an esteemed member of the Board of Directors of the Fund for Orphans of AIDS in Africa (FOAA). Both organizations have established their presence in the global community, and both organizations have selected [the beneficiary] because of his charisma, his abilities and his popularity with all those who are fortunate enough to come in contact with him. [The beneficiary] is also a member of the International Youth Foundation, and was recently selected to be on a task force comprised of six (6) individuals from the global community. Needless to say, the competition to get on that task force was fierce, and [the beneficiary], because of his accomplishments and abilities, was chosen to be the representative from Africa.

The petitioner has not shown that any of the above organizations are "associations in the field." The entities are directly involved in the field itself, rather than serving as associations for individuals employed elsewhere. By way of analogy, the U.S. National Academy of Sciences (NAS) is an association in the sciences, that requires outstanding achievements of its members. The NAS does not conduct research, but rather acts as an advisory body comprised of scientists from a variety of institutions. The Massachusetts Institute of Technology (MIT), on the other hand, is an educational institution and an active research facility. While MIT is a prestigious institution with rigorous standards, it is not an "association" of scientists. In the same way, the entities named by counsel are direct advocacy groups, rather than associations representing the interests of those who work for such groups.

Furthermore, *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), indicates that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Expanding on this decision, the AAO held in *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), that a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. In this instance, one of the memberships claimed is the beneficiary's affiliation with FOAA. Materials in the record discuss the "launch" of FOAA in June 2002, several months after the petition's December 2001 filing date. If FOAA did not even exist at the time of filing, then the beneficiary could not have been a member of FOAA at that time. The beneficiary's subsequent affiliation with the group cannot retroactively establish eligibility as of the filing date. More importantly, the petitioner has not shown that it, FOAA, or the International Youth Foundation require outstanding achievements as a condition for membership.

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

Counsel states:

> [The beneficiary's] contributions to the international AIDS community are of major significance. He represents the interests not only of his country of origin and of orphans everywhere, but also the interests of Africa. . . . [T]he AIDS community recognizes the importance of having someone like him to lead the way. He it vital to the international research community because he is helping that community to understand the problem we face; by providing a voice that speaks to the nature of the problem, and by working with organizations in finding solutions, he is an extremely important factor in the fight against AIDS. . . . His major contributions come in the form of his keynote speaking engagements, his presence on important boards and in important organizations and his contact with important individuals in the field of concern.

It cannot suffice simply to list the beneficiary's accomplishments and declare them to be of major significance. If the beneficiary's work is truly considered to be of major significance throughout the AIDS research and education community, then there ought to be a variety of documentation available from a broad spectrum of sources attesting to the significance of the beneficiary's work. Simply showing that the speeches and presentations took place cannot suffice. Much of the evidence submitted on appeal, concerning the beneficiary's speeches and other activities, concerns events that took place after the petition's filing date.

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

Counsel asserts that the petitioning entity, as well as "organizations like the World Bank and the International Youth Foundation," are organizations with distinguished reputations. Counsel does not explain how the beneficiary plays a leading or critical role for these entities; counsel merely notes that the beneficiary is "actively involved" with the latter two entities.

The record does not substantiate counsel's assertion that the beneficiary is "actively involved" with the World Bank. The record does contain correspondence from [redacted], identified as "the Office Manager of the Unite in the World Bank responsible for Water and Urban programs in Eastern and Southern Africa," but she does not write on behalf of the World Bank. Rather, she writes in her capacity as outreach coordinator for FOAA. There is no evidence of any formal connection between the World Bank and FOAA, and the record contains nothing else from any World Bank official to indicate that the beneficiary's connection to the World Bank extends any further than his acquaintance with Ms. [redacted]

Counsel concludes by asserting that "the international community as a whole" would benefit from "allowing an individual like [the beneficiary] the ability to travel to and from the United States" for the purpose of advancing AIDS awareness and education. Counsel adds that "[w]hile [the beneficiary] intends to stay in the country for an extended period to complete important work for his chosen cause, he does plan on returning to Africa and to Uganda so that he can personally assist those in need." The regulation at 8 C.F.R. § 204.5(h)(5) requires evidence that the alien is coming to the United States to

continue working in the area of expertise. This regulation mirrors the similarly worded statutory requirement at section 203(b)(1)(A)(ii) of the Act. The petitioner has described the beneficiary's work as a short-term assignment, with no salary but with a small weekly stipend to meet the beneficiary's expenses while in the United States.

The petitioner, the beneficiary, and now counsel have indicated that the beneficiary does not intend to remain in the United States to continue working in his area of expertise. Even setting aside the beneficiary's clearly stated intention to leave the United States, the beneficiary's work thus far has amounted to volunteer work undertaken while the beneficiary was still a student. It is not clear that the beneficiary's activities amount to a field of endeavor that would be amenable to an employment-based immigrant classification. When paid at all, the beneficiary receives only nominal stipends. This is not a viable permanent arrangement and cannot be said to represent "employment" in any strictly accurate sense of the word. Therefore, it is far from clear that an employment-based immigrant classification would be appropriate at all in this matter.

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 beneficiary has distinguished himself as an AIDS educator 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 is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level, if his activities can be said to fall within a field of employment at all. 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. The denial of this petition is without prejudice to a nonimmigrant visa petition, seeking an applicable classification, accompanied by appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.