



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[Redacted]

File: EAC 02 074 50863 Office: VERMONT SERVICE CENTER

Date: JAN 4 2000

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]

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 CFR 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 CFR 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 sustained and the petition will be approved.

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 in business. The director determined the petitioner had not established the sustained national or international acclaim necessary for that visa classification.

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 CFR 204.5(h)(2). An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 CFR 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a publisher of educational books. It seeks to employ the beneficiary as editor-in-chief of the Physical Science Division at its subsidiary, Prentice Hall. Paul Corey, president of

Engineering, Science and Mathematics at Prentice Hall, states that the beneficiary "is very qualified for the position of Editor-in-Chief and an extremely talented and valued executive, he is the cream of the editorial crop. He is only one of ten people in our Prentice Hall Division holding the title of Editor in Chief in a HIGHER Education Organization with thousands of employees." The petitioner notes that Prentice Hall had previously filed a petition on the beneficiary's behalf, and that the earlier petition was denied and an appeal dismissed. The petitioner maintains that "significant new evidence and developments" subsequent to that first petition now justify the approval of the new petition.

The regulation at 8 CFR 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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 that the beneficiary's membership in the American Chemical Association satisfies this criterion. The record does not contain the evidence that counsel mentions with regard to this claim. In any event, the petitioner's field is not chemistry, but rather educational publishing. As shall be discussed in greater detail further below, several authors edited by the beneficiary assert that it is rare for the editor of a chemistry textbook to have significant expertise in chemistry, in which case we cannot consider membership in a chemistry association to be a membership in the beneficiary's field.

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 record contains numerous examples of publications where the beneficiary, as editor-in-chief, acquisitions editor, or managing editor, judged the work of contributors to those publications. Counsel notes that the beneficiary has been editor-in-chief of "many number one sellers in the market," and that the beneficiary's "review is not a matter of simply checking the copy for errors. [The beneficiary] uses his scientific background to stand in *Judge* [sic] of the work presented and to assess the validity of the concepts or conclusions set forth by the author." Numerous writers who have worked under the beneficiary's editorship confirm this characterization, and assert that the petitioner's expertise in chemistry allows him to make more meaningful contributions than editors are usually able to offer.

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

Cynthia Jones, president and chief operations officer for Patterson Jones Interactive, states “[i]n just four years, [the beneficiary] has been able to recruit viable authors, implement strategic marketing plans and make strong sales that have increased his list sales from \$8 million to over \$25 million – a phenomenal feat in a very competitive business.” Other publishing executives offer comparable assessments of the beneficiary’s skills and achievements.

Several authors whom the beneficiary has edited offer praise as well, characterizing the beneficiary as easily the best and most effective editor out of the many with whom the authors had worked. The authors indicate that the beneficiary took an active role in shaping the textbooks and other projects, and evidence in the record indicates that these books have gone on to significant success.

Many of these authors are also faculty members of top U.S. universities such as Northwestern University and the Massachusetts Institute of Technology. For instance, Theodore L. Brown, professor emeritus of Chemistry at the University of Illinois and a co-author of *Chemistry: The Central Science*, states that the beneficiary “has had great influence not only on the revision plan for the text, but also on the ancillary materials that accompany the text, and which to a large extent determine the success of the book in terms of sales.”

In a subsequent submission, the petitioner shows that the petitioner’s market share in chemistry books grew substantially between 1995, when the beneficiary began working for the company, and 1998, and that this share has held steady (as the market leader) since 1998. James M. Smith, publisher of Benjamin Cummings (a competitor of the petitioning company), states “publishing chemistry textbooks is a bit like blood sport. In a market of roughly \$110 million, a handful of editors compete in hand-to-hand combat for every scrap of market share that they can grab from the ‘friendly’ competition. Success is measured at year’s end by the increase in market share.” Mr. Smith notes “I compete in many of the same markets against [the beneficiary], and do not have any self-serving motives to write this letter other than those of mutual respect and courtesy.” Mr. Smith asserts that the beneficiary is “known to his peers and contemporaries as one who possesses extraordinary ability in the field of college science publishing.”

Upon consideration, the petitioner has satisfied this criterion. Acting as an editor for a major publishing company is not, in itself, a contribution of major significance, but the record demonstrates that the beneficiary’s contributions in this area substantially exceed the contributions usually made by high-level editors.

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

The beneficiary co-authored five journal articles on biology and chemistry between 1986 and 1989, and contributed to *Science* 10 in 1992. The beneficiary’s field, however, is educational publishing rather than scientific research itself. Several authors have stated how unusual it is for the beneficiary, as the editor of chemistry textbooks, to have an advanced degree in chemistry. Clearly, a background in chemistry, while an advantage, is not a prerequisite to working as an editor of chemistry texts (otherwise, the beneficiary would not be an oddity in his field). The beneficiary’s

journal articles predate, for the most part, the beneficiary's career as a top-level editor, and the articles themselves are not about the publishing field. Therefore, we cannot conclude that the petitioner has satisfied this criterion through the beneficiary's scholarly articles.

Regarding the beneficiary's work in publishing, Paul Corey asserts that the beneficiary's knowledge of editorial methods and the publishing business in general "is among the most closely guarded of our proprietary assets," and therefore the beneficiary is prohibited from writing articles about his work in that business. Mr. Corey adds "there are no journals dedicated to academic editors or their craft." Clearly, there exist no scholarly articles by the beneficiary concerning his work in the field of publishing, and therefore the petitioner cannot satisfy this criterion.

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

Mr. Corey describes the company's distinguished reputation and the beneficiary's role therein:

[The petitioner] aims to be the world's leading education publisher. The company was created in November 1998,¹ through the merger of Addison Wesley Longman and Simon & Schuster education publishing companies' businesses, and boasts many of the most respected imprints in classrooms around the world. . . . Likewise, [the petitioner] is also the world's leading technology publisher. . . .

As Editor in Chief, [the beneficiary] is responsible for strategic list planning, budget planning and management of human resource management including the oversight and training of an editorial staff of ten. He oversees editors responsible for major projects from signing through publication and final sales. The company currently is number one in Chemistry textbooks publishing worldwide; the company is currently number three in Physics and Astronomy textbook publishing worldwide. [The beneficiary's] areas of concentration are physics, chemistry and astronomy. In 2001 the combined list sales are \$36.5 million (excluding international sales). [The beneficiary] is directly responsible for managing the departments generating these sales. He is an indispensable asset to this company and works in an essential/critical role.

As an editor-in-chief, the beneficiary reports directly to the president of the petitioning company. The beneficiary's role clearly rises above middle management or supervision of a small cell of subordinates, and the petitioner's standing in the marketplace reflects its distinguished reputation. The petitioner has readily satisfied this criterion.

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

¹ Prentice Hall, acquired by the petitioner from Viacom, has existed since 1913.

In 2001, the beneficiary earned a salary of \$87,500 plus bonuses for a total of \$119,022 for the year. The petitioner submits documentation showing that the level 2 local prevailing wage for editors is \$62,130 per year. This is a local rather than national figure, and it does not distinguish between editors, executive editors, editors-in-chief, and so on.

Because the information submitted with the petition was insufficient, the director instructed the petitioner to “[s]ubmit documentary evidence of how the beneficiary’s salary compares with the well-known and famous Professionals of the beneficiary’s claimed caliber and expertise.” In response, the petitioner submits documentation showing that editors in New Jersey earn a median annual wage of \$41,200, with the top ten percent earning \$81,500 or more. The documentation also shows that wages in New Jersey exceed the national average, and thus a wage in the top ten percent in New Jersey would be in an even higher percentile nationally.

While the record shows that the beneficiary earns remuneration considerably above the median, and well within the top ten percent, among all editors, it remains that the beneficiary is not merely an editor but an executive-level official of the petitioning company. A more apt comparison, therefore, would be between the beneficiary and publishing executives. It is certainly possible that the beneficiary is among the highest-paid publishing executives, but the record does not contain sufficient proof to allow a definitive conclusion.

Additional evidence in the record indicates that the petitioner is the founder of Script Publishing, which, within a few years of its establishment, published three number one best-sellers in Canada as well as other successful books. This accomplishment does not appear to fit readily into any of the ten criteria at 8 CFR 204.5(h)(3), but it is certainly evidence of the petitioner’s skill and success in the publishing industry and therefore we consider it as comparable evidence pursuant to 8 CFR 204.5(h)(4). While the bulk of the credit for the success of the books lies with the editor directly responsible for the content of the books (the books, compilations of readers’ questions, have no single author as such), no book can become a national best-seller without the distribution and other support afforded by its publisher. A regional magazine article in the record refers to the beneficiary’s former company as a local company, making it all the more significant that several books by a nominally local publisher have achieved success at a national level.

The director denied the petition, stating that the beneficiary “meets some of the above criteria as a Painter” but the record does not establish consistent, sustained acclaim. The director also stated that the record lacks sufficient evidence to allow a comparison between the beneficiary and others in his field.

On appeal, counsel protests the director’s clearly erroneous references to the beneficiary as a “painter.” The director also, however, made several specific references to editing and the publishing industry, and thus it is clear that the director reviewed the record of proceeding before rendering the decision. The references to a “painter” appear to derive from language copied (in the interest of time) from a prior decision, rather than from the director’s mistaken impression that the beneficiary is in fact a painter. As such, the inadvertent references to the beneficiary as a “painter” appear to constitute harmless error.

Counsel contends that the decision reflects a bias against editors. Counsel does not elaborate on this claim, and our review of the decision reveals no clear evidence of such bias. The director stressed the importance of comparing the beneficiary's achievements to those of others in the field, but at no point did the director denigrate editors in general or minimize their importance to the publishing industry.

Although not all of counsel's arguments on appeal are particularly persuasive or germane, counsel is correct in asserting that the petitioner has submitted evidence from others in the publishing field despite the director's finding that such evidence was not submitted. The record contains substantial evidence showing that the beneficiary has been an extremely successful and highly regarded figure in the educational publishing business, and that he is regarded by publishers and authors alike as one of the top editors in the field. Upon careful consideration of all of the evidence presented, the petitioner has, on balance, satisfied sufficient criteria to establish the beneficiary's eligibility for the classification sought.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that the beneficiary has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that the beneficiary seeks to continue working in the same field in the United States and that the beneficiary's entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.