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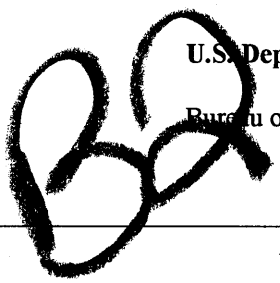

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

[redacted]

JUL 21 2003

File: WAC 02 171 53180 Office: California 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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 education. 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 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 he has sustained national or international acclaim at the very top level.

This petition, filed on April 26, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a "freelance consultant on non-governmental voluntary organizations in Europe and Eurasia." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since 1996. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an international non-governmental voluntary organization consultant in this country.

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 petitioner has submitted evidence that, he claims, meets the following criteria.

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

The petitioner asserts that he satisfies this criterion through having been elected president of a non-governmental voluntary organization known as ATM (Association of International Youth Work). The petitioner's selection for a job position would not qualify as a "prize or award" and at best reflects only organizational (rather than national or international) recognition.

The petitioner also claims that the European Union presented ATM with a $150,000 grant. The record, however, contains no first-hand evidence to support this assertion (in the form of documentation from the European Union/Commission outlining the terms of the grant). We note here that, unlike awards such as the Nobel Prize which recognize demonstrated past achievements, grants are often bestowed in response to applications by prospective recipients, who describe the endeavor which they seek to undertake. In other words, grants generally support future activity rather than recognize prior achievement.

Further, it is noted that a substantial number of volunteer organizations are funded by grants from a variety of sources. The record contains an article from 2000 entitled, "The New Mantra of Globalization: Inclusion," which states:

> Four decades ago, there were fewer than 1,000 non-governmental organizations that operated in at least three countries. Today there are almost 30,000, according to the United Nations. Within the United States, there are about 2 million such groups. In the brief decade since communism collapsed, 65,000 independent organizations dealing with the full range of issues have formed in Russia.

Therefore, we find that the past grant funding received by ATM would not elevate the petitioner to the pinnacle of his field. The petitioner has submitted no documentary evidence to distinguish his non-governmental organization, ATM (which is now defunct), from the numerous other successful volunteer organizations that continue to thrive.

The petitioner submitted documentation notifying him of his listing in the 2002 edition of *Marquis Who's Who in America*. The petitioner, however, has not shown the level of acclaim associated with being listed in this publication. Recognition can come from a national organization and still not be highly significant, particularly when there are thousands of other individuals included in the listings. Furthermore, simply having one's biographical sketch included in a publication would not constitute the petitioner's receipt of a "prize" or "award."

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, a membership in an association that evaluates its membership applications at the local chapter level would not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner asserts that ATM was a member of the Coordinating Committee of International Voluntary Service (UNESCO) and Mobility International. The plain wording of this criterion, however, requires documentation establishing the petitioner's individual membership status. In this case, the petitioner has offered no evidence showing that he holds membership in an association requiring outstanding achievement of its individual members, as judged by recognized experts at the national or international level.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

In a statement accompanying the petition, the petitioner stated: "I fled from the country by train to Warsaw where I took the LOT flight to NYC and was unable to take with me all the necessary published material."

The petitioner submitted a half-page profile of ATM appearing on page 243 in *Le Guide Du Job-Trotter*. The profile describes volunteer work offered by ATM and was published to solicit volunteers. Furthermore, the petitioner's name does not even appear in the text. The plain wording of the regulation, however, requires the petitioner to submit "published materials about the alien."

The petitioner submitted a letter notifying him of his inclusion in the voluminous *Who's Who in America* 2002 edition. Publication in this registry would not distinguish the petitioner from others in his field. Rather than submitting the actual published piece, the petitioner submitted only a letter indicating that the publication was "in its final stage of production." The petitioner has offered no evidence that the edition including him had been published at the time of filing. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

On appeal, the petitioner submits an Annual Report (1993-1994) from [redacted] and an undated seminar publication entitled "The Chernobyl Seminar Minsk: A Preparatory Visit for Representative of Voluntary Service Organizations." These informational reports, which do not mention the petitioner by name, would not qualify as major media. This criterion requires the petitioner to submit published materials written by others about himself. In this case, the petitioner has offered no evidence showing that he has been the subject of sustained major media coverage in Belarus, Europe, or the United States.

> *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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim.[1] Instead, a petitioner must demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others in his field. Similarly, the judging must be on a national or international level and involve other accomplished professionals in the field.

In a statement accompanying the petition, the petitioner stated: "I was elected a member of the Global Support Group GATE, an international commission of Service Civil International, a global voluntary peace organization." The petitioner noted that this group judged "the treatment of volunteers by the authorities of former Soviet bloc countries." Evaluating how governments treat volunteer workers would be an inherent duty of the petitioner's position in the support group and therefore it would not constitute judging the work of others in the petitioner's field.

On appeal, the petitioner submits a barely legible photocopy of an internal motion from SCI-Switzerland to the SCI-GATE meeting in Falun, Sweden. The motion offers no information to establish that the petitioner evaluated others in his field at the national or international level. The record contains no further evidence regarding his participation as a judge of the work of others.

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[1] This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles would not demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

Section 203(b)(1)(A)(i) of the Act, however, requires extensive documentation of sustained national or international acclaim. The petitioner's assertions regarding his activities as a judge carry far less weight in this matter than would contemporaneous first-hand documentation demonstrating the petitioner's actual participation.

In sum, the petitioner has offered no documentary evidence showing that he judged the work of others in his field at the national or international level or that he was selected as a judge based on his national or international renown.

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

The petitioner submitted a few reference letters in support of the petition.

[redacted] served as an Undersecretary of State from 1989 to 1992. In a letter dated April 8, 1996, he states:

> I am writing on behalf of [the petitioner], who has applied to become a research associate at the International Institute for Strategic Studies.
>
> I met [the petitioner] at a 1993 [redacted] where I served as a member of the faculty. I have stayed in contact with him since that time.
>
> I found [the petitioner] to be an extraordinary participant in the seminar. He was perceptive, thoughtful, and energetic. His presentations and comments were invariably insightful. I recall, in particular, his noteworthy description of conditions and attitudes of the general public in Belarus, Russia, Ukraine.
>
> As you can see from his background, [the petitioner] has demonstrated considerable initiative in his efforts to open the former Soviet Union to the larger international community, organize non-governmental groups, and educate himself.... [H]e represents a different type of young Russian who is important to encourage. I have no doubt that he has been and will continue to be a leader.

Sir [redacted] is a Professor Emeritus of Modern History, Oxford University. In a letter dated December 12, 1996, he states:

> In his own country [the petitioner] is widely regarded as their leading expert on international affairs – a reputation that is well deserved. His knowledge, both of the West and of his own part of the world, is both extensive and profound, and his command of the English language, both written and spoken, is quite excellent.
>
> [The petitioner's] expertise is likely to be of particular value, and I strongly recommend him for any research or journalistic appointment in his field.

In an undated letter recommending the petitioner for a "graduate fellowship program," [redacted] Association of International Youth Work (ATM), states: "[The petitioner's] innovative methods were the driving force behind the creation of the first voluntary, truly independent non-governmental institution in Belarus. ATM has won the respect of the government as well as the international community." [redacted] statement is unsupported by independent testimonials or other documentary evidence. Even if we were to accept that the petitioner played a role in creating the first voluntary, non-governmental institution in Belarus, of far greater importance in this proceeding is the national or international acclaim associated with his work. The evidence presented by the petitioner does not establish that individuals beyond the petitioner's professional contacts have recognized his efforts with ATM as a major achievement.

The recommendation letters provided briefly discuss the petitioner's activities and describe him as a knowledgeable individual, but they lack specific information regarding how the petitioner's individual contributions have significantly and consistently influenced the development of other national or international non-governmental organizations. The issue here is not the skill level or educational qualifications of the petitioner, but, rather, whether his work has been viewed as unusually influential and acclaimed within his field.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. If the petitioner's contributions are not widely praised outside of his current and former acquaintances, then it cannot be concluded that he has earned sustained national or international acclaim as one who has reached the very top of the field. Thus, we find that the petitioner has not demonstrated a contribution of major significance to his field. While the witnesses have stated in general terms that the petitioner is a respected and knowledgeable individual, there is no substantive evidence that the petitioner enjoys a national reputation in the United States, Belarus, or any other country.

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

The director's decision stated:

> The petitioner states that he published two electronic versions of his articles, "Nuclear Democracy" and "Nuclear Missile Defense," on the web. However, the file contains no evidence other than the petitioner's assertion that these articles were written and published. In the absence of corroborating evidence, it cannot be determined that the petitioner actually authored and published a scholarly article of any nature.

On appeal, the petitioner does not dispute the director's finding. Even if the petitioner were to show that his articles were published in a major professional journal, the very existence of published work by the petitioner is not dispositive. In order to demonstrate that his published work is nationally or internationally acclaimed, the petitioner must provide citation records or other evidence to establish that the greater field regards the petitioner's published work as especially significant. While heavy

citation of the petitioner's published articles would carry considerable weight, the petitioner has not presented such citations here.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The record adequately establishes that that the petitioner played a leading and critical role for ATM as its president. However, the evidence presented does not establish that ATM, which has been defunct for several years, would constitute an organization with a distinguished reputation. The petitioner has not shown that ATM significantly distinguished itself among the 30,000 other non-governmental organizations acknowledged by the United Nations.

The petitioner's evidence fails to establish that ATM would qualify as a distinguished organization, or that his role as president attracted sustained national or international attention.

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

On appeal, the petitioner states: "I wasn't getting any salary while leading the organization [ATM]." Instead, the petitioner argues that ATM "received diverse grants from a diverse array of foundations and grant-makers." The plain wording of this criterion, however, requires evidence that the petitioner himself "has commanded a high salary or other significantly high remuneration." The petitioner has presented no such evidence.

As noted previously, the statute and regulations require the petitioner's acclaim to be sustained. In this case, virtually all of the evidence provided by the petitioner relates to events that occurred during the early to mid 1990's. The record is ambiguous regarding the petitioner's activities since that time, thus raising questions as to whether he remains active in his particular field and whether he will continue to work in his area of expertise.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in the field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every individual who has presided over a volunteer organization, or who has earned the respect of a few select colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.