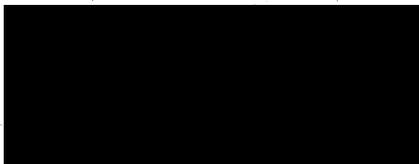


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, N.W.  
Washington, DC 20536



File: SRC-02-189-52564

Office: Texas Service Center

Date: OCT 8 - 2003

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)

ON 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 Citizenship and Immigration Services (CIS) 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, Texas Service Center, and is now before the Administrative Appeals Office 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 petitioner seeks to employ the beneficiary as a welder and carpenter. The director determined the petitioner had not established that the beneficiary is one of the very few who have risen to the top of their field.

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 CIS 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 a welder and carpenter. 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 a letter confirming the beneficiary's employment for Watkins Construction Company from March 1991 through July 2000; a letter from [REDACTED] of Mobil Pipeline Company to Watkins Construction Company praising the beneficiary's professionalism, intelligence, and work ethic; and a letter from the owner of Tri County Properties attesting to the beneficiary's character.

On December 4, 2002, 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 an unsigned letter from the petitioner attesting to the beneficiary's character.

The director concluded that the petitioner had failed to submit evidence that the beneficiary is one of the very few who has risen to the top of his field. On appeal, the petitioner submitted evidence that the beneficiary is a member of the local YMCA, another character reference letter, a certificate of award for distinguished achievement in English as a Second Language, and a certificate confirming the beneficiary's completion of a clock spring installation training program.

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 beneficiary is a talented welder/carpenter, 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. Membership in the YMCA is attainable through the payment of dues. Outstanding achievements in the field of carpentry or welding are not required for membership in the YMCA. Thus, the beneficiary's membership with that organization is not persuasive. The beneficiary's certificates for English courses and clock spring installation are confirmation that the petitioner completed certain training. The certificates are not recognized national awards in the beneficiary's field such that they are indicative of national acclaim.

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 a welder or carpenter 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 the beneficiary's 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.

On appeal, the petitioner states that he may not understand what is required. The petitioner returned the request for additional documentation with "does not apply" written after every regulatory criterion for the classification sought. Thus, the petitioner appears to acknowledge that the classification sought does not apply to the beneficiary. We note that this denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.