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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: SRC 03 035 50623 Office: TEXAS SERVICE CENTER Date: MAY 12 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner's appeal of this denial was improperly filed on Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer, and was improperly addressed to the Bureau of Immigration Appeals. The proper forum for this appeal is the Administrative Appeals Office (AAO), with whom counsel submitted his supporting brief. As the appeal was timely submitted to the service center with the appropriate fee and forwarded to the AAO, who has jurisdiction over the appeal, we will consider the appeal as properly filed. 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 business. 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 has 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 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 November 18, 2002, seeks to classify the petitioner as an alien with extraordinary ability as an aircraft restoration specialist. 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.

In her decision, the director stated, "the mere submission of three or more of the above items does not necessarily establish eligibility for this classification." This statement is misleading, as evidenced by counsel's comments in the appeal. Clearly, if the petitioner satisfies three of the regulatory criteria, he will qualify for the visa classification. However, the petitioner must do more than submit evidence addressing at least three of the criteria. The evidence in support of each criterion must qualitatively satisfy the criterion, and indicate through extensive documentation of national or international acclaim that the petitioner meets the criterion.

The petitioner is involved in the cleaning and detail maintenance of corporate aircraft. Through counsel, 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.

As evidence that he meets this criterion, the petitioner submitted a certificate recognizing him for employee of the month for April 2001 and another recognizing him as the 2001 employee of the year. His current employer, All Pro Cleaning Services, Inc., presented both of these certificates. The director determined that these were work related awards, and did not meet the requirements of this criterion.

On appeal, counsel states that these awards were given to the petitioner "in recognition of his overall leadership, excellent performances, and achievements as an extraordinary aircraft restoration specialist." Counsel further asserts that aircraft restoration is a "very narrow and specialized field" and that the "significance of industry awards is difficult to establish and document." Nonetheless, the petitioner submitted no evidence that an award presented by All Pro Cleaning Services, Inc. is an award that is recognized nationally or internationally as an award for excellence in the field of aircraft restoration.

The petitioner also submitted a list of courses that he has completed in aircraft interior and exterior restoration. The list of courses does not reflect that he won an award or prize, and is not evidence that he meets this criterion.

The petitioner has submitted no evidence that satisfies 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.

As evidence of this criterion, the petitioner submitted a copy of an employee training manual and a copy of an employee test that, according to counsel, the petitioner designed for his employer, All Pro Cleaning Services, Inc. The petitioner also submitted a letter from [redacted] Director of Marketing for the company. Mr. [redacted] states that the petitioner designed the company's program utilizing standardized procedures, material and equipment. Mr. [redacted] also states that the petitioner manages a team of six restoration specialists. The director determined that the evidence established only that the petitioner was involved in employee training and did not evidence acclaim in the field.

On appeal, counsel asserts that this was an "erroneous" classification of the petitioner's work. Citing *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), counsel argues that the petitioner must show only that he was a judge of the work of others, not that his participation was the result of having extraordinary ability.

In *Buletini*, the court stated that the director abused his discretion in requiring the alien to demonstrate that his participation as a judge of the work of others required or involved extraordinary ability. The *Buletini* case does not stand for the proposition that any professional worker who sits as a judge of the work of his or her subordinate employees satisfies this criterion as an alien of extraordinary ability. We read the statute and regulation as a whole. The regulation must be interpreted such that fulfilling the criteria proves what the statute requires – that the alien has extraordinary ability.

The ten regulatory criteria are established to assist the petitioner in demonstrating national or international acclaim. Simply supervising employees during the regular course of work and in accordance with one's job duties does not, without more, evidence national or international acclaim. The petitioner has not shown the national or international import of his work, or that his supervision of those under his direction has a national or international significance. No evidence establishes that the petitioner meets this criterion.

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

To meet this criterion, the petitioner must show that he performed in a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner serves as division manager of corporate aviation restoration at All Pro Cleaning Services, Inc. The record does not reflect the corporate structure of All Pro Cleaning Services, and does not establish that the petitioner's position as a division manager is a leading role within the company.

Mr. [redacted] states that the petitioner performs a critical role within the company as he "oversees design and implementation of customized programs" for the company's clients. Mr. [redacted] also cites examples of the achievements and the "critical role" played by the petitioner, including providing excellent customer service and gaining the clients' trust, communicating effectively, creating training manuals and staff testing and performance evaluations, and independently solving restoration problems and facilitating the implementation of solutions. However, the examples cited by Mr. [redacted] are inherent in any management position in a customer oriented business, and do not establish the critical nature of the petitioner's role within the company or that his role was critical to the company's success. Jan Stalling, the president and CEO of the company, states that the success of the petitioner's division of the company made a "significant contribution" to the company's "reputation and bottom line." However, making a "significant contribution" to an organization is not synonymous with performing in a critical role for the company.

The petitioner submits a letter from [redacted] owner and president of In fab pro, Inc., who states that the petitioner plays a "leading role in aircraft detail restoration because he interfaces directly with client officers." However, coordinating work projects, without more, does not establish that the petitioner plays a leading role in the company for which he works. The record contains no evidence of the significance of these projects to the company.

The record also contains a letter from [redacted] the owner of Houston Air Service Interiors. Mr. Harley states that his company has worked closely with the petitioner on restoration projects for mutual clients. He states that the petitioner is "routinely called on to solve technical issues associated with aircraft restoration issues," and as a "critical member of his maintenance team, he interfaces directly with client officers and routinely meets with these individuals to provide his technical expertise in resolving detail restoration projects." A restoration project is not an organization or establishment within the meaning of this criterion. The petitioner has not established that any of the projects on which he worked were of a critical nature to either his employer or the client companies.

The petitioner also submitted letters from the chiefs of maintenance for the Enron Corporation and the Penzoil-Quaker State Company. While the maintenance chiefs praise the petitioner's work, they do not establish that he played a critical role for their companies.

Further, the petitioner has not established that All Pro Cleaning Services, Inc. has a distinguished reputation. According to Mr. [redacted] the company is listed by the *Houston Business Journal* as one of the top twenty maintenance companies in Houston in the number of staff and earnings. The chiefs of maintenance for Enron and Penzoil-Quaker State indicate that they were satisfied with the petitioner's services as a representative of All Pro Cleaning Services, Inc. However, the statute and regulation require the petitioner to establish eligibility for this classification with extensive documentation. The petitioner submits no independent evidence of the distinguished reputation of All Pro Cleaning Services, Inc., including the survey conducted by the *Houston Business Journal* or any other evidence of the company's reputation within the business community. Two statements from customers satisfied with the petitioner's performance do not establish that the company has a distinguished reputation.

The petitioner's evidence does not establish that he meets this criterion.

The petitioner has not established that he satisfies at least three of the regulatory criteria or that he has extraordinary ability in his particular field of endeavor.

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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an aircraft restoration specialist 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 indicates that the petitioner is skilled in aircraft cleaning and detail restoration, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.