

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 03 2005

IN RE: Petitioner: [Redacted]
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:

SELF-REPRESENTED

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner submitted a letter outlining the beneficiary's achievements. The petitioner did not submit any evidence to support these claims. In his letter, the petitioner asserts that a prior attorney only sought nonimmigrant status for the beneficiary instead of immigrant status. Assuming this conduct was improper as alleged by the petitioner, such conduct is not relevant to the question of the beneficiary's eligibility for the classification sought.

We acknowledge the petitioner's desire to employ the beneficiary. We note that this denial is without prejudice to the filing of a new petition by a United States employer in a lesser classification accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

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 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 propeller shop manager. 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. We note that these criteria are included on the Form I-140 petition instructions, putting the petitioner on notice of what those requirements are. Initially, the petitioner submitted his own letter asserting that the beneficiary has twenty years of experience in marine propeller repair and tuning, including his recent position as an instructor in propeller repair, making him a "valuable asset to our country." The petitioner continues that the beneficiary's employment at the petitioner's company "will bring new levels of performance to the Marine Industry resulting in fuel savings for large commercial and pleasure watercraft."

The director concluded that the petitioner had failed to submit evidence of the beneficiary's sustained national or international acclaim. The director listed the criteria, once again placing the petitioner on notice of those

requirements. On appeal, the petitioner submitted a longer letter listing the beneficiary's achievements in his field. The petitioner does not explain which of the three criteria listed above the beneficiary is alleged to meet.

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 propeller repair manager, the record does not reflect that he has attained any national acclaim for that talent. Specifically, the petitioner has not submitted *documentation* that relates to any of the ten criteria. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The beneficiary's resume does not list any awards or prizes and the record does not contain evidence of such achievements and their significance in the field.

The beneficiary's resume does not list any memberships and the record does not contain evidence of memberships or the requirements for election to membership.

The record contains no published materials in any media covering the beneficiary and his work in the field.

The petitioner asserts that the beneficiary was an instructor at the Propeller Dynamics School in Australia. The record contains no confirmation of this assertion from the school. Regardless, the supervision of one's students inherent to the position of instructor is not the type of judging indicative of national or international acclaim.

The petitioner's bare assertions that the beneficiary has made contributions to the field are insufficient. The record lacks letters from other leaders in the field explaining the beneficiary's impact on their own work. The record also lacks letters from high-level officials at the U.S. Department of the Navy confirming the petitioner's assertion that the beneficiary's work saved the Navy "hundreds of thousands of dollars."

The beneficiary's resume does not include any published articles authored by the beneficiary and the record does not contain copies of such articles or evidence of their influence in the field, such as citations.

The beneficiary is not a visual artist; the display criterion listed above does not apply to his field.

The beneficiary's resume lists repair, inspection, technician, shop manager, associate and senior design consultant and training positions. The record lacks letters from employers confirming these positions and establishing both the critical or leading role of these positions as well as the national distinguished reputation of the employer.

The record lacks tax returns or other evidence of the beneficiary's remuneration as well as evidence that would allow us to compare that remuneration with others in the field.

The final criterion, commercial success, does not appear to relate to the beneficiary's 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 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 a propeller repair manager 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.

ORDER: The appeal is dismissed.