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U.S. Citizenship  
and Immigration  
Services

PHOTOCOPY

JUN 13 2005

FILE:

Office: TEXAS SERVICE CENTER Date:

SRC 03 151 52265

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

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, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for additional action and consideration.

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.

On appeal, the petitioner requests that the evidence submitted be compared with the regulatory criterion. While a minimal appeal, the director's analysis of the ten regulatory criteria for eligibility under this classification is sometimes confusing and, regarding two criteria, incomplete. As the petitioner was on minimal notice of the deficiencies in his case, we will not summarily dismiss the appeal. As discussed below, while the director correctly analyzed three of the criteria, the director's analysis is deficient for more than three other criteria. As only three criteria are required to establish eligibility, we must remand the matter for a new decision.

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). 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 seeks to classify the petitioner as an alien with extraordinary ability in business management. 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.<sup>1</sup>

*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.*

The petitioner submitted a letter from [REDACTED] Chairman of the [REDACTED] Namuna Machindra Campus Unit [REDACTED] certifies that the petitioner "has been serving this institution since the last two years as an Executive Member of [the] Nepal University [REDACTED] Machindra Campus Unit, Lalitpur, Nepal." [REDACTED] affirms that executive members are "elected from among the professors with extra ordinary [sic] ability in their field of endeavor." He further asserts that eligibility for executive membership "requires that the candidate have made an outstanding achievement and a major contribution in his/her field."

In her request for additional evidence, the director inquired as to whether the petitioner had been "invited to join any type of national/international team, associations or organizations in the field of work." Understandably, the petitioner did not relate this inquiry to this criterion, assumed this criterion had been met, and submitted no new evidence.

The director quoted [REDACTED] letter and concluded that "the author did not cite the achievements that the petitioner, or the other Executive Members specifically made." The regulation at 8 C.F.R. § 204.5(h)(3)(ii), however, only requires evidence that the association requires outstanding achievements of all its members, there is no requirement that the petitioner identify the outstanding achievement that resulted in election to membership. Thus, the director appears to have gone beyond the relevant regulatory language.

Any new decision by the director should consider whether [REDACTED] general assertions are sufficient without the submission of the bylaws or other official documentation that clearly sets forth the specific requirements and procedures for executive membership and whether executive "membership" is, in fact, a membership, and not a leadership position that would be better considered under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii). The director may also wish to consider whether [REDACTED] letter suggests that the petitioner is an executive member of a *local* chapter of the association and, if so, the relevance of that fact to whether membership is judged by recognized *national or international* experts. Finally, the director should consider whether a *teacher's* association is an association in the petitioner's discipline or field, which is business management.<sup>2</sup>

*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.*

The petitioner submitted articles about his work that purportedly appeared in *Kantipur*, *Ajako Mankamana*, *Ankush* and *Prateek*. The petitioner asserts that all of the above publications are popular Nepal dailies. The translation of the article in *Kantipur* suggests that the original "article" is an opinion piece concurring with the

<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

<sup>2</sup> Teaching would appear to be the petitioner's occupation, rather than his discipline and field.

ideas expressed by the petitioner in a previous article. It does not appear to constitute independent journalistic coverage of the petitioner and his work in the field. The remaining articles all involve the release of a book of short stories authored by the petitioner. In addition, the petitioner submitted a directory of authors and what appear to be commentaries included as introductions to his own books.

The director requested “the circulation, and national breadth and coverage of the sources quoting you.” The director also requested evidence that the articles appeared in major media, “including title, date, author and any necessary translation.” In response, the petitioner provided such evidence for the newspapers that published articles authored *by* him, not *about* him.

We are unable to confidently discern the director’s ultimate basis for concluding that the petitioner fails to meet this criterion. As such, the petitioner was not put on sufficient notice of the deficiencies relating to this criterion.

In reevaluating this criterion, the director should consider that it is the petitioner’s burden to establish the national circulation of the publications that include materials about him. In addition, the director should consider whether a letter to the editor or opinion piece, as the piece in *Kantipur* appears to be, has the same evidentiary value as independent journalistic coverage.

Moreover, the petitioner seeks classification as an alien of extraordinary ability in business. While the petitioner has authored books in the field of business management, the director should consider whether any media coverage resulting from his publication of short stories is relevant to this petition.

Finally, the director should consider whether inclusion in a directory of authors and commentaries that appear in one’s own books are the type of published material about the petitioner contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Specifically, the director should consider whether such evidence is indicative of national or international acclaim.

*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 petitioner submitted another letter from ██████████ asserting that the petitioner is a member of the Report Evaluation Committee. ██████████ continues:

As a member of this committee, his responsibility is to evaluate, comment, and approve research reports submitted to this campus by researches involved in various research projects in the field of business management. This is an additional responsibility assigned to him compared to that assigned to his fellow professors. Since from his appointment as a panel member of the Report Evaluation Committee, he has already evaluated more than 20 research reports so far.

In her request for additional evidence, the director requested the following evidence relating to this criterion: the invitation to judge, the program, the number of participants, the results, the types of awards issued and a list of the other panelists. In response, the petitioner submitted a chart prepared by ██████████ Coordinator of the Research Report Evaluation Faculty. ██████████ indicates that the petitioner was one of

three panelists in 2003 and 2004 evaluating research reports submitted to the [REDACTED] campus of Tribhuvan University.

The director concluded that the “significant accomplishments required for membership are not named or specified; such university duties often go to many professors, not just those ranked among the highest in the field.”

We concur with the director insofar as a collateral duty, by definition a duty beyond the professor’s normal teaching duties, at one’s own university evaluating local research reports is not indicative of or uniquely consistent with national or international acclaim.

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

The entirety of the director’s analysis under this criterion is as follows (grammar as it appears in original):

Some of the petitioner’s books are provided in translation, but do not cite or compare to others’ research; but the lack of reference to others’ individuals work do not necessarily make his analyses original or significant above and beyond most others’ work in business management.

This analysis is confusing and fails to take into account the letters purporting to verify the significance of the petitioner’s books. Any future decision should clearly explain any deficiencies in the evidence. While the petitioner asserts that his books relate to this criterion, the director may also wish to consider whether these books are more properly considered under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi).

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

The petitioner submitted articles published in the general media and the business management course textbooks discussed above. The director considered the commentaries that appear in the front of the books and concluded that they did not demonstrate sustained national success. Any new decision should consider the letters from publishers regarding the sales of the petitioner’s book. Specifically, the director should consider whether the letter from the Chief Editor [REDACTED] and Stationary indicating that the petitioner’s books were the number one and two bestsellers for the company sufficiently compares the petitioner’s books with books published by other companies. The director may also wish to consider whether the beneficiary’s articles in the general media are “scholarly” as contemplated by the regulations.

*Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.*

The director correctly concluded that this criterion does not relate to the petitioner’s field.

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

The petitioner claims to have played a leading or critical role for Tribhuvan University. The director quoted from a letter from ██████████ but reached no conclusion as to whether the petitioner meets this criterion. Any new decision should actually conclude whether or not the petitioner meets this criterion. In evaluating the evidence, the director should consider the relevant factors for this criterion: the position the petitioner was hired to fill and the reputation of the employer. Any contributions made while in that position should be considered under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(v).

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

The petitioner did not initially claim to meet this criterion. In her request for additional evidence, the director inquired whether the petitioner had received “considerable monetary compensation for work in the field.” In response, the petitioner submitted evidence of his compensation for his books. The director noted that the petitioner failed to compare his compensation with other authors in the field. We concur with this analysis.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The petitioner did not initially claim to meet this criterion. In her request for additional evidence, the director requested “evidence of commercial successes, letters from publishers attesting to and ranking the quantity of publishing noting [the] publisher’s credentials.” In response, the petitioner submitted letters from the publisher affirming that two of the petitioner’s books were “best sellers.”

The director concluded:

Nepalese Authors Dictionary shows, in translation, the first edition of unknown text with 1000 copies at a price of one thousand rupees (rough equivalency to \$13.39 USD). The above exhibit in 1999 may also be included.

Once again, the director failed to conclude whether or not the petitioner meets this criterion. While the director specifically requested letters from publishers, he failed to consider the letter submitted in response to that request. Regardless, the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of sales numbers. The director should consider whether an assertion that the petitioner’s book was a “best seller” is sufficient evidence of that book’s sales numbers. In addition, the director should also consider whether the data contained in the Nepalese Authors Dictionary relates to one of the petitioner’s books in his field. As noted above, the petitioner has also authored short stories.

Finally, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

Initially, the petitioner submitted a statement detailing his areas of interest and asserting that he intended to “[f]ind a teaching position in the area of Marketing and Business management” and “continue a teaching career.” The petitioner also outlined several areas of research he would like to pursue.

The director requested evidence that the petitioner “is coming to the U.S. to continue work in the area of expertise: letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a specific statement from the alien detailing plans on how he intends to continue his work in the U.S.” In response, the petitioner submitted a similar statement to the one submitted initially, adding three proposed benefits to the United States.

The director concluded:

The address [sic] of contemporary issues, the general list of governmental agencies to be helped by his research, the general hope that his research will contribute, and simply his teaching skills, do not clearly substantiate or delineate the prospective benefit the U.S. will reap from this petitioner’s work as an immigrant to the U.S.

The regulations do not provide specific evidentiary requirements to meet the statutory provision that the alien’s entry to the United States will substantially benefit prospectively the United States. In most cases, it is presumed that an alien with extraordinary ability coming to work in his area of expertise will provide such a benefit. In her final decision, however, the director failed to consider the issue raised in the request for additional evidence. Specifically, the director did not consider whether the petitioner’s statement - which does not explain how the petitioner intends to seek employment, identify specific schools that have expressed an interest in interviewing him, identify possible sources of funding for his research - sufficiently details “how” he intends to continue in his area of expertise.

In light of the above, the matter is remanded to the director for a new decision that addresses our concerns stated above. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.