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U.S. Citizenship
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FILE:

WAC 03 082 50770

Office: CALIFORNIA SERVICE CENTER

Date:

MAY 16 2005

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:

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 Director, California Service Center, denied an employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The decision of the AAO will be withdrawn, and the petition will be approved.

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 in business. The director determined the petitioner had not established that the beneficiary qualifies as an alien of extraordinary ability in her field of endeavor. The AAO upheld that determination.

On motion, prior counsel continues to rely on accomplishments after the date of filing. As stated in our previous decision, those accomplishments cannot be considered. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Nevertheless, for the reasons discussed below, we find that the petitioner has now overcome our previous concerns.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in CIS regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. 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 Senior Vice President of Marketing and Communication. The petitioner is a credit union.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

The AAO concluded that the beneficiary's Credit Union Executives Society (CUES) Marketer of the Year award and her Credit Union National Association (CUNA) Best Practices Award were both nationally recognized awards. We reaffirm our previous finding that the beneficiary meets this criterion.

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

The AAO did not contest that the beneficiary plays a leading or critical role for the petitioner, but concluded that the petitioner had not established its own distinguished reputation. On motion, the petitioner submits evidence that the National Credit Union Administration ranked the petitioner tenth in its list of the top ten credit unions by assets for 2002. In addition, CUNA's list of the 2003 top 100 credit unions by assets ranks the petitioner as twelfth. Filene Research Institute, a nonprofit institute with 1,480 credit union, credit union organization, and credit union executive members, lists the petitioner as a leadership circle member. Michael Kitchen, President and Chief Executive Officer of the petitioner, asserts that the petitioner has \$3.1 billion in assets and over 230,000 members. The petitioner is the only California credit union to serve on the national Council of GM Credit Unions. According to the petitioner's annual report submitted initially, the petitioner has 727 services centers in 33 states, Guam, Japan and Korea. We are satisfied that the petitioner, while a regional bank, enjoys a distinguished reputation nationally.

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

The AAO concluded that the beneficiary's salary was *comparable* with one quarter of those in a similar position and concluded that she did not meet this criterion. Upon review, the evidence reveals that her remuneration is well *above* the remuneration earned by the top 25 percent in her position nationwide. While data relating to the top 90th percentile would have bolstered the petitioner's case, we find that she satisfactorily meets this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by prior counsel, the petitioner has established that the beneficiary has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. The petitioner has established that she seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of April 15, 2004 is withdrawn. The petition is approved.