

U.S. Citizenship
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MAY 20 2005

FILE: WAC 03 162 54072 Office: CALIFORNIA SERVICE CENTER Date:

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 of 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 that the petitioner had not established either the beneficiary's statutory eligibility or the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner submitted a copy of the beneficiary's birth certificate, two letters and one notarized statement signed by [REDACTED] of Champion Landscape Maintenance, the petitioner. In her January 16, 2003 statement, [REDACTED] attests that the beneficiary has worked for her company "as a maintenance man since 1989." She states that his "position is permanent" and that she "will be at a great loss without him." A second letter from [REDACTED] dated February 19, 2003 states that the beneficiary is a "landscape supervisor" for the petitioner. A third, handwritten letter by [REDACTED] that is dated February 25, 2003 explains that the beneficiary has been trained in irrigation systems and that it "would be costly and time consuming" for the petitioner to replace him.

The director denied the petition because the record was insufficient to establish the beneficiary's eligibility under the statute and the regulation. On appeal, the petitioner submits another letter from [REDACTED] but no additional evidence [REDACTED] letter provides additional details about the beneficiary's training, experience and importance to her company, but fails to overcome the substantive reasons for denial of the petition. First, the petitioner does not state under which statutory category the beneficiary seeks eligibility. Section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A) applies only to aliens with extraordinary ability in the "sciences, arts, education, business, or athletics." The record shows that the beneficiary is employed by the petitioner as a "maintenance man," "landscape supervisor," and "irrigation installer." The petitioner submitted no evidence that demonstrates that these duties fall under any of the five categories of statutory eligibility. Second, the petitioner submitted no evidence that the beneficiary has garnered the sustained national or international acclaim in his field that is requisite to classification as an alien with extraordinary ability.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act only if the petitioner can establish the alien's extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the beneficiary is a valued employee, but the record does not establish that he is an alien of extraordinary ability. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.