



U.S. Citizenship
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FILE:

[REDACTED]
SRC 05 023 52041

Office: TEXAS SERVICE CENTER

Date: 07 20 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.

Mari Johnson

S 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 (AAO) on appeal. 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. 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on November 1, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Crystal Designer." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since March 1998. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than six years), it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as an artist in this country.

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 pertaining to 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.

The petitioner submitted a Certificate of Honor (dated December 1997) with an accompanying English language translation indicating that he received a "First Class Award of National Grand Design Contest." The record, however, contains no evidence of publicity surrounding this contest or evidence showing that the petitioner's award enjoys a significant level of recognition. Simply receiving an award certificate with the word "national" in the title does not satisfy this very restrictive criterion. The petitioner must provide evidence showing that his award enjoys significant national or international stature. In this case, the record contains no documentation from the awarding entity or print media to establish that the petitioner's Certificate of Honor is a nationally recognized award. Furthermore, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The translation accompanying the petitioner's Certificate of Honor was not certified as required by the regulation.

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

On appeal, the petitioner re-submits five photographs of what are alleged to be his crystal creations, claiming that the items were displayed at the "Hongkong [sic] international crystal design exhibition" and the "national crystal light show, 1999."¹ The record, however, contains no evidence showing that any such exhibitions ever took place or that the petitioner's creations were featured items. 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)).

It must be stressed that an artist does not satisfy this criterion simply by arranging for his or her work to be displayed or sold. In this case, the petitioner has not submitted evidence demonstrating that his works have been displayed at significant national venues. Nor is there any indication that the petitioner's creations have been featured along side those of artists who enjoy national or international reputations. Furthermore, the petitioner has not demonstrated his regular participation in shows or exhibitions at exclusive venues devoted largely to the display of his work alone. The evidence presented by the petitioner is not sufficient to show that his exhibitions enjoy a national reputation or that participation in his exhibitions was a privilege extended to only top national or international artists.

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

¹ The petitioner does not identify the location of the "national crystal light show." We note that in 1999 the petitioner was residing in the United States rather than China.

The petitioner re-submits six photographs of what are alleged to be his creations. On appeal, the petitioner has listed a dollar amount under each of these photographs. The record contains no evidence showing that the petitioner actually earned the dollar amounts listed. As noted previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. There is no evidence showing that the petitioner's compensation is significantly higher than that of others in his field.

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

The petitioner claims that the six photographs discussed under the preceding criterion are evidence of his "commercial success." The plain wording of this criterion, however, indicates that it is intended for "performing" artists such as musicians and actors rather than the petitioner's occupation. Nevertheless, the regulation calls for commercial success in the form of "sales" or "receipts"; simply asserting that one's work has been purchased cannot satisfy criterion. The record contains no evidence of documented "sales" or "receipts" showing significant national distribution of the petitioner's creations or their widespread commercial success.

In this case, the petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "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." The record contains no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.