



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 07 2005
EAC 05 034 50533

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:

[REDACTED]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn, and the petition will be remanded for further action and consideration.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 as a "skilled mechanic." 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. Specifically, the director determined that the sole document submitted with the petition, Form ETA-750, Part B, Statement of Qualifications of Alien, did not warrant approval of the petition.

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):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

(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 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;
- (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 specification 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.

The petition was filed on November 12, 2004. The petition was unaccompanied by evidence pertaining to the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Without issuing a request for initial evidence, the director denied the petition. The director stated:

The record contains a copy of Part B of an ETA-750 labor certification. The form shows that the [petitioner] was employed as a mechanic in Poland from 1996 to 1998. The record does not contain evidence to address the ten criteria listed above, and so it has not been established that the [petitioner] qualifies as an alien of extraordinary ability. Therefore, the [petitioner] is ineligible for classification under section 203(b)(1)(A) of the Act.

On appeal, counsel asserts that that the director denied the petition "without requesting additional documentation." Counsel further states: "It is a reversible error and completely against the legal procedures and appropriate legal sources. By its own regulations, the USCIS is required by law to request additional evidence to be submitted within 12 weeks." Counsel indicates on the appeal Form I-290B, filed on January 7, 2005, that he needs an additional period of 60 days in which to submit a brief and/or evidence. On August 11, 2005, counsel provided the AAO with written confirmation that he never filed a brief or evidence in support of the appeal.

As stated above, the initial submission included no supporting documentation other than Part B of Form ETA-750, nor has counsel submitted anything in support of the appeal. Thus, the director's decision addressed everything submitted and we agree with its conclusion that the evidence of record is not adequate to establish that the petitioner qualifies as an alien of extraordinary ability. However, the regulation at 8 C.F.R. § 103.2(b)(8) provides, in pertinent part:

Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence.

In this case, the director should have issued a request for evidence in accordance with the regulation at 8 C.F.R. § 103.2(b)(8). Therefore, we will remand the matter to the director for the purpose of issuing a request for initial evidence. The request for initial evidence will be the petitioner's final opportunity to submit substantive evidence in support of the petition. We note that section 203(b)(1)(A) of the Act requires "extensive documentation" of sustained national or international acclaim. The petitioner shall be given 12 weeks to respond to the request for evidence, and additional time beyond that period may not be granted.

In light of the above, the matter is remanded to the director for action in accordance with this decision. 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. Unless the petition is denied for abandonment, the new decision is to be certified to the AAO for review.