



U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 05 150 52001

Office: VERMONT SERVICE CENTER

Date: **JUL 18 2006**

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, Chief
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 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 April 28, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a performer bartender.

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 stating that he was a “1st Place Winner” at the “Barwarz on the Hudson 2004” competition in Jersey City, New Jersey. This award, however, reflects local recognition rather than national or international recognition.

On appeal, the petitioner submits a letter from [REDACTED] Founder and Chief Executive Officer of Cocktailshows Entertainment, stating: “This letter is to confirm that [the petitioner] has been selected all times legend Turkish Flair Bartender by www.cocktailshows.com. . . . We have given this title to [the petitioner] because of his previous achievements and being a greate [sic] ambassador for our sport of flair and for Turkey.” There is no evidence of national publicity surrounding this award or evidence showing that it commanded a significant level of recognition beyond the presenting organization. The petitioner has not submitted the “extensive documentation” required by the statute to establish that selection for this title constitutes a nationally or internationally recognized award for excellence.

The petitioner has not established that he meets this criterion.

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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted two photographs of himself appearing on page 59 of a magazine entitled *Bars and Clubs: North Jersey's Hottest Nightlife*. A caption above one of the petitioner's photographs states: “Congratulations to the winners of the 2004 Barwarz Competition.” The material submitted, however, does not identify the petitioner by name, nor does it offer a discussion of his work. Further, there is no evidence showing that this publication had significant national or international readership. Therefore, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Beyond the regulatory criteria, the petitioner submitted several letters of support.

[REDACTED], President and Chief Executive Officer, Flair Bartenders' Association, Inc. (FBA), states:

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

Being from Turkey, [the petitioner] possesses a passion and artistically unique style not present in the USA. [The petitioner] has placed extremely well in our world bartender championships. In the past he has been awarded for exceptionally good individual rounds.

The FBA is in need of competitors like [the petitioner] from other countries for all of our events to help grow our sport here in the USA as well as around the world. [The petitioner] has the rare ability to take his incredible skills and use them to make his guests happy at the bar. He would be an asset here in the USA as he would help progress our sport to the general public via working behind the bar and attending our competitions. He is truly one of a kind and any establishment would be lucky to have him on their team.

The petitioner submitted additional letters of support from [redacted] of Group Media and Communications, [redacted] of [redacted] and [redacted] of Extreme Bartending.Com, but none of these letters were signed. These letters state that the petitioner has participated in various competitions and that he is a talented flair bartender.

Letters of support are not first-hand evidence that the petitioner has earned sustained national or international acclaim. Pursuant to the statute and regulations, the classification sought requires documentary evidence of sustained national or international acclaim, and the petitioner cannot arbitrarily replace such evidence with attestations from the petitioner's associates, who assert that they find the petitioner's abilities to be extraordinary. The regulation at 8 C.F.R. § 204.5(h)(3) requires documentation meeting at least three of the ten criteria. The commentary for the proposed regulations implementing section 203(b)(1)(A) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The criteria require specific documentation beyond mere testimony, such as awards, published material about the alien, and evidence of a high salary. While letters of support from one's associates may place the evidence for the regulatory criteria in context, they cannot serve as primary evidence of the specific achievements required by the regulatory criteria. Further, while the regulation at 8 C.F.R. § 204.5(h)(4) permits "comparable evidence" where the ten criteria do not "readily apply" to the alien's occupation, the regulation neither states nor implies that letters of support attesting to the alien's standing in the field are "comparable" to the strict documentation requirements in the regulations setting forth the ten criteria.²

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 a 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.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

² In the present case, there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation.



ORDER: The appeal is dismissed.