



U.S. Citizenship
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FILE:

SRC 04 198 51146

Office: TEXAS SERVICE CENTER

Date: **MAY 10 2006**

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, Chief
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 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 July 13, 2004, seeks to classify the petitioner as an alien with extraordinary ability in the field of exotic leather processing. At the time of filing, the petitioner was working as the General Manager of Delta Reptile Tannery, "a company that specializes in the tanning, finishing and marketing of crocodile leather based in Baton Rouge Louisiana." A June 9, 2004 letter from [REDACTED], Co-owner, Delta Reptile Tannery, states:

We process fanned alligator hides, produced in the farm owned by my partner and co-owner of Delta Reptile Tannery, [REDACTED]. After being finished, our skins are sold to various exotic leather manufacturers in the United States.

[The petitioner] is an international expert in the field of exotic leather tanning and finishing. This is a very specialized field, and there are few experts in the world. We hired [the petitioner] after a long search, and our company was closed for over two years because we were not able to find a person with [the petitioner's] qualifications.

These qualifications include:

- Expertise in alligator hides descaling.
- Expertise in de-boning and softening of the leather.
- Expertise in dyeing and color matching.
- Expertise in programming computer controlled dyeing equipment.
- Expertise in finishing, hand-glazing and scale emphasis.
- Expertise in sourcing of exotic leather.
- Expertise in international marketing of exotic leather.

This trade is considered an art, and the product obtained needs to be of the highest possible quality in order to be offered to the international market. The number of qualified experts in this field is very small worldwide, and there are probably no more than 5 or 6, including [the petitioner].

[The petitioner's] work is essential to the survival of this company, which he currently operates. It took a long time to find him and it would be difficult, if not impossible, to replace him. The company could not operate without [the petitioner's] direction.

Alligator leather production is a niche enterprise, and its experts have been very careful regarding the secrecy of their processes and formulations. There are no publications on this matter, and even general leather books contain no information on this issue. It is a trade taught personally from a master to a carefully chosen apprentice. Alligator leather master technicians are few and hard to find. Although there are trade fairs, there are no associations of persons involved in the alligator tanning industry. There are no prizes or awards given for outstanding achievements in this industry. There are no trade publications in the alligator tanning industry.

A large portion of the alligator leather currently used in the United States is imported from France. The hides are exported raw from Louisiana and Florida, processed in France and re-exported to the U.S. This situation is happening because there is very little technical expertise in this country in this highly specialized trade. [The petitioner] could help change this trend, by utilizing a valuable American resource and producing it wholly in the United States. This is the main reason to consider [the petitioner] a very valuable asset to the State of Louisiana, as well as to our company.

The petitioner also submitted letters of support from top officials of the Louisiana Department of Agriculture and Forestry emphasizing the importance of the petitioner's skills to the Delta Reptile Tannery's operations. We do not dispute the petitioner's importance to the operations of the Delta Reptile Tannery. The issue to be determined in this case, however, is not whether the petitioner is vital to his immediate employer and beneficial to the Louisiana economy, but rather whether, pursuant to section 203(b)(1)(A) of Act, he has

demonstrated “sustained national or international acclaim” and achievements that “have been recognized in the field through extensive documentation.”

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.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted several letters of support.

a contractor for the United States Agency of International Development, provides information related to the petitioner’s employment history. [REDACTED] states:

I met [the petitioner] 16 years ago in Venezuela. The two of us made part of a UN-sponsored crocodilian resources survey in Guyana. [The petitioner] was the Communications Director of the survey. When we returned to Venezuela, [the petitioner] participated (as general manager) in the design and operation of a large crocodile tannery in San Fernando de Apure, and had the opportunity, between 1988 and 1990, to work and train with [REDACTED], one of the world’s leading experts in exotic leather tanning.

In 1992, [the petitioner] returned to his native Colombia where he designed and built a crocodile tannery in order to participate in the growing Colombian *Caiman crocodilus* trade. This tannery operated successfully until 1997, when [the petitioner] was offered a position in the United States, and decided to accept it, mainly because of the difficult situation in his war-ridden country. [The petitioner] traveled to Dallas, Texas in June, 1997, and started working for his new company, Texana Leather, in October, 1997, as General Manager and Technical Director.

[The petitioner] worked for Texana Leather until April 2002, when this company had to close its doors, mainly because of the unstable economic situation generated by the tragic events of September 11, 2001. In July, 2002, [the petitioner] was hired by Delta Reptile Tannery, an alligator tannery based in Baton Rouge, Louisiana, to manage the company and supervise all the technical processes.

In the highly specialized field of exotic leather tanning, alligator leather production is perhaps the most difficult and demanding profession. [The petitioner] is one of the few technicians in the world qualified to perform this task.

[REDACTED] Chief Executive Officer of Durland-Lawson Sales, Inc., Dallas, Texas, states:

Between 1999 and 2002 my partners and I owned Texana Leather Company, a finishing operation for South American Caiman Crocodile. [The petitioner] was the Manager and Technical Director of that company, he held that position from 1997, when the company started, until it's [sic] closure in 2002.

[The petitioner] is an internationally recognized expert in Crocodile leather tanning, finishing and marketing. His skill and knowledge puts him in a very exclusive group of leather technicians able to produce world-class crocodile leather.

[REDACTED] a former employer of the petitioner in Venezuela, states:

[The petitioner] decided to join our company as a management executive. Under his leadership, the company was able to establish itself earning recognition in the international arena, as well as providing much needed employment to the local population. [The petitioner] stayed on this position, as General Manager of TEVEX, for . . . three years.

From his experience in managing TEVEX, and working alongside one of the world's renowned tanners, [REDACTED] Inoue, [the petitioner's] talents and skills were much in demand.

[REDACTED], Colombian Consul General in Atlanta, Georgia, states:

[The petitioner] built ECOCAIMAN S.A. a tannery in Bogota. His aim was to export Colombian Crocodile Leather with an increased aggregate value, since before his in the country the leather had been exported in the raw.

[The petitioner] was very closely involved in the international promotion of this product. Working with [REDACTED] then Director of the Colombian Exports Promotion Office in Los Angeles, California, he created and directed the Caiman Leather Export Unit, and managed to offer his product in several markets with the direct support of the Colombian Government.

During the 5 years that he managed his company, [the petitioner] exported Caiman Leather of a very high quality, which allowed him to export in excess of \$4,000,000 to the highly demanding European and Japanese markets.

[The petitioner] is known in the field of Exotic Leather production and marketing, and is considered an international expert in this field.

The record, however, includes no financial records showing that the export dollar amount cited in [REDACTED] letter was directly attributable to the petitioner.

On appeal, counsel argues that the letters from [REDACTED] and [REDACTED] demonstrate that the petitioner "has made business-related contributions of major significance in his field." We do not find that running a successful business operation rises to the level of a business-related contribution of major significance in one's field. Without quantitative data or financial documentation to support [REDACTED] observations, we cannot conclude that the petitioner has had a substantial impact on the exotic leather

industry. Further, there is no evidence showing that the petitioner's company, ECOCAIMAN S.A., had a record of success spanning more than five years or that it was widely acknowledged throughout the exotic leather industry as a leading company. We cannot ignore the absence of contemporaneous evidence related to the petitioner's activities with this company. Section 203(b)(1)(A)(i) of the Act, however, requires "extensive documentation" of sustained national or international acclaim.

Nor can we ignore that the witnesses in this case consist mostly of individuals who have worked with the petitioner. With regard to the personal recommendation of those with whom the petitioner has previously worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his circle of business acquaintances. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. In this case, we find that the record lacks specific evidence (beyond mere testimony) demonstrating the extent of the petitioner's influence throughout the exotic leather industry. The evidence presented here is not adequate to show that his work is nationally or internationally acclaimed throughout his field as a contribution of major significance.

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

The record reflects that the petitioner served as General Manager and Technical Director for various companies in the exotic leather industry, but there is no evidence (such as media reports or independent industry statistics) showing that any of these companies enjoyed distinguished national or international reputations.

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

The June 9, 2004 letter from [REDACTED] stated that the petitioner earns "\$66,000 per year" as General Manager of Delta Reptile Tannery. The petitioner also submitted a copy of an approved Application for Alien Employment Certification, Form ETA-750, filed by Texana Acquisition Company, Inc. (now defunct) reflecting a \$90,000 salary to be paid to the petitioner. The petitioner's initial submission also included an internet printout from U.S. Department of Labor's website showing that the "Level 2 Wage" for "First-Line Supervisors/Managers of Production and Operating Workers" in the petitioner's locality was \$63,003. Local prevailing wage data, however, are not an appropriate basis for comparison. The petitioner must demonstrate that his salary places him at the top of his field at the national level, not simply above average at the local level. Another flaw in the petitioner's comparison is that his job duties include both production management and marketing. To classify the petitioner's occupation as that of a first-line supervisor of production workers would be to disregard the comments by [REDACTED] about the petitioner's "international marketing" expertise and the comments by [REDACTED] that the petitioner served as a "management executive." The evidence presented here fails to demonstrate that the petitioner's compensation was significantly high in relation to other general managers or executives in the exotic leather industry.

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

In response to the director's request for evidence and again on appeal, counsel argues that the letters of support should be considered as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the beneficiary's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to his field.

In response to the director's request for evidence, the petitioner submitted a second letter from Clay Gibson, dated May 5, 2005, stating:

After carefully reading your letter, I realized that there is a significant amount of specific evidence required for the Department of Homeland Security to grant [the petitioner's] petition. Unfortunately, we operate in a very small and exclusive worldwide market, supplying a very expensive and unique product to a small clientele. There are no journals, awards, or distinctions in the field of Exotic Leather Processing. The Master Tanners who operate in this field are a very small group of highly trained individuals, and each of them tends to keep his trade secrets to himself. There are no publications. That makes your usual requirements difficult to impossible in this case.

Currently, most of the exotic leather tanneries are based in Italy, France, Singapore, Japan, Thailand, Colombia and Venezuela. There are no more than 100 top exotic leather *technicians* in the world now, and no more than about 20 to 25 *Master Tanners* in the world, including [the petitioner], and they usually are in charge of operations at major tanneries. This fact alone makes [the petitioner] an individual of *Exceptional Ability*. He is one of a very small number of people in the whole world with the set of skills and knowledge required to perform his line of work successfully.

Of the ten regulatory criteria, only half have been disputed as not applying to the petitioner's occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence. Further, the regulation at 8 C.F.R. § 204.5(h)(4) neither states nor implies that simply offering general 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. The plain language of the statute at section 203(b)(1)(A)(i) of the Act requires the petitioner to demonstrate "the alien has extraordinary ability . . . which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." The regulatory criteria at 8 C.F.R. § 204.5(h)(3) outline the particular forms that this "extensive documentation" may take. The specific criteria may be replaced with "comparable evidence," pursuant to 8 C.F.R. § 204.5(h)(4), but that "comparable evidence" must still reflect achievements that have been recognized in the field through extensive documentation. The commentary for the proposed regulations implementing section 203(b)(1)(A) of 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). Eligibility under this classification, therefore, rests on extensive documentation of one's achievements rather than mere testimony. 8 C.F.R. § 204.5(h)(4) does not waive the extensive documentation requirement or substitute a less stringent standard. While letters of support are useful in explaining the significance of certain evidence or placing it in context, such letters alone cannot serve as primary evidence of sustained national or international acclaim, or achievements that have been

recognized in the field. We find that evidence in existence prior to the preparation of the petition is of greater weight than letters of support prepared especially for submission with the petition.

On appeal, counsel cites an unpublished appellate decision involving a researcher whose appeal was sustained by the AAO. Unpublished appellate decisions have no force as precedent and thus are not binding with regard to unrelated proceedings. *See* 8 C.F.R. § 103.3(c), which indicates that only designated precedent decisions are binding on Citizenship and Immigration Services' officers. Therefore, counsel's attempt to apply findings from a non-precedential decision to the current case is flawed. In the matter cited, that alien was able to satisfy at least three of the criteria at 8 C.F.R. § 204.5(h)(3), whereas in the present case the petitioner has not satisfied a single criterion. Further, in that matter, the letters of support were not considered by the AAO as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

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.

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.

ORDER: The appeal is dismissed.