

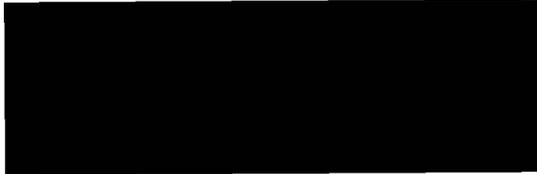


U.S. Citizenship
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FILE: LIN 05 120 53443 Office: NEBRASKA SERVICE CENTER Date: MAY 25 2006

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an alien of extraordinary ability in business pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director questioned whether the beneficiary's occupation as an operations manager constitutes a qualifying field of endeavor for the classification sought and determined the petitioner had not established the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that the beneficiary's qualifications are rare in the Chicago area and that the beneficiary has an excellent rapport with contractors and architects. The petitioner submits documentation, most of which was submitted initially.

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). This petition seeks to classify the beneficiary as an alien with extraordinary ability as an operations manager. 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 the following 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.

- (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 material 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 specialization 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.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

Initially, the petitioner submitted a copy of a certificate and a trophy awarded to the beneficiary at the Good Morning Ireland Fundraiser in Chicago. The fundraiser recognized the beneficiary as the Chicago Irish Young Entrepreneur of the Year and a "Rising Star." The petitioner also submitted an article in the *Irish American News* reporting on the fundraiser. The article mentions the beneficiary's award.

The petitioner also submitted several reference letters attesting to the beneficiary's professionalism, one of which is unsigned. Finally, the petitioner submitted the beneficiary's credit card statement as evidence of his financial stability and want ads seeking someone with the beneficiary's qualifications.

The director concluded that the petitioner had failed to submit evidence of the beneficiary's sustained national or international acclaim. On appeal, the petitioner asserts that the beneficiary's qualifications are rare in the Chicago area and that the beneficiary has an **excellent rapport with contractors and architects**. The petitioner submits a statement from its president, [REDACTED] and newspaper articles about the importance of the type of business performed by the beneficiary.

The statute requires extensive documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate sustained national or international acclaim. Assuming that the beneficiary is a talented operations manager, the record does not reflect that he has attained any national acclaim for that talent. Specifically, the petitioner has not submitted documentation that sufficiently relates to any of the ten criteria. Significantly, the petitioner has never explained which criteria the beneficiary purportedly meets. We will attempt to relate the evidence submitted to the criteria.

An award limited to young individuals of Irish descent residing in the Chicago area is not a nationally or internationally recognized award whereby the beneficiary competed with the most renowned members of the business community nationwide or internationally. Moreover the beneficiary is recognized as a "rising star." It is presumed that someone who is one of the few at the top of his field is no longer perceived as a "rising" star. For these reasons, the award cannot serve to meet the criterion set forth at 8 C.F.R. § 204.5(h)(3)(i).

The article in *Irish American News* is not primarily "about" the beneficiary. Rather, it is about the success of the fundraiser in general. Moreover, the petitioner provides no evidence that the publication enjoys a large national circulation such that it could be considered "major media." As such, the article cannot serve to meet the criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii).

The letters submitted initially are merely character reference letters that fail to address the beneficiary's business contributions or any of the other regulatory criteria quoted above. On appeal, Mr. [REDACTED] asserts that the beneficiary brought steel sheet shoring and wood shoring expertise to the petitioning business, allowing them to work on the small lots in Chicago. The petitioner submits a newspaper article about the dangers of building on small urban lots without shoring up neighboring buildings. Mr. [REDACTED] further asserts that the beneficiary's **expertise** is rare and that the beneficiary has trained the petitioner's employees. In addition, Mr. [REDACTED] notes that the beneficiary has a commercial drivers license and runs health and safety seminars for the petitioner's employees. Mr. [REDACTED] concludes that the beneficiary has increased sales for the petitioner.

██████████ an architect confirms recommending the petitioner to other clients. ██████████
Product Manager for ██████████ asserts that the beneficiary “helped develop the system that is
used to install our product.”

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). The above statements are not persuasive evidence of the beneficiary’s influence in the field of business or any other field nationally. Moreover, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Thus, the letters cannot serve to meet the criterion set forth at 8 C.F.R. § 204.5(h)(3)(v).

While Mr. ██████████ attests to the importance of the beneficiary’s role for the petitioner, the record is absent evidence that the petitioner enjoys a distinguished reputation beyond Illinois, much less nationally. Thus, the beneficiary’s position with the petitioner cannot serve to meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Finally, evidence of a shortage of workers with the beneficiary’s qualifications is not relevant to the classification sought. While addressing a lesser classification, the Administrative Appeals Office has stated that the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. at 221.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the beneficiary has distinguished himself as an operations manager 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. Therefore, the petitioner has not established the beneficiary’s 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.