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U.S. Citizenship
and Immigration
Services

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FILE:

SRC 05 085 51357

Office: TEXAS SERVICE CENTER

Date:

APR 30 2008

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.

Laura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially denied the employment-based immigrant visa petition for abandonment. Subsequently, the director reopened the matter and issued two new requests for additional evidence. The director issued a final notice of denial on January 30, 2007. That decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in education, 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 determined the petitioner had not established that he was coming to the United States to continue working in his area of extraordinary ability and would substantially benefit prospectively the United States.

On appeal, the petitioner submits a statement and additional evidence.¹ For the reasons discussed below, we uphold the director’s decision insofar as the petitioner’s proposed paid employment does not appear to be within his originally claimed area of extraordinary ability. Moreover, we must withdraw the director’s finding that the beneficiary has demonstrated his extraordinary ability as that finding was in gross error and is not supported by record. In withdrawing this favorable conclusion, we note that the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

¹ While the petitioner filed the appeal himself and asserts that the denial is based on his attorney’s misunderstanding of what was being requested by the director, the petitioner does not explicitly state that he is no longer represented and does not refer to the attorney as his former attorney. Thus, without evidence that the attorney-client relationship has been formally terminated, we consider the petitioner to still be represented by the attorney that filed the petition and previous filings relating to that petition. We additionally note that the petitioner’s general statements regarding the actions of his former attorney are not sufficient to establish a claim of ineffective assistance of counsel. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988).

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 into the United States will substantially benefit prospectively the United States.

Intention to Continue Working in the Area of Extraordinary Ability

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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 petitioner did not complete Part 6 of the Form I-140 petition relating to the proposed employment. The petitioner did, however, list his occupation as "educator" on Part 5 of the petition. Counsel's initial brief indicates that the petitioner is seeking classification as an alien of extraordinary ability in education. Counsel noted that the petitioner has "nearly twenty (20) years of experience in communication and education management for leading industrial groups in Turkey." More specifically, counsel stated that the petitioner had "conducted educational programs, and has developed corporation communications technologies for large prestigious companies, and has served as an advisor to their management and human resources departments." On page 2 of the brief, counsel asserted that the petitioner "has nearly 20 years of experience analyzing Turkish and World Media environment as a graduate student, researcher and professor." On page 8 of the initial brief, counsel stated:

Should this petition be approved, [the petitioner] will continue working in his field of endeavor and continue to facilitate opportunities for the advancement of the latest in communication methods and technology. [The petitioner] has been presented with numerous opportunities to continue his important work in the United States, at a number of universities, so-called think tanks, businesses and institutions – both in the public and private sectors.

The petitioner submitted evidence that he has taught communications courses, including a course where his students produced a radio and television documentary, served as advisor to the Human Resources Department of a Turkish company where he "helped the department with developing new programs on

communication and education management and improving the corporate communication” and served as an “academic advisor” to another Turkish company where he studied Television Audience Measurement (TAM) systems.

Finally, the petitioner initially submitted a letter from the School of Journalism and Mass Communication at Florida International University inviting the petitioner to perform research at the university. The invitation specifies that no financial support will be offered. Rather, the petitioner is merely being offered access to the university’s library facilities and faculty.

On October 16, 2006, the director requested that the petitioner submit “at least one of the following” documents: copies of any pertinent job offers, copies of any pertinent contracts or a statement detailing plans on how the petitioner intends to continue working in the United States.

In response, the petitioner asserts that his goal is to continue to facilitate opportunities for advancement of the latest in communication and information technologies, education planning and management. He expressed his confidence that he “will be presented with numerous opportunities to continue [his] work in the United States at a number of universities, businesses, institutions and think-tank organizations – both in the public and private sectors.” The petitioner further stated that he was seriously considering an offer from Office Orbit. The petitioner submitted a December 18, 2006 letter from ██████████ ██████████ **President** of Office Orbit, offering the petitioner the position of “Education Manager.” The petitioner’s initial tasks are to help education planning, education programming and education management on developing the company’s education division. The petitioner also submitted Internet materials about Office Orbit, which provides innovative and efficient information technology (IT) outsourcing solutions. One of the services Office Orbit provides is IT training empowering personnel of client companies to quickly become successful in using basic computer tools and office software. Finally, the petitioner submitted an undated letter from Florida International University inviting the petitioner for another unpaid research opportunity in 2007.

The director noted that the Florida International University position was unpaid and that the letter from Office Orbit postdated the filing of the petition. The director ultimately concluded, however, that the petitioner had not established that he was coming to the United States to continue work “in the area of expertise.”

On appeal, the petitioner asserts that the new employment offers were submitted pursuant to counsel’s advice, who concluded that the director was seeking assurances of future employment. The petitioner asserts that he was working in his field when the petition was filed and notes that Florida International University expressed their hope that he would give a presentation in “one or two” of their classes while there performing unfunded research. The petitioner submits a 2004 electronic-mail message from the Chair of Florida International University’s Department of Advertising and Public Relations Department advising that if the petitioner is authorized to work in the United States “there is a possibility we could ask you to teach one or two courses for us next year.” A February 23, 2005 letter from the university indicates that the petitioner “participated” in many of the university’s regular classroom activities but

does not suggest that he actually taught a class. Finally, the petitioner submitted a new letter from Mr. [REDACTED] who stated that Office Orbit had already verbally offered the petitioner a position “at the end of September 2004.”

We affirm the director’s finding that the petitioner has not demonstrated that his affiliation with Florida International University is a paid position as an educator with the university. While the petitioner appears to have overcome the director’s concern that the Office Orbit offer postdates the filing of the petition, we cannot conclude that Office Orbit is offering the beneficiary a position in his claimed field of extraordinary ability.

The petitioner’s alleged area of extraordinary ability is mass communication education. The evidence submitted all relates to his knowledge of radio and television technology. Office Orbit is an IT outsourcing provider. The only training it provides is for basic computer tools and office software. The record lacks any evidence that it is involved in TAM or other mass communications technology. Thus, this position would not be within the petitioner’s claimed area of extraordinary ability.

Extraordinary Ability

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 sustained national or international acclaim at the very top level.

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 that, he claims, meets the following criteria.²

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

The petitioner submitted a certificate affirming his attendance at the 12th Film Seminars organized by the Turkish Film and Audiovisual Culture Foundation (TURSAK). The petitioner acknowledges that this is not an award. Rather, the petitioner relies on an award winning radio documentary he produced with his students at Kocaeli University. The petitioner submitted a letter from [REDACTED], Dean of the university, who asserts that the university was destroyed in a 1999 earthquake and that the petitioner directed his students in an award-winning radio documentary about the earthquake. Dr. [REDACTED] explains that the documentary received an Aydin Dogan Foundation Award. The petitioner submitted Internet materials about the Aydin Dogan Foundation revealing that the foundation issues several awards, including a Young Communicators Award.

The record does not contain the actual award issued by the Aydin Dogan Foundation. The regulation at 8 C.F.R. § 103.2(b)(2) provides that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. Only where the petitioner documents that both primary and secondary evidence are unavailable can he rely on affidavits. The record contains no evidence that the Aydin Dogan Foundation Award is either non-existent or otherwise unavailable. Thus, the petitioner cannot rely on the letter from the Kocaeli University.

Without the award itself, we cannot determine if the petitioner is the named recipient of the award. Moreover, we cannot determine which award the documentary received. We do note, however, that an award limited to students cannot serve to meet this criterion as the most experienced and renowned members of the field are excluded from consideration.

Finally, the award was apparently issued in 2000, five years before the petition was filed. As such, without evidence of acclaim more proximate to the date of filing, the award could not serve as evidence of *sustained* acclaim when the petition was filed.

In light of the above, the petitioner has not submitted the required initial evidence to meet this criterion.

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.

Counsel initially asserted that the petitioner is a member of the Turkish Association of Marketing and Opinion Researchers, the Informatics Association of Turkey and the Society of Communication Researchers. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted no evidence that he is a member of either the Informatics Association of Turkey or the Society of Communication Researchers. Moreover, according to the materials in the record, the Informatics Association of Turkey is open to IT staff and workers, those engaged in research, teaching, writing or publishing in the IT arena and those who are responsible for extensive and effective use of IT in their organizations. None of these requirements are outstanding.

The petitioner did, however, submit evidence that he is a member of the Turkish Association of Marketing and Opinion Researchers. The petitioner initially submitted Internet materials about the association, none of which address the membership requirements. In response to the director's June 2, 2006 request for additional evidence, the petitioner submitted a letter from [REDACTED], General Coordinator for the association. [REDACTED] asserts:

In order to be a member of the association, new members are offered to the "Board of Directors" by at least two of the board members (in corporate membership by at least three members of the board). Then, the candidate should be approved by all the members of the Board to be a member of the Association.

While this information confirms the process of becoming a member, it does not explain the membership requirements themselves. The fact that board members must approve new members does not create a presumption that the board only admits those with outstanding achievements.

In light of the above, the petitioner has not demonstrated that he meets this criterion.

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.

Initially, counsel asserted that the petitioner has served on various discussion and organization panels. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires that the alien participate individually or on a panel *as the judge of the work of others in the same or an allied field*. Merely serving on a discussion or organizational panel that does not involve the judging of the work of other members of the petitioner's field is insufficient.

In light of the above, the petitioner has not submitted any evidence relating to this criterion and even counsel's assertions about the petitioner's panel participation do not sufficiently relate to this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains evidence that the petitioner has authored a book, book chapters and articles. While the petitioner did not provide certified translations of the titles of these works, counsel asserts that the subject matter includes new communication technologies, TAM systems and the development of radio and television broadcasting and the Internet in Turkey.

While the petitioner has submitted evidence relating to this criterion, the evidence submitted must be indicative or consistent with national or international acclaim if that statutory standard is to have any meaning. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence that the articles were published in professional or major trade publications or other *major* media. The record contains no evidence regarding the circulation of the publications that carried the petitioner's articles such that we can conclude that they are major media. Moreover, given the emphasis on major media, it can reasonably be inferred that books authored by or including chapters by the petitioner must be shown to be significant texts. The petitioner did not submit, for instance, the sales data for the books or other evidence demonstrating their recognition as authoritative texts in the field such that they can be considered a professional publication or major media.

In light of the above, the petitioner has not demonstrated that he meets this criterion.

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

The petitioner relies on his production of an award-winning radio documentary, which was also allegedly broadcast on CNN Turk. However, as previously noted, the petitioner has submitted no evidence of the actual award. Regardless, the petitioner claims extraordinary ability in the field of education. This criterion relates to the visual arts. Thus, this criterion is not applicable to the petitioner's field.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The petitioner submitted a 1998 letter assigning the petitioner to the position of Vice Dean of the Department of Radio, Television and Film of the School of Communication at Kocaeli University. The petitioner's curriculum vitae reveals that he left this university in 2000, five years before the petition was filed. Thus, this position cannot be considered evidence of the petitioner's sustained acclaim at the time of filing.

The petitioner also submitted evidence that he advised private companies in Turkey. Without additional information as to how the petitioner's position fits into the companies' hierarchy, such as organizational charts, we cannot determine that these roles were either leading or critical.

In light of the above, the petitioner has not established that he meets this criterion.

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 petitioner has distinguished himself as an educator 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 indicates that the petitioner is an experienced educator in the field of mass communications, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.