



U.S. Citizenship
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FILE: [REDACTED]
EAC 05 031 50895

Office: VERMONT SERVICE CENTER

Date: JAN 28 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a finding of fraud and material misrepresentation.

The petitioner seeks classification 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 determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. In the decision, the director noted that the petitioner did not appear to have worked in his area of expertise since arriving in the United States.

On appeal, the petitioner submitted a letter indicating that he has been working as a volunteer at a travel agency since 2000. On April 6, 2006, this office, based on several discrepancies that will be discussed in more detail below, requested three original documents. The AAO afforded the petitioner 12 weeks in which to respond. The petitioner did not respond. On August 2, 2007, based on additional discrepancies discovered between this petition and the ETA Form 9089 supporting a separate petition, EAC 06 088 51493, the AAO issued a notice of derogatory information in accordance with 8 C.F.R. § 103.2(b)(16)(i) and of the AAO's intent to dismiss the appeal. In response, the petitioner asserts that the discrepancies mentioned were due to printing errors or clerical errors and that our additional concerns are speculative. For the reasons discussed below, the petitioner has not overcome the director's basis of denial or the concerns raised in the AAO's August 2, 2007 notice. Thus, in addition to dismissing the appeal, we will make a formal finding of fraud.

Inconsistencies

In support of the petition, the petitioner submitted a letter from [REDACTED] of [REDACTED] [REDACTED] asserting that the petitioner worked there from 1989 through 1996 as a marketing executive.

On October 22, 2005, Reliable Auto Repair of Monsek, Inc. in New York filed an application for alien employment certification, ETA Form 9089, in the petitioner's behalf with the Department of Labor (DOL). The petitioner signed this form on January 26, 2006 in Section L, declaring under penalty of perjury that Sections J and K are true and correct. Both sections, however, are inconsistent with the petition now before us, also signed by the petitioner, and the evidence submitted in support of this petition. First, in section K, the only employment in the last three years and other qualifying experience is listed as an auto service technician at Mumbai Auto Service from January 2, 1995 through January 31, 1997. The petitioner attested to this employment as being full-time, or 40 hours per week. This employment as an auto service technician conflicts in part with the petitioner's purported employment as a marketing executive for N.T.V. Travels Pvt. Ltd. from 1989 through 1996.

In addition, on Section J of the ETA Form 9089, the petitioner's country of citizenship and birth is listed as the Philippines. On Part 3 of the petition before us, however, the petitioner listed his place of birth as India. Finally, on Part 7 of the petition before us the petitioner listed two children born in South Africa in 1993 and 1995. The record contains no evidence that the petitioner resided in South Africa at any time. As noted by the AAO in a notice dated August 2, 2007, while the petitioner's lack of residence in South Africa does not preclude his having children born there, this information bears mention given the inconsistencies discussed above.

In response, the petitioner asserts that the Philippines listing as his country of birth was a "clerical error" and that his wife resides in South Africa. He further asserts that there is no conflict between his experience as a marketing executive and his experience as a mechanic because "many talented people" like him "are multi tasking."

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* Moreover, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

We note that, on the ETA Form 9089, it lists both the petitioner's country of citizenship and country of birth as the Philippines. The petitioner has not adequately explained how this mistake, occurring in two separate locations, was due to a clerical error. Moreover, the petitioner's claim in support of the current petition to have been a nationally acclaimed marketing executive in the travel industry in India is simply not consistent with his claim, in support of the petition filed by Reliable Auto Repair of **Manassas, Va.** to have worked 40 hours per week during that same time as an auto service technician.

Finally, as stated above, the fact that the petitioner has never resided in South Africa does not preclude him from having two children born there. Nevertheless, given the unresolved serious inconsistencies noted above, the petitioner's overall credibility is seriously diminished. Moreover, as will be discussed further below, the petitioner has submitted evidence in support of the instant petition that is highly suspicious. On April 6, 2006, the petitioner was afforded twelve weeks to provide the originals of these documents and failed to do so or otherwise respond. According to the regulation at 8 C.F.R. § 103.2(b)(5), the failure to submit originals when requested is, by itself, sufficient grounds for denial or revocation of a previous approval. Nevertheless, since the director's decision was based on the merits of the petition, we will address those merits below.

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

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, 60898-99 (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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a marketing executive. 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.

Initially, the petitioner submitted three letters purporting to document his experience as a marketing executive for an exporter and two travel agencies from 1980 through 1996. On February 1, 2005, the director issued a request for additional evidence. In this notice, the director advised the petitioner of the ten regulatory criteria and requested evidence that the petitioner meets at least three of them. In response, the petitioner submitted evidence that relates to some of the criteria. The bulk of the evidence submitted, however, consists of Internet material about India's tourist industry, including an Internet travel log by someone other than the petitioner. The petitioner is not the author of any of this material, nor is he mentioned by name in any of these materials. The director concluded that the evidence

submitted did not sufficiently recognize the petitioner's contributions to the travel industry in India and did not demonstrate that the petitioner was recently involved in the travel industry as would be expected of an alien who enjoys *sustained* acclaim in the field. On appeal, the petitioner submitted a letter from [REDACTED], the sales manager of [REDACTED], asserting that the petitioner has been volunteering at that company since 2000 and is "one of the best travel and tour specialists in the European – South Asian market." The criteria and a discussion of the evidence submitted follows.

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 an April 10, 1990 letter from [REDACTED] of Charisma Travels and Tours congratulating the petitioner on his "award recognition from Charisma Travel and Tours." Mr. [REDACTED] indicates that there will be a "special recognition dinner." The petitioner submitted a copy of a photograph of himself purportedly receiving a trophy from Mr. [REDACTED] but the image is of poor quality. The petitioner also submitted a copy of a photograph at a podium for the "Travel Tourism Awards" that appears to show the trophy being awarded in the photograph with Mr. [REDACTED]. Once again, the copy is of poor quality and is consistent with an altered photograph.

The petitioner also submitted a "Diploma" from the International Air Transport Association (IATA) and the Universal Federation of Travel Agents Association (UFTAA) purporting to confirm the petitioner's successful completion of an "advanced course" for international travel consultants. Some of the text is far darker than other text and the "a" in "awarded" covers the 1989 wet seal while the wet seal covers the "p" in "Diploma." Wet seals typically are applied to a document after the printing is completed. While the anomalies on the diploma are minor, the anomalies in the alleged newspaper articles discussed below are far more obvious. As stated above, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Thus, on April 6, 2006, the AAO requested the original of this document. The petitioner failed to submit the document. On that basis alone, the petition must be denied. 8 C.F.R. § 103.2(b)(5). On August 2, 2007, the AAO advised the petitioner of the discrepancies on the document. In response, the petitioner asserts that he received the diploma and that there must have been a problem with the printer. A printer, however, does not apply the wet seal. Moreover, this issue could have been definitively resolved by the submission of the original document in response to the April 6, 2006 notice, to which the petitioner did not respond. The petitioner also submitted a second diploma dated in 1988 from IATA and UFTAA in recognition of passing a standard course examination.

In addition, the petitioner submitted a 1995 certificate from the India Trade Promotion Organization, the Tourism Office of India and the India Trade Society for "Outstanding Contribution by an Individual Volunteer" and a letter purportedly from Prinyanka Pares, Assistant Minister for India's Tourism Office, expressing appreciation for the petitioner's "significant contribution to the Tourism and Hospitality Program." In support of the 1995 volunteer award, the petitioner also submitted what

