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U.S. Citizenship
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Services

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FILE: LIN 07 013 53605 Office: NEBRASKA SERVICE CENTER Date: JUN 18 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:

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” 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 would continue to work in his area of extraordinary ability.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, we uphold the director’s concerns.

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, 60898-9 (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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a television journalist, a position he no longer held as of the date the petition was filed. Rather, he had begun working as a columnist.

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.

While the regulation indicates that a statement from the alien detailing plans on how he intends to continue in the field is an appropriate piece of evidence, nothing in the regulation suggests that CIS is precluded from examining the content of such a statement and considering whether the alien's described job prospects are reasonable, especially in occupations that require an employer. The petitioner's occupation, broadcast journalism, is a highly competitive field that requires an employer.

The original submission did not include any evidence relating to the petitioner's continuation of employment in broadcast journalism in the United States. On February 1, 2007, the director requested evidence that the petitioner was coming to the United States to continue work in the area of expertise. In response, the petitioner stated:

If granted the opportunity to work in the United States, I intend to continue my profession as a Broadcast Journalist by seeking employment with the various broadcast networks in the various states in the U.S. I have attached my resume which I will be sending to all possible American or ethnic employers as soon as my petition is approved.

The petitioner then stated that he planned to apply for positions at three specific networks. The director concluded that the petitioner's statement was not sufficiently detailed and that he had not submitted letters from prospective employers and evidence of prearranged contracts. The director continued:

Moreover, it is not clear that [the petitioner] could find employment as a TV journalist in the United States regardless of his success in his home country. First, there is considerable competition for TV journalist positions. More importantly, the evidence indicates that while the petitioner has a grasp of international issues his area of expertise is commenting on issues of interest to residents of the Philippines which might not be a marketable skill outside of that country.

While the director conceded the possibility that a U.S. television network might consider the petitioner for employment to comment on Filipino issues or based on his communication skills, the director reiterated that the regulation requires evidence of potential interest where the alien has not submitted a detailed statement.

On appeal, the petitioner asserts that he has made “viable contacts” with prospective employers. He then asserts that he “intends to explore various Internship, News Associate, Volunteer and on-the-job training programs offered by CNN, ABC, NBC, MSNBC and their affiliates, and other local television stations in order to gain the ‘American broadcast experience.’” The petitioner submitted an eight-step “Action Plan” that includes establishing residence in the United States, updating his resume, revising his cover letter to indicate that he has received permanent residence, resending his resume, providing samples of his work, submitting to an interview, follow up on job applications and enrolling in internships or news associate or on-the-job training programs.

The petitioner also submitted form letters responding to resumes he has already submitted. While the responses indicate that the petitioner will be contacted if his qualifications are appropriate or that his resume will remain on file for possible matching with open positions, none of the responses reflect that anyone has reviewed the petitioner’s qualifications and found them appropriate for a position in broadcast journalism. The petitioner also submitted correspondence from the Department of Labor in Guam. None of this correspondence implies that any employer has expressed an interest in hiring the petitioner.

The only personal response the petitioner received is from GMA Pinoy TV in the United States, which advised that no positions were available but that the petitioner’s availability had been relayed to the appropriate departments.

The evidence submitted on appeal does not overcome the director’s valid concerns that the petitioner has not established how his skills are marketable in the field of broadcast journalism in the United States.

The visa classification sought is an employment-based classification. A petitioner must demonstrate not only that the alien will continue in his field of expertise but also that he will substantially benefit the United States. **Section 203(b)(1)(A)(ii),(iii) of the Act.** The requirement that the alien’s entry substantially benefit prospectively the United States indicates that Congress does not intend for these aliens to immigrate to the United States and remain idle. 56 Fed. Reg. 30703, 30704 (proposed July 5, 1991)(enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). An alien whose skills are not marketable in the United States and who must enter the field as an intern or volunteer cannot demonstrate that he meets either subparagraph of section 203(b)(1)(A) of the Act.

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.

LIN 07 013 53605
Page 5

ORDER: The appeal is dismissed.