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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: [Redacted]

Office: Nebraska Service Center

Date:

JUN 21 2001

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:



identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as an adult literacy coordinator at the Indo-American Center, Chicago, Illinois, where she has worked since 1990. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as an alien of exceptional ability, and that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision on motion.

On motion, counsel submits a brief to address the petitioner's claim of exceptional ability. Counsel asserts that a brief regarding the national interest waiver will be submitted at a later date. Counsel explains that medical concerns have prevented her from completing the brief in a timely fashion.

8 C.F.R. 103.5(a)(1)(i) requires that a motion to reconsider must be filed within thirty days of the underlying decision. The same regulation gives the Service discretion to allow for an extension of time for motions to reopen "when the petitioner has demonstrated that the delay was reasonable and beyond the control of the petitioner," but the regulation applies this extension only to motions to reopen and not to motions to reconsider. Because the discretion to allow additional time is expressly limited to motions to reopen, the clear implication is that no such discretion exists for motions to reconsider.

The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of an already-filed motion. By filing a motion, the petitioner does not guarantee herself an open-ended period in which to supplement the record. The regulations grant the petitioner thirty days to contest the dismissal of the appeal via motion to reconsider, with no provision for extension or later submission of supplementary arguments. Furthermore, even if the

regulations did allow for the submission of supplementary briefs on motion, to date, two years after the filing of the motion, the record contains no such brief.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We will address the relevant criteria below.

We note that the regulation at 8 C.F.R. 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every physician has a college degree and a license or certification; but it defies logic to claim that every physician therefore shows "exceptional" traits.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

In its dismissal order, the AAO stated:

Counsel asserts that the petitioner satisfies this criterion through having taken "training courses and workshops in literacy and adult education." The wording of the regulatory criterion contemplates a college-level degree in a field of

study relevant to the prospective employment. The petitioner has claimed no such degree. . . .

The petitioner has shown only that she has completed a number of short-term training exercises and workshops, which cannot compare to a college degree or diploma. To assert that the petitioner's minimal training distinguishes her as exceptional in the field is to posit that most adult literacy tutors have no training whatsoever.

On motion, counsel states that the wording of the regulation "suggests flexibility . . . the drafters of the regulations did not contemplate that aliens meeting this criterion . . . would necessarily have attained a college-level degree." Counsel notes the absence of the phrase "higher learning" from the regulation.

Counsel also asserts that the AAO's decision "implies first that [the petitioner's] training is minimal, and second that she has not distinguished herself." Counsel contends that the petitioner has submitted evidence to "demonstrate that her completion of so many courses far exceeds the usual expectations for adult literacy tutors." The petitioner had, as of the petition's filing date, submitted five certificates, documenting her qualification as a tutor. Certificates of this kind may establish basic competence in a given field but they do not elevate the petitioner above others in her field, unless there is evidence that the majority of paid literacy tutors do not hold these certificates. If the certificates are a basic job requirement, then they do nothing to distinguish the average from the exceptional.

Counsel contests the AAO's determination that the petitioner's training is "minimal." The certificates indicate that the petitioner attended a three-day conference, a half-day workshop, a one-day workshop, and a twelve-hour training course. If slightly more than one week of training is not minimal for a literacy tutor, counsel fails to demonstrate what is minimal. The regulation calls for a college diploma "or similar award." Certainly, an alien can satisfy this criterion without an actual college diploma, but the petitioner has failed to establish that a week of training is, in any meaningful sense, "similar" to a college degree or other attestation of long-term occupational or professional training.

Counsel cites four letters from the initial petition which, counsel claims, "demonstrate that her completion of so many courses far exceeds the usual expectations for adult literacy tutors." One of these letters refers to the petitioner as a "lifelong learner who constantly adds to her pool of knowledge by attending and actively participating in conferences, workshops, and seminars." The other cited letters express similar sentiments, but the authors do not say whether or not the petitioner is more highly trained as a literacy tutor than others who perform such work as an occupation.

Some of the petitioner's training certificates in the record have nothing to do with literacy tutoring; for example, the petitioner attended a breast cancer education and screening workshop. Certainly such education is important and useful, but there is no reason to believe that it has any meaningful impact on her skills as a literacy tutor. The letters state that the petitioner has attended training courses; nothing in those letters justifies the conclusion that the petitioner has attended more training courses than most others in her occupation.

Evidence of membership in professional associations.

The petitioner is a member of the Illinois Adult and Continuing Educators Association and Illinois Teachers of English to Speakers of Other Languages - Bilingual Education. In its prior decision, the AAO stated:

The director, in denying the petition, stated that "[t]he evidence does not establish that these associations require exceptional ability of their members, as distinguished from associations open to individuals who have reached certain levels of education or specialization in their careers." While the reasoning of the director's finding is clear enough, it appears that the director may have applied too strict a standard to this criterion. . . . There is no indication that the criterion pertaining to membership in professional associations is intended to be significantly more strict than those pertaining to education and experience.

Counsel contends that the petitioner further satisfies this criterion through her participation "in various local initiatives, coalitions, and conferences for adult educators in general and specifically teachers of literacy." Coordination or participation in local gatherings does not constitute membership in professional associations.

Counsel observes, correctly, that the AAO did not clearly state whether or not the petitioner has satisfied this criterion. The associations to which the petitioner belongs are not "professional associations" in the sense that the petitioner's field is not a profession as defined in 8 C.F.R. 204.5(k)(2); that is, one of the occupations listed in section 101(a)(32) of the Act, or an occupation which requires at least a U.S. baccalaureate. Still, the regulation at 8 C.F.R. 204.5(k)(3)(iii) allows for the submission of comparable evidence when the criteria do not apply to the petitioner's field. From the available evidence, we conclude that the petitioner satisfies this criterion.

Counsel protests that the AAO did not similarly accept the petitioner's participation in local initiatives and conferences. Counsel asserts that these groups "constitute professional

associations, rather than 'local gatherings.'" Counsel does not explain how a short-term project or conference, or an ad hoc committee, can represent the equivalent of a long-standing association. A group of people does not become a "professional association" simply because those people share a common occupation. A coalition, formed to advance a particular goal, serves a different purpose than a professional association which exists to serve the members of a given occupation and advance their interests.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The AAO determined that the evidence submitted to fulfill this criterion establishes the petitioner's participation in various events and initiatives, and that certificates recognizing such participation do not necessarily reflect significant contributions to the field. Counsel, on motion, asserts that the AAO "failed to consider the majority of letters submitted to demonstrate petitioner's satisfaction of this criterion." Counsel indicates that Janice D. Schakowsky, who wrote a letter on the petitioner's behalf, has since been elected to the U.S. House of Representatives, and therefore Rep. Schakowsky's letter should carry greater weight. It remains that Rep. Schakowsky was not a member of Congress at the time she wrote the letter, and the petitioner's contributions do not automatically take on greater significance because one of her proponents has been elected to higher office.

Counsel asserts that witness after witness has attested that the petitioner is "a role model," "an asset to the community," and so on. Counsel has not rebutted the AAO's finding that "[t]he letters submitted do not establish that the petitioner's contributions have significantly exceeded those of other devoted and qualified literacy tutors." We note also that the record reflects little formal recognition of the petitioner's work, arising from various groups taking the initiative to recognize the petitioner's contributions, as opposed to private letters which the petitioner took the initiative of selecting witnesses and soliciting letters from them expressly for the purpose of supporting her visa petition.

Independent evidence which would have existed whether or not this petition was filed is more persuasive than subjective statements (from individuals with an expressed interest in the petitioner's continued involvement) intended specifically to further the petition. The independent certificates presented to the petitioner recognize her "participation" and involvement in various events, but if involvement itself is sufficient grounds for receiving such a certificate, then the certificate does not recognize anything of

significance. It cannot suffice for the petitioner simply to establish that community organizations appreciate her work.

As stated above, the regulatory definition of "exceptional ability" requires "a degree of expertise significantly above that ordinarily encountered." The evidence, in the aggregate, must establish such expertise, and the AAO has no discretion to disregard this definition when evaluating the evidence before it.

Counsel closes with this assertion:

I submit that the regulatory standards of exceptional ability enumerated at 8 C.F.R. §204.5(k)(3)(ii) do not readily apply to the highly specialized field of adult immigrant literacy education. This unique field requires a combination of training and skill in education and teaching with a high degree of cultural understanding, patience, imagination, and administrative and social work skills.

Even if we were to accept that the petitioner's narrow specialty constitutes a discrete field in its own right, nothing in counsel's argument establishes the petitioner's eligibility. If anything, it "raises the bar" by asserting that "adult immigrant literacy education" requires a higher level and broader range of skills than mere "literacy tutoring"; an individual must possess all of the traits listed by counsel just to be minimally qualified for the occupation. The petitioner must therefore stand out not only among all literacy tutors, but among others in what counsel narrowly defines as her field. We reject outright the implied assertion that one must be "exceptional" to work in "adult immigrant literacy education."

For the above reasons, the petitioner has failed to overcome the AAO's finding that she has not established eligibility as an alien of exceptional ability. Because counsel's brief on motion does not address the issue of the national interest waiver, the AAO's prior findings in that regard stand undisturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of March 18, 1999 is affirmed. The petition is denied.