



U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: FEB 27 2003

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

[Redacted]

**PUBLIC COPY**

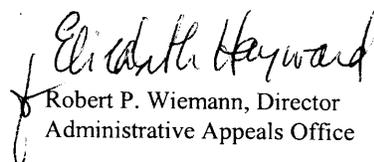
INSTRUCTIONS:

This is the decision 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.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant petition was denied by the Director, California Service Center. The Administrative Appeals Office (“AAO”), in reviewing the petitioner’s appeal, affirmed the director’s decision in part and remanded the petition to the director for further consideration. The petitioner subsequently filed a motion to reopen, which was superfluous because the case was already open, owing to the remand order. The director approved the petition, but on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition. Pursuant to the AAO’s prior instructions, the director has certified the decision to the AAO for review. The director’s decision shall be affirmed. The approval of the petition shall be revoked.

The petitioner seeks classification of the beneficiary as an employment-based immigrant 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 asserts that the beneficiary is eligible for blanket certification under Group II of Schedule A. The director found that the beneficiary was ineligible for Schedule A certification, and that the petitioner has not established its ability to pay the beneficiary’s proffered wage of \$33,000 per year.

In response to the certified notice of revocation, the petitioner submits tax documentation as evidence of its ability to pay the beneficiary’s salary.

Section 203(b)(2)(A) of the Act creates an immigrant classification for aliens 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. The regulation at 8 C.F.R. § 204.5(k)(4)(i) states, in pertinent part, “[e]very petition under this classification must be accompanied by an individual labor certification from the Department of Labor, [or] by an application for Schedule A designation (if applicable).” 8 C.F.R. § 204.5(g)(2) requires that, in employment-based immigrant classifications requiring an offer of employment, the petitioner must demonstrate the petitioner’s ability to pay the proffered wage from the time the priority date is established until the beneficiary obtains lawful permanent residence. The regulation specifies that evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The AAO has already found that the beneficiary qualifies as an alien of exceptional ability in business, and that the beneficiary does not qualify for an exemption, in the national interest, from the job offer requirement. At issue in the present proceeding are the petitioner’s ability to pay the beneficiary’s proffered wage, and the beneficiary’s eligibility for designation under Schedule A, Group II, as defined at 20 C.F.R. § 656.22.

The petitioner, in its latest submission, has established its ability to pay the beneficiary. That submission contains tax documents showing that, while the petitioning employer has failed to show a profit, it has nevertheless paid the beneficiary an amount close to the proffered wage, while

maintaining sufficient current assets to make up the slight shortfall between the actual wage paid and the proffered wage. In 2001, the petitioner paid the beneficiary an amount exceeding the proffered wage.

The remaining issue, and the major ground underlying the revocation of the approval of the petition, concerns the petitioner's effort to designate the beneficiary under Group II of Schedule A. Department of Labor regulations at 20 C.F.R. § 656.22 state:

(d) Aliens seeking labor certifications under Group II of Schedule A shall file as part of their labor certification applications documentary evidence testifying to the current widespread acclaim and international recognition accorded them by recognized experts in their field; and documentation showing that their work in that field during the past year did, and their intended work in the United States will, require exceptional ability. In addition, the employer shall file, as part of the labor certification application, documentation concerning the alien from at least two of the following seven groups.

(1) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought.

(2) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts in their disciplines or fields.

(3) Published material in professional publications about the alien, relating to the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material.

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought.

(5) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought.

(6) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation.

(7) Evidence of the display of alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

The petitioner's first submission intended specifically to address the above criteria consists of a letter from an official of the petitioning company and two "contracts developed, negotiated, finalized and signed by the alien on behalf of his employer." Charles Zhang, president of the petitioning company, states that the petitioner is one of "over eight hundred subsidiaries and branches" of its parent company, China National Nonferrous Metals Industry Corporation, which "is owned by the Central Government of China, and is the largest company in China, very likely the largest in Asia, in nonferrous metals trade." Mr. Zhang states:

At all times during his employment as a scientist and/or manager, [the beneficiary] remained and still remains a reputable specialist and expert consultant in nonferrous metals development and trade around the world.

[The beneficiary's] extraordinary ability in the field and international fame is apparent from his being the deputy general manager of China's largest copper company and leading nearly one thousand subordinate workers and producing the largest volume of China's copper trade, being selected by the Government to represent China to serve as the deputy general manager in developing the Chambish Copper Mine in Zambia, being the expert and representative of China in the nonferrous metals industry in the 1997 International Flash Furnace in Magama, sponsored by Automkunpu, being a special invitee to the 1998 International Coal, Copper and Mining Development Conference . . . being China's representative to Canada to negotiate a joint venture in copper mine development, and being the representative of China in numerous other world events of the nonferrous metals industry.

[The beneficiary's] name is recognizable as one of the most accomplished consultant[s] in nonferrous metals production and trade in the international family of professionals and managers in the field. . . .

[The beneficiary's] full-time service in our company is indispensable to its ongoing success.

(Paragraph numbers omitted.) Counsel asserts that this letter, and the two contracts, constitute evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought, and evidence of the display of alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country. Counsel does not elaborate. Neither of those criteria apply to the field of business. Running a company and arranging for the sale of metals do not constitute scientific or scholarly research or artistic exhibitions. While the beneficiary had previously engaged in research work, yielding some published material in 1984 and 1993, the petitioner has not established the major significance of this research work or shown that it was published internationally. The assertions of the president of the petitioning company do not constitute evidence of the beneficiary's recognition.

The director approved the petition but subsequently informed the petitioner of the Service's intent to revoke that approval. The director stated that "[n]one of the evidence [in the record] demonstrates that the beneficiary is known throughout the world for his exceptional consultant/specialist abilities. Therefore, based on the evidence submitted, the beneficiary does not meet the 'widespread acclaim and international recognition' component of the regulations." The director also stated that the petitioner had established only that the beneficiary had performed "the routine duties of [his] position," not that the position required exceptional ability as defined by the relevant Department of Labor regulations.

In response to the notice of intent to revoke, the petitioner has submitted additional documentation. Counsel asserts that the beneficiary has received an "award for excellence in the field" pursuant to 20 C.F.R. § 656.22. The award in question is a Certificate of Honor from the China Metal Society, presented to the beneficiary "due to your great contribution to the development of mining sources." The petitioner has not shown that a certificate from the China Metal Society is an internationally recognized prize or award. Counsel asserts that this certificate "illustrates that [the beneficiary] is internationally recognized," but counsel fails to explain how a certificate from a Chinese organization, presented to a Chinese national working in China, is demonstrative of international recognition.

Counsel asserts that the beneficiary's 1984 appointment as a "special editor for Metallurgical Engineering Magazine" is another sign of recognition. It is not clear how this constitutes a prize, or how it is international in scope (the appointment letter is in Chinese, with no indication that the magazine is published outside of China).

Counsel essentially repeats prior claims, such as the assertion that the petitioner's published work is, on its face, an original research contribution of major significance, but the response to the notice of intent to revoke contains nothing to establish that the petitioner's research work in the 1980s and 1990s was of such significance that the beneficiary has earned widespread acclaim and international recognition. While working in China (which is where the beneficiary was when most of the evidence of record came into existence), the beneficiary's reputation was largely restricted to China. His involvement in international business deals and conferences does not establish that the business community outside of China considered him widely acclaimed.

Counsel's letter accompanying the petitioner's response to the notice of intent to revoke includes a request for "additional time to obtain an expert opinion letter regarding the exceptional ability of" the beneficiary. Counsel did not identify the "expert" or explain how much time would be necessary.

The director revoked the approval of the petition on May 30, 2002, and allowed the petitioner 30 days to respond. As noted above, the petitioner's response to the revocation is limited to the issue of the petitioner's ability to pay the beneficiary's proffered wage. The response to the revocation does not include any substantive response to the director's finding regarding the beneficiary's eligibility for designation under Schedule A, Group II. As with the previous response to the notice of intent to revoke, counsel again requests an unspecified period of "additional time" in which to

obtain "an expert opinion" from an unidentified source. The response to the certification is dated June 25, 2002, but to date the record contains no further submission. There is no regulatory requirement that the Service must suspend adjudication indefinitely, in order to accommodate the submission of evidence for which only the vaguest description has been offered.

Whether or not the petitioner has submitted any supplement, the pertinent regulations do not permit or require us to accept it. 8 C.F.R. § 103.4(a)(2) states "[t]he affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice." The regulations contain no provision for any extension beyond this plainly defined 30-day period, which began on May 30, 2002 and thus elapsed days after the June 25 submission of the petitioner's response.

Upon review of the evidence of record, we affirm the director's finding that the petitioner has not established that the beneficiary qualifies for designation under Group II of Schedule A. The petitioner has offered no timely rebuttal to this finding.

**ORDER:** The director's decision is affirmed. The approval of the petition is revoked.