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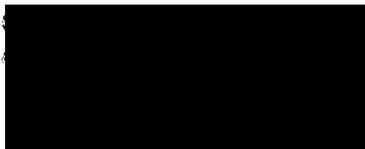
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FILE: WAC [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 16 2005

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:



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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

(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.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability as a dentist. The record shows that at the time of filing, the petitioner was employed as a dentist at the Dental Clinic of Alliance Medical Center (Alliance). The record indicates that Alliance is a non-profit organization serving the healthcare needs of impoverished migrant farm workers and their families in Healdsburg, California. The petitioner initially submitted supporting documents including his resume, diploma, California dental license and 15 support letters. The director determined that the evidence submitted did not demonstrate that the petitioner had garnered the requisite sustained national or international acclaim in dentistry and that the record did not establish that his entry into the United States would substantially benefit the country as required by section 203(b)(1)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(iii). On appeal, counsel submits a brief and materials concerning oral health and dental care in the United States. Counsel's claims and the additional evidence submitted on appeal do not overcome the substantive reasons for denial and we affirm the director's decision.

We first note that counsel apparently misclassified this case. Although the petitioner's Form I-140 states that he is filing for classification as an alien of extraordinary ability, much of the record addresses the employment-based second preference immigrant category in section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2). Indeed, counsel's appellate brief is entirely devoted to inapplicable arguments concerning the employment-based second preference classification and the national interest waiver provision of section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i) as discussed in *New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998). Counsel closes her brief by stating that the "[a]ppellant should be granted the National Interest Waiver as requested." The supporting documents also address these issues rather than the classification sought. Half of the record documents the petitioner's education and professional qualifications. The other half consists of support letters focusing on the petitioner's bilingual and bicultural skills and how they are essential to the operation of the Alliance dental clinic, which serves a predominately Spanish-speaking population that would otherwise have no access to dental care. The record establishes that the petitioner has valuable professional, bilingual and bi-cultural skills that enable him to provide dental services to Alliance's impoverished patients and suggests that there is a shortage of dentists such as the petitioner to treat medically underserved communities across the country. However, these issues relate to the requirements of a petition filed under section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), not the classification sought here: an alien with extraordinary ability under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A).

We discuss the evidence submitted under the regulatory criteria at 8 C.F.R. § 204.5(h)(3) applicable to the extraordinary ability classification and relevant to the petitioner's case.

*(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The record contains no evidence of prizes or awards won by the petitioner.

*(ii) 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.*

The petitioner submitted no evidence of his membership in any associations in the field of dentistry.

*(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The record contains no published material about the petitioner.

*(iv) 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.*

The petitioner submitted no evidence that he had judged the work of other dentists or oral health professionals.

*(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The petitioner submitted 15 recommendation letters, including 14 letters written by his employers and colleagues. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Moreover, recommendation letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim.

Most of the letters in this case praise the petitioner's bilingual and bicultural skills and his dedicated service to Alliance's patients. For example, [REDACTED] states that he "had the pleasure of working with [REDACTED] at the Alliance Dental Clinic, in Healdsburg. This city has a large impoverished Hispanic population and this clinic is their primary provider for medical and dental treatment. As a bilingual dentist, [REDACTED] is an asset to the community." [REDACTED] who has also worked with the petitioner at Alliance, affirms that [REDACTED] provides a valuable service to the primarily low income Hispanic patients served by this clinic. His ability to provide quality care and communication with staff and patients is an asset to our community as a whole." [REDACTED] director of the Alliance Dental Clinic, explains that the clinic serves underprivileged families and that "[d]uring his employment at Alliance, [REDACTED] has helped to improve the oral health status of these families by providing culturally sensitive quality dental services to those denied access because of socioeconomic barriers." [REDACTED] stresses that the petitioner "provides both the essential elements of being bilingual and bi-cultural which are critically important in connecting with our patients."

Former colleagues of the petitioner also praise his professional dental skills and amicable nature. [REDACTED] the former director of the Alliance Dental Clinic who hired the petitioner in 1999, describes him as "an exemplary clinician with the highest moral and ethical standards who was well liked by co-workers and patients." [REDACTED] a former colleague of the petitioner, describes him as an "excellent clinician. He is also a very dedicated and caring doctor." [REDACTED] another dentist who works with the petitioner at Alliance explains that he has "found him to be a wonderful technician, to possess an easygoing personality and to be a stabilizing influence in the clinic. . . . Most importantly, [his] patients are receiving a level of care far above what is generally expected or seen at a rural health clinic. The restorations that he places are of the highest quality exhibiting pride of workmanship, knowledge and skill in all areas of dentistry."

Although the letters indicate that the petitioner is skilled at providing quality dental care in a culturally sensitive manner to impoverished patients, the record does not demonstrate that this skill has resulted in major contributions that have been recognized in the fields of dentistry or community dental health care beyond the petitioner's immediate colleagues. The record shows that the petitioner is highly valued and well respected by his colleagues, but it does not demonstrate that his accomplishments as a dentist have garnered the sustained national or international acclaim requisite to classification as an alien with extraordinary ability. Accordingly, the petitioner does not meet this criterion.

*(vi) 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 no evidence of scholarly articles written by the petitioner.

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

The record is insufficient to meet this criterion. While many of the letters attest to the important role the petitioner holds at the Alliance Dental Clinic, the record contains no independent evidence that the clinic has a distinguished reputation.

*(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

On page eight of her brief on appeal, counsel claims that the petitioner “has proven substantial remuneration for his professional services” and cites a letter of ██████████ Chief Operating Officer of Alliance, stating that the petitioner is compensated at the rate of \$56.25 per hour for a total of 2,080 hours per year. The record contains an affidavit of support completed by the petitioner and listing his annual salary as \$120,000. However, the record is devoid of any evidence that this salary is significantly higher than that of other dentists or is comparable to dentists in private practice or at community health centers who are at the very top of their field. The record does suggest that the petitioner’s compensation is significantly lower than that of dentists in private practice. ██████████ the petitioner’s colleague, affirms that ██████████’s definitely not doing this for money, as I know he could obtain more money working in a private practice.” Hence the evidence submitted does not demonstrate that the petitioner is highly compensated in a manner consistent with the requisite sustained acclaim. Consequently, the petitioner does not meet this criterion.

Although the director determined that the petitioner did not meet the statutory requirement that his entry would substantially benefit prospectively the United States, we do not consider that issue here. The petitioner meets none of the regulatory criteria to demonstrate the requisite sustained acclaim and is thus ineligible for classification as an alien with extraordinary ability. Consequently, we do not reach the issue of whether or not his entry into the United States would substantially benefit prospectively this country as required by section 203(b)(1)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(iii).

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is a skilled dentist who provides vital services for a community health clinic and is highly respected by his employer and colleagues. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as a dentist or community dental health professional placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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.