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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



EAC 05 189 51708

Office: VERMONT SERVICE CENTER

Date: SEP 06 2006

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 employment-based immigrant visa petition was denied by the Director, Vermont 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of 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 to the United States will substantially benefit prospectively the United States.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on June 20, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an electrician.

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. The petitioner has submitted evidence pertaining to the following criteria.

*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 a “Merit Certificate” issued on October 11, 2004 by the Chamber of Commerce for the city of Iskenderun. This award, however, reflects local recognition rather than national or international recognition.

The petitioner submitted an “Artisan Instructor Certificate” for “having successfully completed the course started in accordance with 31<sup>st</sup> article of Apprenticeship and Professional Education Law number 3308.” The petitioner also submitted a “Master Workman Certificate” and a “Foreman Certificate” which were presented to him for “having successfully passed the foremanship examination.” The record includes no evidence showing that that these certifications are nationally or internationally recognized prizes or awards for excellence, rather than simply an acknowledgment of the petitioner’s completion of standardized vocational training programs required by the government. Further, there is no evidence of publicity surrounding the petitioner’s receipt of these certifications or evidence showing that they command a significant level of recognition beyond the presenting organization.

The petitioner’s response to the director’s request for evidence included a letter of support from [REDACTED] Chief of Technical Staff, UYTAS International Construction Company, stating:

To begin, it should be noted that [the petitioner] is certified by: the Turkish Board of Electrical Engineers and Technicians (TBEET); the Turkish United Societies (TOBB); Iskenderun Board of Electricians (IBE). [The petitioner] has also been awarded Excellence Status within the electrical technology field at national level. These peer-reviewed awards are given to very select, specialized electricians who have distinguished themselves within their profession (More than 90% of electricians picked for review never qualify for achievement status). In conjunction with [the petitioner’s] diplomat status he is also a member of the prestigious Master Teacher Technologists, and was rewarded as master teacher. He worked in our company from June 1, 1987 to July 31, 1997 as Chief Master Technologist and had pivotal role in our company’s major projects. He was the chief leader technologist completing the Istanbul Dam project which brought him Special Recognition Award in the Division of Electrical Technology.

As stated previously, the petitioner’s certifications do not constitute nationally or internationally recognized prizes or awards for excellence. Regarding the petitioner’s “Excellent Status” award and “Special Recognition Award in the Division of Electrical Technology,” the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i), requires the submission of “nationally or internationally recognized prizes or awards for excellence in the field,” rather than a third-party letter attesting to the existence of such awards. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The letter from Orhan Adrin cannot carry the same weight as the awards themselves. Nevertheless, the Special Recognition Award appears to be an institutional award which is neither nationally or internationally recognized. Regarding the petitioner’s “Excellent Status” award, the record includes no evidence that would demonstrate the number of such awards given, the geographic area from which the individuals eligible for consideration for this award were drawn from, the criteria for granting the award, and the number of individuals eligible to compete for the award. Nor is there evidence showing that the recipients of this award are announced in trade journals or in some other manner that would garner the recipients national acclaim.

On appeal, the petitioner submits a "Participation Certificate" and an "Acknowledgment Certificate" both dated July 6, 2005. This evidence, however, came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Nevertheless, there is no evidence showing that these certificates are nationally or internationally recognized awards for excellence, rather than simply an acknowledgment of the petitioner's participation in a seminar sponsored by *Satellite World* magazine.

The petitioner has not established that he meets this criterion.

*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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The letter of support from [REDACTED] states:

[The petitioner] has demonstrated his excellence, as a technologist through his membership in the electrical engineers and technologist community's most prestigious societies and associations. This impressive list includes our company, namely Uytas International Construction Company (UYTAS); UYTAS founded in 1975, is one of the largest operating construction company in Turkey. UYTAS is the world's leading construction company has built and completed international projects including Istanbul Dam, Karabuk City, Steel factory, National Highways, Professional Buildings of Levent and many other projects in Turkey.

We find that the petitioner's employment with UYTAS does not constitute "membership" in an association. Regarding [REDACTED] assertion that the petitioner holds "membership in the electrical engineers and technologist community's most prestigious societies and associations," the record includes no evidence to support his claim. In this case, the petitioner has submitted no evidence showing that he holds membership in an association requiring outstanding achievement of its individual members, as judged by recognized experts at the national or international level. Thus, the petitioner has not established that he meets this criterion.

*Published materials 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.*

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>1</sup>

The petitioner submitted a six-sentence piece about himself appearing in the October 12, 2004 issue of *Guney*, a regional newspaper. There is no evidence showing that this publication had significant national or international readership. Therefore, the petitioner has not established that he meets this criterion.

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

In order to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted evidence of his employment with UYTAS International Construction Company, but there is no evidence showing that this organization has earned a distinguished reputation at the national or international level. Nor has the petitioner submitted evidence establishing the relative importance of his role when compared to that of others employed by this company (such as its executives and project managers). We find the petitioner has not established that he performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

In response to the director's request for evidence, the petitioner submitted evidence of his earnings from the Iskenderun Pamuk Residence Building Cooperative. The plain wording of this criterion, however, requires the petitioner to submit evidence of a high salary "in relation to others in the field." In this instance, the petitioner has provided salary information that is limited to a former employer. The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. Therefore, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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<sup>1</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "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." The record includes no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.