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FILE: [REDACTED]
SRC 06 039 52819

Office: TEXAS SERVICE CENTER

Date:

FEB 16 2007

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn, and the petition will be remanded for further action and consideration.

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 that he would continue work in his field of expertise in the United States.

On appeal, the petitioner states that he intends to continue work in the United States in his area of expertise "as a Forestry Specialist . . . with extensive experience in the field of Environmental Management."

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.

The regulation at 8 C.F.R. § 204.5(h)(5) states:

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.

This petition, filed on November 18, 2005, seeks to classify the petitioner as an alien of extraordinary ability as a forestry specialist. The initial documentation accompanying the petition included no evidence pertaining to the regulation at 8 C.F.R. § 204.5(h)(5). On December 20, 2005, the director issued a notice of intent to deny informing the petitioner of this deficiency. The director's notice also stated:

The facts reveal that

The self-petitioner reports current occupation is “none – a retired employee.”

- The self-petitioner reports the address where he or she will perform the work is “not determined yet.”

The petitioner’s response to the director’s notice of intent to deny included a January 12, 2006 letter and a January 20, 2006 pay stub from ██████████ in Jacksonville, Florida indicating that the petitioner was a current employee of the company. The petitioner also submitted a January 10, 2006 letter from ██████████ expressing the firm’s interest in hiring the petitioner. We find that the preceding evidence is adequate to demonstrate that the petitioner intends to continue work in his area of expertise in the United States. While we agree with the director that the record initially lacked clear evidence indicating that the petitioner intended to continue forestry work in the United States, we find that the evidence submitted in response to the notice of intent to deny is adequate to satisfy the regulation at 8 C.F.R. § 204.5(h)(5). Thus, the petitioner has overcome the stated grounds for denial and established eligibility pursuant to Section 203(b)(1)(A)(ii) of the Act.

Beyond the decision of the director, section 203(b)(1)(A)(i) of the Act requires an individual seeking extraordinary ability classification to demonstrate sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation. In this case, the evidence submitted by the petitioner fails to demonstrate that he has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. 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 (November 29, 1991). As used in section 203(b)(1)(A) of the Act, 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.

As required by section 203(b)(1)(A)(i) of the Act and the implementing regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since December 11, 2003. Given the length of time between the petitioner’s arrival in the United States and the petition’s filing date (more than 23 months), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a forestry specialist in this country.

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. Review of the record indicates that the petitioner claims eligibility based on an award, an association membership, judging the work of others, authorship of a scholarly article, and commanding a high salary pursuant to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iv), (vi), and (ix). The director's decision failed to specifically address these criteria and explain how the evidence submitted for each criterion was not adequate to demonstrate sustained national or international acclaim.

8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. We find that the petitioner's 1999 "Commendation Award" from his immediate employer at that time, the National Power Corporation, Quezon City, Philippines, reflects institutional recognition rather than national or international recognition. Therefore, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(ii) calls for 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 his Certificate of Membership for the Society of Filipino Foresters. The record, however, includes no evidence of the membership bylaws or the official admission requirements for this society showing that it requires outstanding achievement for admission to membership or that prospective members are evaluated by national or international experts in consideration of their admission to membership. Therefore, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(iv) calls for 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 an October 1, 2005 letter from [REDACTED] Vice President, National Power Corporation, stating that the petitioner served as "one of the panel of judges in the '1998 Regional Search For The Best Power Plant and Transmission Line Facility in the Northern Luzon Region.'" The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "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). We do not find that the petitioner's participation as a judge for a "regional" competition organized by his immediate employer in 1998 is indicative of sustained national or international acclaim. Therefore, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(vi) calls for evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner submitted evidence that he prepared an "Environmental Exchange Program Participant Report" summarizing his training program at the University of California, Berkeley in 2000. We do not find that this participant report qualifies as a scholarly article authored by the petitioner. Further, there is no evidence showing that the petitioner's report was published in "professional

or major trade publications or other major media.” Therefore, the petitioner has not established that he meets this criterion.

8 C.F.R. § 204.5(h)(3)(ix) calls for evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner submitted a certification from the National Power Corporation specifying his annual income for 2002. The petitioner, however, offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no evidence that the petitioner earns a level of compensation placing him among the highest paid forestry specialists at the national or international level. Therefore, the petitioner has not established that he meets this criterion.

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).

In conclusion, while the petitioner has overcome the stated grounds for denial and satisfied the regulation at 8 C.F.R. § 204.5(h)(5), we find that the evidence of record fails to demonstrate that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Further, the record does not establish that whatever acclaim the petitioner had in the Philippines has been sustained since his entry into the United States in 2003. 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 the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

In light of the above, this matter is remanded to the director for the purpose of issuing a new decision in order for the director to address the petitioner’s evidence as it relates to the pertinent regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). The director’s new decision shall set forth the specific deficiencies in the evidence outlined above and any further deficiencies as noted by the director. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is **withdrawn**. The petition is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.