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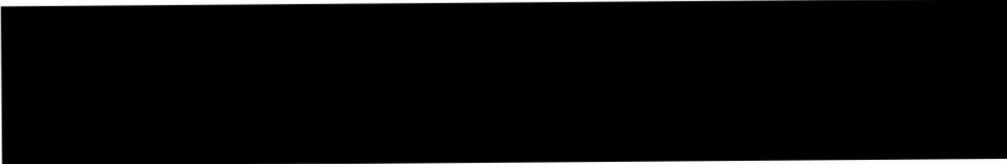


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 01 2007
EAC 05 120 52181

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.

Maura Deadrick
f Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially denied by the Director, Vermont Service Center for abandonment. The director reopened the matter on the petitioner's motion, and denied the petition again. The matter is now before the Administrative Appeals Office (AAO) 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):

Initial evidence: 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. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

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

- (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;
- (iii) 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;
- (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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have 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; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The Form I-140, Immigrant Petition for Alien Worker, was filed on March 18, 2005 seeking to classify the petitioner as an alien of extraordinary ability as an "automobile mechanic." The petition was unaccompanied by evidence demonstrating the petitioner's sustained national or international acclaim and that his achievements have been recognized in his field of expertise.

On December 13, 2005, the director issued a notice requesting evidence pertaining to the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director's notice stated:

The evidence does not adequately distinguish you from other members of the mechanic profession as being an alien of extraordinary ability. To qualify for [extraordinary ability] classification, you must be shown to be an individual who is one of that small percentage who have risen to the very top of the field of endeavor, and must be shown to have received sustained national or international acclaim.

Submit . . . evidence that shows you have received sustained national acclaim and recognition for achievements in the field of expertise.

The director's request for evidence notice then cited the ten criteria at 8 C.F.R. § 204.5(h)(3), 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.

In the following discussion we address the evidence submitted and counsel's contentions. Counsel does not claim that the petitioner meets any criteria not discussed below.

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 photocopy of a certificate of "SPECIAL THANKS" from the Naval Inventory Control Point of Mechanicsburg/Philadelphia. The petitioner also submitted a January 23, 2006 letter from [REDACTED], Office Manager, [REDACTED] West Babylon, New York, stating:

This letter will confirm that [the petitioner] worked for [REDACTED] from February 9, 2000 to September 18, 2001.

At the time of [the petitioner's] employment, our company was a major player in the Navy's recovery from a critically declining stock position for the main and nose landing gear for the F-18 aircraft. [The petitioner] played a major role in our success and was personally commended for his effort. I have enclosed a photo copy of this achievement taken from his personnel file.

The record includes no information regarding the number of Nassau Tool Works employees who received a "SPECIAL THANKS" certificate. We find that the preceding award certificate reflects local recognition for a project related to the petitioner's employment rather than national or international recognition. Further, there is no evidence showing that this award was for excellence in automobile repair.

The petitioner also submitted documentation reflecting that he completed training courses in subjects such as Computer Numerical Control programming, rail traffic control, railway signaling, and rail passenger and freight transport. We do not find that successful completion of such training programs constitutes "receipt of nationally or internationally recognized prizes or awards for excellence" in one's field. Completing a training course is not indicative of national or international acclaim, nor does it demonstrate that an individual has risen to the very top of his field. Further, there is no evidence showing that this training relates to the field of automobile repair.

In light of the above, the petitioner has not established that he meets this criterion.

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

The petitioner submitted employment verification letters, but these letters fail to specify an original contribution of major significance in the field of automobile repair directly attributable to petitioner. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous

and, thus, that it has some meaning. To be considered a contribution of major significance the field, the petitioner must show that his work has had a significant national or international impact. We accept that the petitioner is capably trained, but the record lacks independent evidence demonstrating that his contributions have significantly influenced his field. For example, there is no evidence showing the extent of the petitioner's influence on others in his industry or that his field has somehow changed as a result of his work. The mere fact that the petitioner has performed admirably for his employers does not demonstrate that his activities are nationally or internationally acclaimed as having major significance in the field. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude 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.

The aforementioned January 23, 2006 letter from [REDACTED] reflects that the petitioner contributed to the success of a project undertaken by [REDACTED] for the United States Navy, but there is no evidence showing that the petitioner performed in a leading or critical role for the company beyond this one particular project. Further, there is no evidence showing that [REDACTED] has a distinguished reputation.

The petitioner also submitted employment verification letters reflecting that he worked for B & R Machine and Tool Corporation as a Machinist/Operator and the Polish National Railway, Inc. as a Shipping Agent, but neither of these letters indicates that the petitioner performed in a leading or critical role these organizations. Nor is there evidence showing that these organizations have distinguished reputations.

In light of the above, the petitioner has not established that he meets this criterion.

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 January 24, 2006 employment verification letter from B & R Machine and Tool Corporation stating that he earns \$17.50 per hour. The plain language of this criterion requires the petitioner to submit evidence of a "high salary . . . in relation to others in the field." The petitioner offers no national wage statistics as a basis for comparison showing that his compensation is significantly high in relation to others in his field. There is no evidence that the petitioner earns a level of compensation that places him among the highest paid machinists or automobile mechanics in the United States. Thus, 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 receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

On appeal, counsel states:

The evidence submitted is sufficient to establish objectively that the applicant is an artist of extraordinary ability as defined by Sec. 203(b)(1)(A) of the INA and 8 C.F.R., Part 204.5(h).

You agreed initially that the evidence of exhibits and publications is sufficient. However, you provide no reasonable basis for the denial.

Counsel's statements regarding the director's decision do not appear relevant to the facts of this case. For example, the petitioner seeks classification as an alien of extraordinary ability as an automobile mechanic rather than an "artist." Nor has the petitioner submitted evidence of any "publications." Further, the director's March 23, 2006 decision denying the petition, the December 13, 2005 request for evidence notice, and the other service center correspondence contained in the record include no statement that the "evidence of exhibits and publications is sufficient" to demonstrate eligibility for the classification sought. Finally, contrary to counsel's claim, we find that the director's March 23, 2006 decision did provide a reasonable basis for denial. The director's decision included a discussion of the deficiencies in the petitioner's evidence as it related to the ten criteria at 8 C.F.R. § 204.5(h)(3). We concur with the analysis in the director's decision and find that the grounds cited therein were couched in the pertinent statute and regulations.

The petitioner's appeal was filed on April 20, 2006. The appellate submission was unaccompanied by evidence or arguments addressing specific criteria at 8 C.F.R. § 204.5(h)(3). On the Form I-290B, Notice of Appeal to the AAO, counsel indicated that a brief and/or evidence would be submitted to the AAO within 90 days. As of this date, more than thirteen months later, the AAO has received nothing further.

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) of the Act and the 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.