



U.S. Citizenship
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FILE:

[REDACTED]
SRC 08 072 52501

Office: TEXAS SERVICE CENTER

Date:

OCT 19 2009

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

UBeadndk
Perry Rhew

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 (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 as a pastor. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Notwithstanding, we find that the petitioner does not work in one of the fields designated by Congress for the classification sought. Although our finding on this issue renders the question of whether the beneficiary meets the regulatory criteria in any field moot, we will also consider that issue. As discussed below, the petitioner does not meet any of the regulatory criteria, of which an alien must meet at least three to be eligible for the classification sought.

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 into the United States will substantially benefit prospectively the United States.

The Petitioner's Field of Expertise

At time of original submission, the petitioner did not complete Part 5 and Part 6 of the Form I-140 immigrant visa petition, which included questions regarding the petitioner's occupation and job title. We note that counsel signed the petition as the person preparing the form. In addition, counsel asserted in his cover letter that the petitioner is "an immigrant worker with extra-ordinary ability in religion." In

response to the director's request for evidence, the petitioner submitted a revised Part 6 of Form I-140, which he indicated that his job title was a pastor.

We must presume that the phrase "in the sciences, arts, education, business, or athletics" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). If Congress had intended all aliens of extraordinary ability, regardless of their field, to qualify under section 203(b)(1)(A), there would have been no purpose in including the phrase "in the sciences, arts, education, business, or athletics." As Congress *did* use that phrase, it can be presumed that there may be aliens of extraordinary ability, who enjoy sustained national or international acclaim, that are nevertheless ineligible for classification under section 203(b)(1)(A) *solely* because their occupation does not fall within the sciences, arts, education, business, or athletics. To hold otherwise would render the clear language of the statute meaningless and undermine Congressional intent.

Counsel cites no legal authority that would allow an alien who has extraordinary ability in religion to be eligible under one of the classifications pursuant to section 203(b)(1)(A)(i) of the Act. The "exceptional ability" classification, now under section 203(b)(2) of the Act, existed prior to the enactment of the Act. When the Act was amended in 1990, there existed case law interpreting "arts" as including "athletics." The extraordinary ability classification, however, was an entirely new classification. Thus, Congress chose the fields for this new classification very specifically, expressly adding "athletics" to section 203(b)(1)(A) of the Act, whereas it did not do so under section 203(b)(2) of the Act where it was already presumed to fall within the "arts." "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987). Thus, Congress was capable of expanding the fields previously recognized and chose not to expand the list of fields other than by adding athletics.

In light of the above, the petitioner must establish that his field of expertise *and* the employment he intends to pursue fall within the sciences, arts, education, business, or athletics.

Moreover, there is no reason to presume that Congress must have intended for religion to fall under section 203(b)(1)(A) of the Act. In a separate part of the Act, Congress defined religious workers as special immigrants pursuant to section 101(a)(27)(C) of the Act. To admit a member of the clergy who is not seeking an academic post as an alien of extraordinary ability in education would frustrate Congress' intent in defining the eligibility requirements for clergy. Given the petitioner's listed "job title" on the Form I-140, it is reasonable that he must meet the requirements for a religious worker or minister to obtain an employment based visa petition approved in his behalf.

We acknowledge that religious workers are not precluded from consideration under the L-1 nonimmigrant "managerial" classification pursuant to section 101(a)(15)(L) of the Act. *Matter of Church Scientology International*, 19 I&N Dec. 593, 596-97 (Commr. 1988). That determination, however, results from the recognition that some religious organizations are sufficiently hierarchical. *Id.* That decision, however, found that since the classification was designed for businesses rather than religious organizations, the same standards used for businesses would apply. Unlike the

nonimmigrant L-1 classification, the immigrant classification sought in this matter is expressly limited by statute to those in the sciences, arts, education, business, or athletics.

Where the language of the statute is clear on its face, there is no need to inquire into congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984); *Shaar v. INS*, 141 F. 3d 953, 956 (9th Cir. 1998); *Matter of Lemhammad*, 20 I&N Dec. 316 (BIA 1991). Congress' language limiting the fields for extraordinary ability to the sciences, arts, education, business, and athletics is clear.

As the petitioner has not established that his field of expertise and proposed activities fall within the sciences, arts, education, business, or athletics, any further discussion of the evidence under the regulatory criteria is moot. Nevertheless, for purposes of thoroughness, we will address the evidence below.

Extraordinary Ability

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-99 (Nov. 29, 1991). 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 sustained national or international acclaim at the very top level.

This petition, filed on December 31, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a pastor. On appeal, counsel contends that the petition was denied in error because the supporting evidence clearly established eligibility under 8 C.F.R. § 204.5(h)(3). Counsel further states:

The evidence demonstrates that the Petitioner is a person of extraordinary ability in the field of Karate and he is already at the top of his field. The evidence also attest to the fact that the Petitioner has sustained national acclaim as a Pastor and he is recognized as one of the small percentage who has risen to the very top of that field.

The record is absent any evidence that the petitioner is a person of extraordinary ability in the field of karate. In fact, it is only mentioned once, stated above, in the brief for the appeal by counsel. The petition was filed based on the petitioner's occupation as a pastor, and all supporting documents, submitted both at time of filing and in response to the director's intent to deny, relate to the petitioner's occupation as a pastor and not in the field of karate.

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, internationally

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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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 the following:

1. Certificate issued by the Nepal Methodist Theological Seminary in Kathmandu, Nepal, on May 2, 2006, stating the petitioner received his bachelor of theology;
2. Certificate issued by the International Open University of Theology in Siliguri, West Bengal, India, on November 10, 2006, stating the petitioner was awarded his bachelor of theology;
3. Certificate from Eternal Light Ministries on November 30, 1990, for his graduation from Word of Light Bible School;
4. Plaque from [REDACTED] from Se-Shin Methodist Church on October 1, 2002, for the consecration of the building for the Nepal Methodist Church; and
5. Appreciation letter from the Independent Christian Chitwan Unity on July 19, 2000, for the petitioner's "valuable suggestion [sic] by giving his valuable time."

Items 1 through 3 reflect earned degrees and completion of educational studies rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. With regard to items 4 and 5, there is no evidence demonstrating their significance. The petitioner has not established that his plaque and appreciation letter reflect national or international recognition for excellence in the field rather than institutional recognition. For example, there is no evidence showing that petitioner's plaque and appreciation letter had a significant level of recognition beyond the presenting organization. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence demonstrating that items 1 through 5 are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Accordingly, 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, a 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, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted "The book of discipline of Nepal Methodist Church" (2002), which gives an overview and structure of the church. Counsel contends:

[The petitioner] is a founder [sic] member of the Nepal Methodist Church. He founded Nepal Methodist Church in 2002. He prepared the bylaws of this church. He built the building of Nepal Methodist Church (NMC) and merged other churches with NMC.

While counsel contends that the petitioner prepared the bylaws, nothing in the document corroborates this assertion, nor is there even any mention of the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regardless, the petitioner failed to establish that to become a member of the Nepal Methodist Church the petitioner was required to demonstrate outstanding achievements, as judged by recognized national or international experts in their disciplines or fields.

Accordingly, the petitioner has not established that he meets this criterion.

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 translations.

The petitioner submitted a "Heartfelt Felicitations" from the *Himalayan Times*, dated December 6, 2007, and the *Annapurna Post*, dated December 4, 2007, stating:

We, express our heartfelt felicitation to [REDACTED] for his outstanding ministry with the establishment of 133 Churches, ordination of 31 elders and 5 decans [sic] during his chairmanship in N.M.C. Methodist Church Ktm since 1991 to 2007.

The “Heartfelt Felicitation” appears to be a paid message from the “N.M.C. Family & N.M.C. Believers Church Family,” which is situated in the business section of the *Himalayan Times*. In the *Annapurna Post*, the “Heartfelt Felicitation” is located in an unknown section but is situated next to paid advertisements.

While counsel argues that the petitioner has “been highly praised by the recognized critics in leading Nepali daily and weekly newspapers,” the documents do not support this argument. No evidence was submitted establishing that the *Himalayan Times* and *Annapurna Post* are professional or major trade publications or other major media relating the petitioner’s work in education. Further, paid advertisements and general messages of appreciation are not considered published material about the petitioner relating to his work.

Accordingly, 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 the following:

1. Certificate from the World Methodist Evangelism Institute of the World Methodist Council from June 19, 2007, to June 26, 2007, for completing the course of study “That the World May Know Jesus Christ” for the Eighth International Evangelism Seminar;
2. Directory for the Eighth International Evangelism Seminar;
3. Letter from [REDACTED] of the World Methodist Evangelism Institute, dated January 18, 2007, requesting the petitioner to attend the Eighth International Evangelism Seminar; and
4. Four pictures showing the petitioner attending the Eighth International Evangelism Seminar, including a group picture.

Counsel contends that the petitioner meets this criterion because of his participation in various seminars and conferences. The mere attendance and participation in seminars are not indicative or original contributions of major significance. The petitioner has failed to establish how his attendance and participation made original contributions that have significantly influenced or impacted his field.

Accordingly, the petitioner has not established that he meets this criterion.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.

At the time of original filing of the petition, the petitioner submitted four pictures and a DVD for several events. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) reveals that this criterion applies to the visual arts. The beneficiary is a pastor. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Given that the beneficiary is a pastor, he would not satisfy this criterion simply by demonstrating participation and speeches at different events. Further, the petitioner did not address this criterion in response to the director's notice of intent to deny or on appeal.

Accordingly, 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.

The petitioner submitted the following:

1. Certificate from [REDACTED] and [REDACTED] ordaining the petitioner as an elder of the Nepal Methodist Church on May 3, 2006;
2. DVD evidencing the ordination on May 3, 2006; and
3. Certificate from [REDACTED] and [REDACTED] ordaining the petitioner as a deacon of the Nepal Methodist Church on January 22, 2003.

Counsel also states:

The Elder is the "pastor," the one who usually preaches, leads the sacraments, presides at worship, counsels, visits. Elders also earn bachelors and graduate degrees and are appointed to churches by their bishops. They too begin by being recommended by their local Methodist church and pastor after being active in the church.

Decan [sic] is a professional minister whose call is to ministries of service to church and world other than leading a local church. Some examples are Directors of Program, Directors of Education, Music Directors, Church Administrators, Chaplains. Deacons attain a bachelor's degree and a graduate degree in ministry at an approved seminary. Men and women are qualified to apply. All candidates must be active United Methodists who are recommended by their local church and pastor. Deacons may assist Elders in leading worship.

Counsel also states that the petitioner is "a highly talented and recognized individual in Nepal and abroad" and is the "founder of Nepal Methodist Church and elected for President. (See Recommendation letter by [REDACTED] July 14, 2006)." However, a review of the record does not reflect that a "Recommendation letter by [REDACTED] July 14, 2006" was ever submitted, either at time of initial filing of the petition or subsequently. Furthermore, while not mentioned by counsel, a brochure from the Nepal Methodist Church was submitted at the time of filing of the petition. The brochures states that [REDACTED], who is General Superintendent of the New Methodist Church, started

the church in 1991, which contradicts counsels claim that the petitioner is the founder. The brochure also states six deacon pastors were ordained on January 22, 2003, and five elder pastors were ordained on May 3, 2006. The petitioner was not the only ordained deacon or elder from Nepal Methodist Church.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

While the petitioner has been ordained and served as a deacon and an elder in the Nepal Methodist Church, the petitioner has failed to establish how his role as a deacon or elder differentiated him from other deacons or elders in the Nepal Methodist Church. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the organization to which he was appointed to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. In addition, the documentation submitted by the petitioner does not establish that the Nepal Methodist Church has a distinguished reputation.

Accordingly, the petitioner has not established that he meets this criterion.

Review of the record does not establish that the petitioner's field of religion as a pastor falls under one of the classifications under section 203(b)(1)(A)(i) of the Act. Regardless, the petitioner has not 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)(i) 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.