



U.S. Citizenship
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FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: OCT 11 2005

SRC 05 001 51252

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:

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.

Mari Johnson

Robert P. Wiemann, Director
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 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 that she qualifies 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on October 1, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Specialist of Human Beauty, Massage, Nutrition." The statute and regulations require the petitioner's acclaim to be sustained. The record reflects that the petitioner has been residing in the United States since August 2002. Given the length of time between the petitioner's arrival in the United States and the petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation 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. 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 an "Honor Certificate" issued by "The Chinese Reform and Development Secretarial Members' Association" on December 30, 2000. An English language translation accompanying the Honor Certificate states:

Comrade: [the petitioner's name]

Based on your contributions toward the society, and your outstanding achievement in your field of work, you have been chosen the "Person with Excellent Ability of the Century" on the first ceremony of the "Nowadays Chinese Citizen with Excellent Ability."

This Certificate is the proof of this award.

There is no evidence of publicity surrounding the petitioner's receipt of this award or evidence showing that it enjoys a significant level of recognition. In this case, the record contains no supporting documentation from the awarding entity or print media to establish that the petitioner's award is a nationally recognized award for excellence. Furthermore, pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The translation accompanying the petitioner's Honor Certificate was not certified as required by the regulation.

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, 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. 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.

On appeal, the petitioner argues that her "acupuncture certificate of a national membership" issued by the Republic of China Human Resources Department satisfies this criterion. The record, however, does not

include the membership bylaws or official admission requirements for this organization. There is no evidence showing that admission to membership in this association required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of her admission to membership.

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 a "Nomination Notification" letter allegedly issued by the Hong Kong Economic Trade Council's International Commerce Center and the Hong Kong Press Publisher. The nomination notification letter has two blank spaces into which the petitioner's name and the name of her cosmetic product are hand written.

On appeal, the petitioner argues that this nomination notification letter represents a "patent notification" which satisfies this criterion. We note, however, that this letter represents a solicitation for a book entry rather than first-hand evidence of the petitioner's patent.

The English language translation of the nomination notification letter states:

Your Face Beauty and Whitening Skin Lotion (Beauty and Whitening Powder) has been evaluated, it has met the standards of China the Beat [sic] Choice of Excellent Patent & Technology.

* * *

The book's aim is to give the best response to the world about the Chinese patent and technology, and to encourage creativity, develop China Science & Technology Achievement. The main objective is to market the newest science and technology patents in China.

* * *

China the Beat [sic] Choice of Excellent Patent & Technology collects more than 1000 patents and technologies

* * *

Due to time limit, we ask of you to file the admission application as soon as possible. The first publication of the book is scheduled during the first season of 1996.

There is no evidence showing that the petitioner's product was published in this book, nor is there any official documentation originating from the Chinese Patent Office establishing that the petitioner has been issued a patent.

The petitioner also submitted what she alleges is evidence of her authorship of an article entitled "Salvage the Sunburned Skin" in *People Health Newspaper*. The translation accompanying this article was not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, there is no evidence showing that this

article was actually published under the petitioner's name or evidence of its significant national or international distribution. Nor is there supporting evidence showing that the petitioner's article is viewed throughout her field as significantly influential.

In this case, the petitioner has failed to demonstrate that she 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.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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 September 12, 2004 letter accompanying the petition does not adequately detail how the petitioner intends to continue her work in the United States.

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.