

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



B2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **SEP 28 2005**
SRC 05 008 51347

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 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 October 12, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a photographer. In support of the petition, the petitioner submitted three samples of what is alleged to be his photography. This evidence, however, was not sufficient to demonstrate the petitioner's sustained national or international acclaim, or that his achievements have been recognized in his field of expertise. On November 3, 2004, the director denied the petition, finding that the petitioner's evidence did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3).

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. On appeal, 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 submits a Certificate of Honor (dated March 1993) with an accompanying English language translation indicating that he received a "First-Class Award of National Grand Photography Contest." The record, however, contains no evidence of publicity surrounding this contest or evidence showing that the petitioner's award enjoys a significant level of recognition. Simply receiving an honor certificate with the word "national" in the title does not satisfy this very restrictive criterion. The petitioner must provide evidence showing that his award enjoys significant national or international stature. In this case, the record contains no documentation from the awarding entity or print media to establish that the petitioner's Certificate of Honor is a nationally recognized photography award. 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 Certificate of Honor was not certified as required by the regulation.

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

The petitioner re-submits what are alleged to be two samples of his photography. On appeal, the petitioner added captions to his photographs. One of the captioned photographs states: "The rainbow displayed on my photography exhibition of 1997 HK."

The second captioned photograph states: "The beach displayed on my photography exhibition of 1997 HK."

An assertion at the bottom of a photograph is of limited probative value. The record lacks substantive evidence to support the petitioner's assertions. For example, the petitioner has not submitted a pamphlet or brochure from the 1997 Hong Kong exhibition to demonstrate his participation. 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)).

We cannot ignore that section 203(b)(1)(A)(i) of the Act requires "extensive documentation" of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide ample evidence showing that the exhibitions in which he participated were only open to top national or international photographers. A photographer cannot satisfy this criterion simply by arranging for his or her work to be displayed or sold. In this case, the petitioner has not shown that his exhibitions enjoy a national reputation, or that he has regularly participated in exclusive exhibitions devoted solely or largely to the display of his photography alone.

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 re-submits what is alleged to be his photograph of a wooded area. On appeal, the petitioner has added a caption to this photograph indicating its dollar amount and year of sale. The record, however, contains no evidence to support the petitioner's assertion regarding the price at which he sold this photograph. As noted previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. There is no evidence showing that the petitioner's compensation is significantly higher than that of other professional photographers.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner claims that the photograph discussed under the preceding criterion is evidence of his commercial success. The plain wording of this criterion, however, indicates that it is intended for "performing" artists such as musicians and actors rather than the petitioner's occupation. Nevertheless, the regulation calls for commercial success in the form of "sales" or "receipts"; simply asserting that one's work has been purchased cannot satisfy criterion. The record contains no evidence of documented "sales" or "receipts" showing significant national distribution of the petitioner's photography or its widespread commercial success.

In this case, the petitioner has failed to demonstrate 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.

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.

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 contains no such evidence.

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.