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

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FILE:

Office: VERMONT SERVICE CENTER

Date: **DEC 15**

EAC 06 055 51043

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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):

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.

This petition, filed on December 12, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a fence installer. According to Part 3 of the Form I-140 petition, the petitioner has been residing in the United States since July 1, 1996. Given the length of time between the petitioner's arrival in the United States and the petition's filing date (more than nine years), 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 in this country.

In support of the petition, the petitioner submitted documents showing that his company, All Master Fencing, is a registered business in the state of New Jersey. The petitioner also submitted letters of support from his customers in New Jersey who state that the petitioner performed quality work in installing their fences. Each letter of support was accompanied a contract showing the specific work performed by the petitioner and the amount paid to his company. The petitioner's initial submission also included the petitioner's United States income tax return for 2004 reflecting business income of \$32,452. Regarding the petitioner's contracts and business income as they relate to the criterion at 8 C.F.R. § 204.5(h)(3)(ix), there is no basis for comparison showing that his compensation was significantly high in relation to others in his field.

On January 28, 2006, the director issued a notice of intent to deny informing the petitioner of the deficiencies in the record and requesting evidence pertaining to the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In response, the petitioner submitted photographs of his work, marketing material and local promotional advertisements for All Master Fencing, company bank statements from 2005, additional contracts from his New Jersey customers, and company invoices. None of this evidence was sufficient to establish the petitioner's eligibility under any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On July 19, 2006, the director denied the petition, finding that the petitioner had not established eligibility pursuant to section 203(b)(1)(A) of the Act.

On appeal, the petitioner states: "All Master Fencing Company is my company. I am very professional. I do jobs for Township of Dover and others. If you need any information, I have with me. I do fencing . . . residential, commercial, custom fences."

The petitioner submits additional letters from three satisfied customers, including the mayor of the township of Dover, New Jersey. The petitioner also submits a local promotional advertisement for his company. Local promotional advertisements, which are not the result of independent journalistic reportage, cannot serve to meet the criterion 8 C.F.R. § 204.5(h)(3)(iii). Such material is simply not indicative of national or international acclaim. Nothing in the petitioner's appellate submission is adequate to demonstrate the petitioner's eligibility under any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In this case, the petitioner has failed to demonstrate his 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.

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.