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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B2

FILE:

[REDACTED]
LIN 04 183 50446

Office: NEBRASKA SERVICE CENTER

Date: JUL 14 2006

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:

[REDACTED]
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.

Maui Johnson

Σ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, counsel notes that much of the director’s discussion regarding two of the regulatory criteria addresses evidence unrelated to this matter, a Guinness World Record and articles in *Boxing* and *Fight*. We find that this error is more than typographical and prevented the petitioner from filing a meaningful appeal.

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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an artist. 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 director found that the petitioner did meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vii) regarding display of the petitioner's work at artistic exhibitions or showcases. In reaching this conclusion, the director correctly observed that the petitioner includes among photographs that purport to be of his own work, a miniature entitled "Glamorous" that is credited to another artist elsewhere in the record. The petitioner does not respond to that observation.

In addressing the awards and published materials criteria, however, the director appears to have used language from a different case. Specifically, the petitioner submitted evidence of a city award and an "Honored Diploma." Yet the director discussed a Guinness World Record. Similarly, the petitioner submitted several articles in Ukrainian newspapers. While the director acknowledged this submission, the director then discussed articles in *Boxing* and *Fight*. This discussion of unrelated evidence under two regulatory criteria without a discussion of the correct evidence precluded the petitioner from filing a meaningful appeal.

Therefore, this matter will be remanded for consideration of the evidence of record. The director may wish to consider whether artists competed nationally for the petitioner's city award and diploma and whether the petitioner has established the national circulation of the Ukrainian newspapers beyond counsel's bare assertions. Finally, the director may wish to consider whether any of the petitioner's recognition in the Ukraine was "sustained" as of the date of filing in June 2004, nearly two years after the petitioner entered the United States to study for a Master of Fine Arts.¹ As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

¹ While an alien need only enjoy national, not international, acclaim, his acclaim, if he ever had any, must be sustained as of the date of filing.