

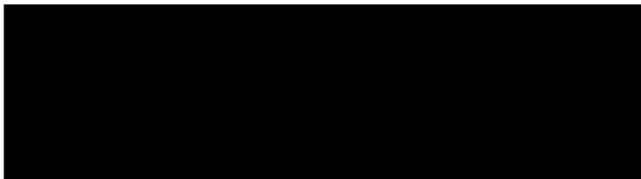


U.S. Citizenship  
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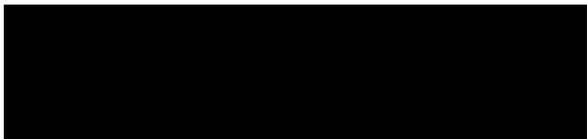
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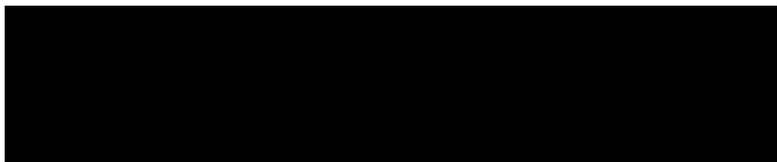
FILE: LIN 04 210 50310 Office: NEBRASKA SERVICE CENTER Date: JUN 29 2006

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.

S Robert P. Wiemann, Chief  
Administrative Appeals Office

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 The director's decision will be withdrawn, and the petition will be remanded for further action and consideration.

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.

On appeal, counsel states: “[The petitioner] has met three of ten enumerated criteria per the regulations and is, therefore, statutorily eligible to receive, and hereby respectfully requests, status 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 July 16, 2004, seeks to classify the petitioner as an alien with extraordinary ability as an otolaryngology researcher and a physician. The petitioner's initial evidence included six letters of support from the petitioner's colleagues and photocopies of his diplomas, transcripts, medical licensing examination results, and training certifications. 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 April 19, 2005, the director issued a request for evidence pertaining to the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In response, the petitioner submitted an award, four published articles that cite his work, evidence of his membership in three associations, and photocopies of his scholarly articles. The petitioner's response also included a letter from counsel discussing the petitioner's medical contributions in the field of otolaryngology.

On August 10, 2005, the director issued a notice denying the petition. In addressing the evidence submitted by the petitioner, the director's decision merely stated:

The submitted evidence does not persuasively demonstrate the beneficiary's status as an alien of extraordinary ability.

The Service acknowledges that the beneficiary meets at least three of the previously stated criteria. Although the submitted evidence relates to the criteria, the petitioner has not submitted evidence to demonstrate that the alien has sustained national or international acclaim in the alien's field of endeavor and the criteria required in the field of expertise.

The beneficiary has reviewed other's work, served published [sic] over 44 publications, presented over 46 papers, and appears to have the respect of his peers for his combined theoretical, experimental, and clinical skills. However, he does not appear to have received the national or international acclaim associated with an alien of extraordinary ability. The standard for this classification is very high. The Service recognizes that the alien is extremely talented, gifted, and unquestionably valued by his professional associates. However, the petitioner has not established that the alien is one of the small percentage who have risen to the very top within the field of endeavor.

The director's observation that "the beneficiary meets at least three of the previously stated criteria" is contradicted by the statement immediately following it in which the director notes that while the evidence submitted "relates" to the criteria, the evidence addressing the criteria is not adequate to demonstrate sustained national or international acclaim. While the wording of the director's decision could certainly be improved, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. It is important to note that the controlling purpose of the regulation at 8 C.F.R. § 204.5(h)(3) is to establish sustained national or international acclaim, and any evidence submitted to meet the regulatory criteria must therefore be to some extent indicative of such acclaim. A more rational interpretation of the director's decision is that the petitioner submitted documentation which related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim; it is not simply a matter of accepting that any piece of evidence presented under a particular criterion automatically satisfies that criterion. By way of analogy, Citizenship and Immigration Services sometimes requires copies of income tax returns to establish that the petitioner has the ability to pay the proffered wage to the beneficiary. The petitioner, however, does not automatically meet this requirement by submitting a copy of an income tax return. Rather, we must consider the content of that income tax return; if it does not show that the petitioner can afford to pay the beneficiary, then the petitioner cannot credibly argue that it met its obligation merely by supplying the copy of the tax return. The same reasoning applies to evidence presented under the criteria 8 C.F.R. § 204.5(h)(3).

The director's decision is deficient in that it lacks any meaningful analysis explaining why the specific evidence submitted by the petitioner fails to demonstrate sustained national or international acclaim. The director's decision cited the ten criteria at 8 C.F.R. § 204.5(h)(3), but the discussion that followed did not sufficiently relate

to those criteria. Review of the record indicates that the petitioner claims eligibility based on an award, association memberships, original contributions, and authorship of scholarly articles pursuant to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i),(ii),(v), and (vi). The director's decision failed to specifically address these criteria and explain how the evidence submitted for each criterion was not adequate to demonstrate sustained national or international acclaim.

8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. We find that the petitioner's award from the Indiana University School of Medicine (dated May 27, 2005) reflects institutional recognition rather than national or international recognition. Further, this award was issued to the petitioner subsequent to the filing date of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

8 C.F.R. § 204.5(h)(3)(ii) calls for 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 this case, there is no evidence of the membership bylaws or official admission requirements showing that the petitioner's associations require outstanding achievement for admission to membership or that prospective members are evaluated by national or international experts in consideration of their admission to membership.

8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. It is noted that the letters of support discussing the petitioner's contributions consist entirely of those who have supervised him or worked directly with him. Such letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner's reputation is limited to his close colleagues, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, it cannot be concluded that his work rises to the level of a contribution of major significance.

8 C.F.R. § 204.5(h)(3)(vi) calls for evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. We find that authoring scholarly articles is inherent to the sciences. For this reason, evidence showing the influence of the petitioner's articles becomes necessary to set him apart from other otolaryngology researchers. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed. In the present case, we do not find that an aggregate of four cites to the petitioner's work sets him apart from almost all others in his field.

In conclusion, we find that the director's decision is so vague that it does not present the petitioner with an opportunity to mount a meaningful rebuttal on appeal. Therefore, this matter is remanded to the director for the purpose of issuing a new decision in order for the director to properly address the petitioner's evidence as it relates to the pertinent regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). The director's new decision shall set forth the specific deficiencies in the evidence outlined above and any further deficiencies as noted by the director in order to afford the petitioner an opportunity for a meaningful rebuttal.

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