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U.S. Citizenship
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Services

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FILE:

EAC 05 003 53316

Office: VERMONT SERVICE CENTER

Date: SEP 08 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:

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 Director, Vermont Service Center, denied the employment-based immigrant visa petition, which 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 in the sciences. 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, the petitioner asserts that her physician training is unique in the United States for her age and only a small number of physicians are willing and eligible to join the army. She also attempts to address the regulation criteria.

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). This petition seeks to classify the beneficiary as an alien with extraordinary ability as a military medical doctor. 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 the following 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.

(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 material 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 specialization 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.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level. Although the petitioner's U.S. Army recruiter asserts that the Army recommended that the petitioner apply for the classification sought and that the petition should be approved "according to legislation adjusted for army recruitment," the recruiter does not identify any law, and we know of none, that waives the statutory standard of national or international acclaim for aliens recruited by the U.S. military. Thus, assuming the petitioner is well qualified for her age and that the military has suffered a decline in enrollment of medical specialists, the petitioner must still establish that she enjoys sustained national or international acclaim in the field of medicine.

Initially, the petitioner submitted a September 18, 2004 letter from Staff Sergeant [REDACTED] on "United Staes [sic] Army" letterhead asserting that the Army is interested in recruiting the petitioner and that the Army recommended that the petitioner file a petition under the classification sought. Staff Sergeant [REDACTED] does not state or imply that the petitioner is acclaimed nationally or internationally. The petitioner also submitted her medical degree and certification of internship.

On May 2, 2005, the director advised the petitioner of the ten criteria and requested evidence that the beneficiary meets at least three of those criteria. In response, the petitioner asserted that she has received awards or prizes for excellence in her field, performed in a leading or critical role for an organization or establishment with a distinguished reputation and commanded a high salary. The petitioner submitted a letter from the Chief Physician of the Clinical Hospital of the Far Eastern Railroad asserting that the petitioner worked there as an obstetrician and gynecologist and was "awarded numerous financial awards and certificates of achievement from the management of the hospital." The petitioner also submitted a certificate discussing the importance of the Open Shareholders Society in implementing functions of transport in Russia and confirming that the petitioner was an employee of the society. Finally, the petitioner submitted a certificate of her remuneration at the Railroad Clinical Hospital reflecting an average annual wage of 38,630.94 Rubles.

The director concluded that the petitioner had failed to submit evidence of the beneficiary's sustained national or international acclaim, noting that the petitioner had not demonstrated that she performed a leading or critical role for her employer and had not provided evidence of comparable wages in her field in Russia.

On appeal, the petitioner asserted that the reference letter from the hospital established her awards, that the Railroad Clinical Hospital has a distinguished reputation and that labor laws in Russia preclude her from establish the wages of other physicians.

The reference letter reflects that the petitioner received awards from her employer. Financial bonuses from one's own employer cannot be considered nationally or internationally recognized awards or prizes, as they are limited to employees of a single entity. The record lacks evidence regarding how many such awards are issued and the recognition such awards carry beyond the employer. Assuming that the Railroad Clinical Hospital enjoys a distinguished reputation nationally, the petitioner has still not established that she played a leading or critical role for that hospital. Not every obstetrician/gynecologist working at a hospital plays a leading or critical role for the hospital. Specifically, the role the petitioner was hired to fill does not set her apart from other physicians working for hospitals. Finally, it is the petitioner's burden to establish that she meets every element of a given criterion. Without government statistics or other comparable evidence establishing the high-end remuneration for physicians in Russia, we cannot determine whether the petitioner's remuneration was significantly high in her field.

The statute requires extensive documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate sustained national or

international acclaim. Assuming that the beneficiary is a talented physician, the record does not reflect that she has attained any national acclaim for that talent.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a physician 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. Therefore, the petitioner has not established her 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.