

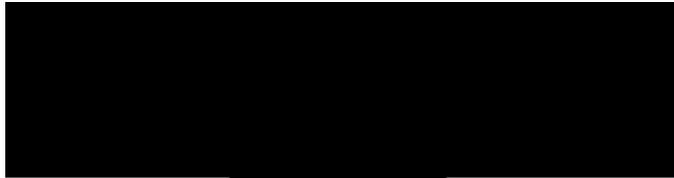


U.S. Citizenship
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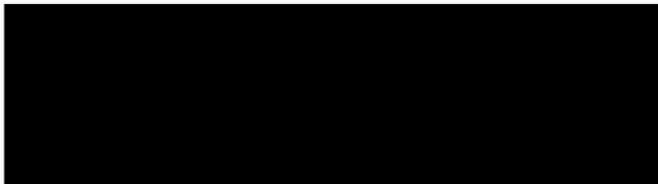
Petitioner:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” 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 business. The director determined the petitioner had not established that the beneficiary enjoys the requisite national or international acclaim.

On appeal, counsel submits a brief and additional evidence. While not all of counsel’s assertions are persuasive and many of the director’s concerns are valid, for the reasons discussed below we are satisfied that the beneficiary meets the necessary three of the ten regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).

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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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.

The director characterized the beneficiary's field as wine import and distribution. According to counsel, the evidence establishes that the beneficiary is an extraordinary marketer and brander of niche wines. Counsel warns that should the AAO disagree, three experts are willing to testify in support of this assertion in federal court.

We do not question the experts' opinion that the beneficiary is a marketer of niche wines. Our expertise, however, is immigration law, and, thus, how narrowly the petitioner may define the alien's field within the context of section 203(b)(1)(A) of the Act. As the statute requires evidence of sustained national or international acclaim, a petitioner cannot narrow the alien's field to such a small group that rising to the top of the group has no meaning. Our review of the record leads us to conclude that the beneficiary's field is marketing. Even if we limited the beneficiary's field to wine marketing, it is not appropriate to limit the beneficiary's field any further to include only those that market a specific type of wine.

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. The director concluded that the beneficiary meets the regulatory requirements for the published materials criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii) but concluded that the lack of materials after 2003 precluded a finding that they were indicative of sustained acclaim. We concur with counsel on appeal that the evidence submitted to meet a given criterion need not, on its own, establish sustained acclaim as of the date of filing so long as it is indicative of or consistent with sustained acclaim and the remaining evidence supports sustained acclaim through the date when the petition was filed. Review of the evidence of record establishes that the beneficiary has in fact met two additional criteria.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel asserts that the beneficiary's efforts in contracting with Wal-Mart to sell South African wines constitute a contribution of major significance. The director concluded that the petitioner had not demonstrated that these efforts were recognized as having major significance in the field as a whole. When we consider the beneficiary's career in the aggregate, however, we are persuaded that the beneficiary meets this criterion.

First, the deal with Wal-Mart to sell the South African wine Goiya, distributed by the petitioner (whose [REDACTED] is the beneficiary), was covered in the biggest daily newspaper in Cape Town. [REDACTED], the former National Sales Director for Winery Exchange, explains that the competition for "shelf-space" at Wal-Mart is considerable, with distributors waiting a year just for an appointment with Wal-Mart executives. Despite the competition with established wine distributors, the beneficiary secured Wal-Mart shelf-space for two South African wines. While this achievement may

not be sufficient on its own, the record contains additional evidence of the beneficiary's marketing influence in the field rather than simply personal success on behalf of his suppliers.

The beneficiary is the CEO of the petitioner, the U.S. distribution partner for [REDACTED] now [REDACTED], South Africa's largest wine distributor. In 2000, [REDACTED] issued the beneficiary its Chairman Award of Achievement for Outstanding National Marketing and Sales Performance in 1994 through 2000. Honorees are chosen by committee and issued to those who have demonstrated extraordinary innovation, commitment and effort in pursuit of [REDACTED] goals. According to a letter from [REDACTED] honorees are selected from [REDACTED] distributors worldwide in 27 countries and the beneficiary was only the third recipient of this award during the 50 years [REDACTED] has been in existence (although there is no evidence the award itself has existed that long). As we are sustaining the appeal, we need not elaborate on why we reject counsel's assertions that this award is sufficient to meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Moreover, an award that does not meet that criterion is not necessarily evidence sufficient to meet this criterion. Nevertheless, this award is part of the overall record of achievement that leads us to conclude that the beneficiary meets the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v).

In addition, the beneficiary was selected to serve on the five-member Wines of South Africa (WOSA) South African Wine Importers Committee. This evidence was submitted as evidence of the beneficiary's membership in an exclusive association pursuant to 8 C.F.R. § 204.5(h)(3)(ii). As we find that the beneficiary meets three other criteria, we need not address whether this five-member committee constitutes an association as contemplated under 8 C.F.R. § 204.5(h)(3)(ii). Nevertheless, the letters addressing the beneficiary's selection for and work on this committee is illuminating.

[REDACTED], CEO of WOSA, asserts that she selected the beneficiary for committee membership from 150 importers "due to his astounding success, which includes his being credited in large part with the forty percent increase in the quantity of South African wines imported into the United States in the past few years." [REDACTED] explains that the committee's purpose is to develop a wine marketing plan for the United States. We acknowledge the evidence of [REDACTED] recognition as an expert in the field, although we cannot help but note that more evidence of this type relating to the beneficiary's accomplishments and recognition would have bolstered the petitioner's claims. In her November 16, 2005 letter, [REDACTED] asserts that the beneficiary extensively studied the U.S. wine market and contributed to the success of the South African wine industry in the U.S. through his distribution plan, which included supplying wine to Wal-Mart, Publix, Kroger and Winn-Dixie. [REDACTED] notes that the beneficiary markets Goiya, the number one South African wine in Publix and five U.S. states.

[REDACTED] A, describes the beneficiary's efforts in evaluating the taste and packaging of South African wines for U.S. markets. [REDACTED] notes that the import of South African wines into the United States increased 45 percent in 2004.

Given all of the above evidence in the aggregate, we are satisfied that the beneficiary meets this criterion in that he has significantly influenced the branding and marketing of South African wine in the United States.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel and the director both focus on the beneficiary's distributor role for [REDACTED] and concluded that the beneficiary was not responsible for the company's success. We concur with counsel that the regulation does not involve a consideration of the alien's contributions for the organization or establishment, but, rather, the nature of the role the alien was selected to fill.

More significant than the "role" the beneficiary played for [REDACTED], the beneficiary served as the CEO of the petitioning distributor, one of the largest importers of South African wine into the United States. Clearly, the position of CEO is leading or critical for the company. The director concluded that the petitioner was too new to enjoy a distinguished reputation. The petitioner, however, has been consistently covered in the media, including a 2003 cover story in a significant California trade journal, for its innovations and success and is one of the largest U.S. importers of South African wines. Thus, we are satisfied that it enjoys a distinguished reputation in South Africa and the United States. Moreover, as noted above, the beneficiary was selected as one of five out of 150 to serve on a WOSA committee, arguably playing a critical role for WOSA. Thus, we are satisfied that the beneficiary meets this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that the beneficiary has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that the beneficiary seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.