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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

LIN 08 014 53581

Office: NEBRASKA SERVICE CENTER

Date: JUN 04 2009

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)

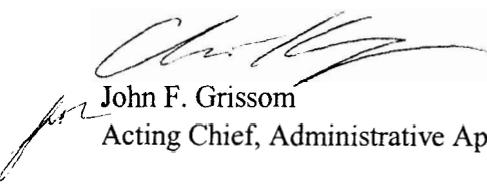
ON BEHALF OF PETITIONER:

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.

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 employment-based immigrant visa petition was denied by the Director, Nebraska 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 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 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 August 13, 2007, seeks to classify the beneficiary as an alien with extraordinary ability as a jeweler. The record reflects that the beneficiary of the petition has been residing in the United States since January 1, 1997. Given the length of time between the beneficiary's arrival in the United States and the petition's filing date (over a decade), it is reasonable to expect her to have earned national acclaim in the United States during that time. She has had ample time to establish a reputation in this country.

The petitioner initially submitted an Application for Alien Employment Certification (ETA 750) that was certified, a copy of the first two pages of the beneficiary's passport, her marriage certificate and her birth certificate. As the petitioner failed to provide any supporting evidence, the director denied the petition on June 16, 2008, finding that the petitioner had not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act.

On appeal, the petitioner provided two reference letters. The petitioner, W.F. Gold Manufacturing, wrote a letter as the beneficiary's employer dated October 2006, praising the beneficiary as an employee who has a "positive impact" on the clients and is an "exceptional" person. The petitioner also provided a reference from Libutti Jewelers, dated June 2004, which thanked the beneficiary for her "help" with a Contemporary Jewelry Exhibition at the Museum of Arts and Design in New York. The petitioner also submitted its promotional materials listing the beneficiary as a point of contact, and referring to her job title as "Fine Antique Jewelry/ Goldsmith/Restoration Specialist." Neither the reference letters submitted by the petitioner nor the promotional materials address the beneficiary's eligibility under any of the regulatory criteria at 8 C.F.R.

§ 204.5(h)(3). This evidence likewise fails to demonstrate that the beneficiary has earned sustained acclaim at the national or international level.

In addition, the petitioner submitted a newsletter from the Woman's Jewelry Association ("WJA"), dated May 2007, that names the petitioner as a new member. A letter from WJA, which welcomed the beneficiary as a new member to the organization, was also submitted. In order to meet the criterion under 8 C.F.R. § 204.5(h)(3)(ii), the petitioner must provide:

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 order to demonstrate that membership in an association meets this criteria, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation. The record does not include evidence (such as membership bylaws or official admission requirements) showing that WJA requires outstanding achievements of its members, as judged by recognized national or international experts in the jewelry field. Accordingly, the beneficiary has not met this criterion.

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that she 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 beneficiary has distinguished herself 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. The evidence is not persuasive that the beneficiary's achievements set her significantly above almost all others in her field at the national or international level. Therefore, the petitioner has not established the beneficiary's 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.