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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B2



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER
LIN 07 172 50081

Date: JUN 16 2009

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:



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 dismissed.

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). The director determined the petitioner had not established that the beneficiary enjoys the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief. For the reasons discussed below, we uphold the director’s ultimate conclusion that the petitioner has not established the beneficiary’s eligibility for the benefit sought. Specifically, for the reasons discussed in detail below, while we concur with counsel’s assertion, raised for the first time on appeal, that the beneficiary plays a leading or critical role for a winery with a distinguished reputation, the petitioner has not demonstrated that the beneficiary meets any of the other regulatory criteria for the classification sought.

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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a master winemaker. 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 petitioner has submitted evidence that is claimed to meet the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Initially, the petitioner submitted a self-serving list of awards won by its wines on its own letterhead and competitions results posted on its own website. In response to the director's request for additional evidence, the petitioner submitted competition results posted at www.uncorknewyork.com. The results reflect that in 2002, one of the petitioner's wines received the Chairman's Award and a gold medal at the Riverside International Wine Competition. An electronic mail message from the competition's chairman, [REDACTED] indicates that the competition averages about 2,400 wines and awards approximately 58 percent of those wines medals. The website www.uncorknewyork.com also reflects that in 2002, one of the petitioner's wines won "Double Gold" at the San Francisco International competition. Results posted at <http://fingerlakeswinegazette.com> reflect that in 2006, three of the petitioner's wines won silver or double gold medals at the International Eastern Wine Competition in Corning. In April 2007, before the filing date, one of the petitioner's wines won a Gold/Best of Class award and another of the petitioner's wines won a silver award at the Pacific Rim International Wine Competition, a competition that had over 2,000 wines entered from Canada, the United States, Mexico, South America, South Africa and Japan. Of the 29 entries listed on the page of entries submitted, all won gold, silver or bronze awards.

The director noted that the competitions issue numerous prizes and questioned the stature of the competitions in comparison with other competitions. Regardless, the director concluded that the beneficiary could not meet this criterion because the beneficiary was not the recipient of any of these awards.

On appeal, counsel asserts that the petitioner established that the competitions were conducted with expert judges, double blind tests and that the "double gold" is the highest award given. Counsel further asserts that the regulation does not require that the petitioner distinguish the competitions from others in the field, only that the awards are nationally or internationally recognized. Finally, counsel notes that the beneficiary is the sole wine maker at the petitioning winery and, thus, the acclaim of the awards

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

accrues to him. In the alternative, counsel asserts that this evidence should be considered as evidence of the petitioner's leading or critical role for a winery with a distinguished reputation pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(ix).

A national or international pool of entries does not necessarily demonstrate that a competition is nationally or internationally recognized. The existence of several wine competitions raises the possibility that not all of the competitions are notable at the national level. Evidence that a competition is nationally significant might include coverage in a national trade journal or other national media. That said, we acknowledge that the petitioner's wines have won high honors at some of these competitions.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) explicitly requires evidence of "the alien's receipt" of qualifying awards or prizes. Thus, in order to meet this criterion, the alien must be the named recipient of the award. In light of the above, we concur with the director that the petitioner has not established that the beneficiary meets this criterion. That said, we concur with counsel that this evidence relates to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(ix) as will be discussed below. We note, however, that counsel raises this alternative assertion for the first time on appeal.

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.

The petitioner initially submitted articles about wine events, including events hosted by the petitioning winery, and the influx of foreign winemakers in what appear to be local Finger Lakes or Upstate New York publications: the *Star-Gazette*, the *Finger Lakes Times*, the Rochester-based *Democrat and Chronicle* and *Indulge: Finger Lakes Wineries, Restaurants and Attractions*. The petitioner also submitted an article on New York winemaking in general in *Wine Business Monthly*, an article about the petitioning winery in "The All American Cheese and Wine Book" and a portion of an article that appears to be about Riesling grapes in *The Wine News*.

In response to the director's request for additional evidence, the petitioner submits new published material that postdates the filing of the petition, including an interview with the beneficiary in *Lenndevours*,² a listing of one of the petitioner's wines as a Recent Vintage in Hugh Johnson's *Picket Wine Book*, a brief article on the Finger Lakes Region in New York that lists the petitioner as one winery that produces Riesling in *Better Homes and Gardens* and a listing of the petitioner as one of the 10 "Fastest-Improving Producers" in *Wine Report 2008*. The petitioner must establish eligibility as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Thus, we will not consider any published material published after that date. The petitioner also submitted a list of wineries, including the petitioner, as part of a cover story on New

² The petitioner submitted no evidence regarding the circulation of this publication or other evidence indicating that it constitutes a professional or major trade journal or other major media.

York wine country in *Wine Spectator* and articles about wines produced by the beneficiary at the petitioning winery in publications such as *Enotheque* and *Wine Review Online*.

The director concluded first and foremost that the material was not primarily about the beneficiary and, for the most part, only mentions him briefly. The director further concluded that the petitioner had not established that “all” of the materials were commensurate with major media.

On appeal, counsel asserts that in the field of winemaking, media coverage falls into three categories: inclusion of the winery in leading wine books and journals, articles about top wineries in major trade publications, online sources and newspapers and trade journal articles which focus on an individual winemaker or a handful of winemakers. Counsel further asserts that while the petitioner may have included some “lesser known newspapers” in the original submission, those can be ignored.

While listings in wine books and journals and coverage of wineries may be a typical type of media coverage in the industry, it does not meet the regulatory requirements of this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii), which requires that the published material be “about the alien.” Counsel does not suggest that this criterion does not apply to the beneficiary’s field, as counsel acknowledges that trade journals do publish articles that focus on individual winemakers. Thus, we will not consider comparable evidence under this criterion pursuant to 8 C.F.R. § 204.5(h)(4), which only allows the submission of comparable evidence where a criterion does not readily apply to the alien’s field. Regardless, we are not persuaded that published material that is not about the alien is comparable to published material that is about the alien.

Outside of the local publications, the only material predating the filing of the petition that discusses the beneficiary beyond a sentence or two is the section on the petitioning winery in “The All American Cheese and Wine Book.” The section is titled with the petitioner’s name, not the beneficiary’s name, and is primarily about the petitioner itself. The section does state that the owners are aided by the beneficiary and then discusses his history and wines. Nevertheless, the title of the section, the contact information for the winery provided at the end of the section and a reading of the section as a whole reveals that it is primarily about the winery. Moreover, the record contains no evidence about the sales volume of this book. In fact, the record does not even include the publication date, as mandated by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Thus, the petitioner has not established that the book constitutes a professional or major trade journal or other major media.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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.

Initially, the petitioner submitted a letter from Todd Steiner, Enology Outreach Specialist at The Ohio State University, expressing appreciation to the beneficiary for agreeing to serve as a judge of the 2007 Ohio Wine Competition and providing details of the event. [REDACTED] asserts that the competition

hopes to equal or surpass the 273 entries from the previous year. [REDACTED] further indicates that he is enclosing the cover letter and entry form “sent to all commercial bonded wineries in Ohio.” The petitioner also submitted an unsigned invitation to judge a wine competition, apparently from [REDACTED] [REDACTED], Coordinator of the International Eastern Wine Competition (IEWC) at the Corning Museum of Glass in New York’s Finger Lakes region.

In response to the director’s request for additional evidence, the petitioner submits a signed letter from [REDACTED] asserting that the beneficiary is “one of regular judges” and that 2008 would be the “fourth consecutive IEWC in which he has served as a judge.” [REDACTED] indicates that the competition is one of the oldest and largest in North America, had over 2,100 entries in 2007, and includes entries from Europe and the southern hemisphere. [REDACTED] also indicates that the IEWC uses 32 judges. The promotional materials for this competition indicate that the judges are merely “wine knowledgeable professionals and media specialists who represent major East Coast markets from Miami to Toronto.” [REDACTED] indicates that the beneficiary served on a panel with a “famous British wine writer.” Previously, however, [REDACTED] states: “Since the Finger Lakes district has around 200 wineries, I could draw on dozens of winemakers to judge the competition, but I focus on a few who are acknowledged leaders.”

The director concluded that the record did not reflect that the beneficiary had garnered any recognition consistent with national or international acclaim from his judging experience. On appeal, counsel asserts that the director reversed the burden and that the petitioner has established that he was selected as a judge based on his national acclaim as a winemaker.

Counsel is not persuasive. The evidence submitted to meet this criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005). We are not persuaded that judging competitions in Ohio and western New York demonstrates any recognition beyond the eastern Great Lakes region.

Without evidence that the beneficiary has judged competitions beyond the region where he works, we cannot conclude that he meets this criterion.

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

Initially and in response to the director’s request for additional evidence counsel asserted that the reference letters and other evidence established the beneficiary’s original contributions of major significance through a collaboration with other local vineyards to jointly produce and market the Riesling wine Tierce, presentations at local seminars and collaborations with Cornell University.

The director acknowledged the positive statements in the reference letters but concluded that opinions solicited for the purpose of supporting a visa petition could not substitute for independent evidence of sustained national or international acclaim. The director further concluded that while the Tierce collaboration was a novel concept, it could not be considered a contribution of major significance. Finally, the director concluded that the presentations and collaboration with Cornell University had not resulted in an original contribution of major significance to the field.

On appeal, counsel asserts that the director “improperly assessed” the reference letters under this criterion when they were actually submitted as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Counsel does not explain how the director erred in failing to consider these letters “as a separate stand alone category of eligibility” given that counsel raises this assertion for the first time on appeal.

First, the regulation at 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence when the regulatory criteria at 8 C.F.R. § 204.5(h)(3) do not “readily apply.” Counsel has not demonstrated that the regulatory criteria do not readily apply to the beneficiary’s field. Moreover, counsel has not explained how the necessarily subjective opinions of the beneficiary’s references are comparable to the objective evidence specified in the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). Thus, we will consider the information in the letters as they relate to the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Also on appeal, counsel asserts that the reference letters include letters from wine critics who are independent of the beneficiary and the beneficiary’s competitors. Counsel further asserts that Tierce was the beneficiary’s initiative and has gained the attention of the regional and national media, characterized as breaking “new stylistic ground.” Finally, counsel asserts that the record demonstrates that the beneficiary was specifically chosen for the Cornell University collaboration based on his precision and notes that the university, one of two U.S. institutions to offer a program in Enology and Viticulture, relies on the beneficiary to assist in the training and education of its undergraduate students.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of winemaking, it can be expected that the contribution will have already had a demonstrable impact in the field.

As noted by the director, the record contains numerous letters from critics and other wine makers commenting on the beneficiary’s experience and winemaking skills. They place him at the top of the industry in New York and credit him with raising wine quality standards in the region. They note his knowledge of cool climate grape growing and organic and sustainable viticultural practices.

Head of Wine Research and Extension Program at Cornell University, asserts that the beneficiary’s unconventional methods to ensure quality in New York’s climate “are becoming routine methods of vineyard maintenance and winemaking procedures.”

does not, however, identify these methods or provide examples of their application at independent wineries beyond the beneficiary's collaboration on Tierce. [REDACTED] does not assert that the beneficiary has impacted winemaking at the national level.

[REDACTED] winemaker at Fox Run Vineyards (located near the petitioner), asserts that the beneficiary improved quality at the petitioner and "acted as a valuable resource to other Finger Lakes winemakers and grape growers. [REDACTED] does not provide any examples of the beneficiary's influence beyond this region.

We also note the assertions that the beneficiary has unique experience and training in wine making. The issue of whether similarly-trained workers are available in the United States, however, is an issue under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

The initial letters were almost exclusively from New York State or Germany, where the beneficiary's family has been running vineyards for generations. One exception is from [REDACTED], whose vineyard owns land in Penn Yan, New York, currently farmed by the petitioner. Another reference, [REDACTED] of Grape American Wines in San Francisco, previously was a wholesaler in New York. Thus, these letters still do not demonstrate the beneficiary's recognition outside of the Finger Lakes region.

In response to the director's request for additional evidence, the petitioner submitted letters from wine critics, journalists and contributors affiliated with *Wine Advocate*, *Wine and Spirits* and "Wine Report." These letters praise the results of the beneficiary's winemaking efforts in producing a quality wine. While significant to the petitioner and beneficial in promoting the region's wines, the beneficiary's winemaking ability is not a contribution of major significance to the overall field of winemaking.

Regarding the beneficiary's Tierce initiative, [REDACTED], President and Winemaker at Red Newt Cellars and part of the Tierce collaboration, asserts that it was the first collaboration in the Finger Lakes and garnered national media attention. [REDACTED] further asserts that it "served as a focal point of the current evaluation of the Finger Lakes Industry." [REDACTED], however, provides no examples of shifts in the industry in this region resulting from the collaboration. [REDACTED], the third Tierce collaborator, asserts that the collaboration was the first in the entire industry and notes the positive reviews of the wine.

A staff writer for the *Rochester Democrat and Chronicle* wrote a blog entry praising the result of the "outside-the-box thinking" Tierce collaboration. In this entry, she indicated that the wine would not be sold outside of tasting rooms. Subsequent coverage, however, suggests that the wine is marketed. In the April 2007 edition of *Wine & Spirits*, [REDACTED] refers to the collaboration as breaking "new stylistic ground." One of the reviewers for *Wine Review Online* selected Tierce as his pick for Wine of the Year. Without additional evidence of the impact of this novel collaborative

initiative on the wine industry as a whole, we concur with the director that the beneficiary's initiative, while novel, has not been shown to be a contribution of major significance.

an assistant professor at Cornell University, discusses his collaboration with the beneficiary. explains that the beneficiary is "critically involved" in a research project Dr. Sacks began the previous year investigating the effects of novel polymers to absorb off-flavors from wines. While was able to do small-scale work on this project, he needed to "scale-up" with a winemaker partner. asserts that the majority of winemakers in the region do not have the precision in their winemaking necessary for the project. further asserts, however, that the cleanliness of the beneficiary's facility and quality of record-keeping was impressive. maintains that the project produced "very positive preliminary data" and that is filing a patent for the technique. While projects that the technique will "bring economic benefit to our state" through improved wine and licensing to other regions, the record contains no evidence that the patent has been granted or that any other independent winery has expressed any interest in licensing the patent. It would appear that the results of this project are too recent to determine the impact of the project. Thus, we cannot conclude that this work is a contribution of major significance.

The record satisfactorily establishes that the beneficiary is a talented winemaker whose wines have won the praise of critics. The beneficiary has demonstrated initiative by forming a successful collaboration with two other local winemakers. The beneficiary is also a careful winemaker able to control variables such that his work is suitable for collaboration with a university. Talent, initiative and careful work are not, in and of themselves, contributions of major significance. The petitioner must demonstrate the impact the beneficiary has had on the field as a whole, including outside of the Finger Lakes region. Without evidence of the impact of the beneficiary's work on the winemaking industry as a whole, the petitioner cannot establish that the beneficiary has made a contribution of *major significance* as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v). In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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

As stated above, the beneficiary is the sole wine master for the petitioner, a winery whose wines have been recognized in trade journals, books, newspaper wine reviews and competitions around the United States. The petitioner's wine was also served at the 2003 Emmy Awards. "Pocket Wine Book" lists the petitioner as one of 11 top wineries in the Finger Lakes region. Thus, we are persuaded that the beneficiary performs a leading or critical role for the petitioner and that the petitioner enjoys a distinguished reputation nationally.

In light of the above, the beneficiary meets this single criterion.

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 himself as a wine master to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a wine maker, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established 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.