

identifying data, deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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]
LIN 07 082 51455

Office: NEBRASKA SERVICE CENTER

Date: MAY 14 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

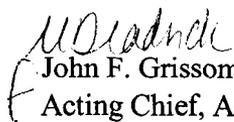
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 that 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 argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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, 60898-99 (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.

This petition, filed on January 24, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a Sales and Marketing Director and Seafood Production, Distribution and Marketing Specialist.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

As aforementioned, each petition must be adjudicated on its own merits under the statutory provisions and regulations which apply. Thus, the petitioner's eligibility will be evaluated under the regulatory criteria relating to the immigrant classification as claimed by the petitioner.

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

The petitioner initially claimed that he had been awarded the "Cross of the Armed Forces" in February of 1992. In order to establish his receipt of this award, he provided a photograph of the award without a translation that was certified as being complete and accurate pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Without the proper translation, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, this photograph is not probative and will not be accorded any weight in this proceeding. The petitioner also submitted a letter from the World Conservation Trust ("IWMC") President, dated November 10, 1997, proposing that he be nominated as the "Seafood Personality of the Year."

After a review of the initial evidence submitted, the director issued a Request for Evidence ("RFE") dated February 8, 2008. In his RFE, the director requested "documentary evidence of the scope, nature and significance" of the claimed awards. The director also noted that the "Cross of the Armed Forces" award does not appear to be in the petitioner's "field of endeavor."

In response to the RFE, on March 17, 2008, the petitioner submitted a brief, and accompanying evidence. The petitioner's brief explained that the "Cross of the Armed Forces" award was given to the petitioner for "his regular participation in the Military Academy to speak to future National Guard and Coast Guard officers about fisheries, fishing gear and fishing vessels." The evidence provided included an Internet printout without the internet site referenced generally describing the award, a picture of the award and the Venezuelan regulations implementing the awards. The

Venezuelan regulation provided indicates that the purpose of the “Cross of the Armed Forces” is “to reward the distinguished services given to the Army, the Navy, the Air Forces and the National Guard.” None of the evidence provided established a connection between the petitioner’s receipt of the award and his “field of endeavor.” The petitioner’s claims in his brief that the award was given to him for his participation in educating the military in various aspects of the fishing industry are not sufficient to meet his burden to show that the award relates to his “field of endeavor.” Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner also submitted an additional letter from the IWMC President dated February 26, 2008, in response to the RFE. In the letter, the President again stated that the petitioner was nominated for “Seafood Personality of the Year” in 1998 and that the petitioner “met the IWMC criteria to be nominated.” This letter fails to confirm whether the petitioner won this award. As no evidence exists showing the petitioner’s “receipt” of this award, this award cannot be considered as evidence sufficient to meet this criterion.

The petitioner also provided two pictures of awards he received from the Venezuelan Navy in recognition of his participation at the 1st Hydrographic Workshop in 1992 about Sea Sciences and for his participation as a speaker at the World Alimentaria Food Show (WAFS) in 1990. In addition, the petitioner’s response brief also mentioned that he spoke at two conferences. However, recognition for participation and speaking at conferences are not prizes or awards that are nationally or internationally recognized.

The director, in his July 14, 2008 decision, found the petitioner failed to provide evidence sufficient fulfill this criterion. On appeal, the petitioner did not submit any new evidence to support this criterion.

We concur with the director and find the evidence submitted does not satisfy this criterion. Specifically, in addition to the above-detailed deficiencies, the petitioner also failed to provide documentation about the awards received by the petitioner such as evidence regarding the awards’ prestige, selection process or candidates that the petitioner was competing against. Without such information, the petitioner failed to establish the national or international recognition of these awards. Finally, it is noted that as many of the petitioner’s awards occurred a decade or close to a decade prior to the filing of his petition, the sustained acclaim required by this highly restrictive classification cannot be demonstrated.

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

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 the following as evidence:

1. A list of lectures, interviews, invitations and special events in which he has purportedly participated;
2. A press release from Storm Seafood dated March 2002 entitled, "Storm Seafood expands to Latin America," which indicated the petitioner will be joining the company as a Vice President;
3. An article entitled, "Green Backlash," which referred to the petitioner as "another IWMC Specialist, and Former Minister for Fisheries in Venezuela" and noted his attendance at a press conference regarding a Venezuelan biologist;
4. A press release dated May 25, 2006 from WiTEL Wireless Communications entitled, "Former Honduran President Ricardo Maduro joins venture to deliver affordable wireless and internet service across Central America;"
5. An article entitled, "Maine Seafood May Find Market in Mexico," that quoted the petitioner as stating, "There's still a demand, but no scallops" and references his title as International Sales Manager for Latin America for Ocean Garden Products, Inc. taken from the www.highbeam.com website;
6. An article in *Exceso* dated July 31, 1991; and
7. An article in *ServiAlimentos*, entitled "Seafood."

In his RFE, the director asked for evidence to demonstrate the importance of the publications, the nature of the publications and the dates the articles were published. Additionally, the director requested information as to how the article "Green Backlash," that named petitioner as IWMC Specialist and former Minister for Fisheries in Venezuela, relates to his "field of endeavor."

In response to the RFE, the petitioner explained that most of his published material is unavailable to him, as it is located in Mexico or Venezuela. In lieu of the original documents, the petitioner provided a description of his articles purportedly written by the IWMC. However, this description was not even on the organization letterhead, and therefore the reliability of its contents cannot be determined. Moreover, even assuming this list allegedly provided by the IWMC can be taken into consideration, it only describes one of the petitioner's articles as actually being published. As no new evidence was provided in response to the RFE, the director could not conclude the petitioner met this criterion. On appeal, the petitioner failed to provide any new evidence.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

Item 1 contains a list detailing the lectures, interviews, invitations and special events in which the petitioner purportedly participated. However, no independent evidence was offered to prove the petitioner's involvement in these engagements. More importantly, the petitioner provided no evidence that any publications resulted from these events. Mere participation or attendance at conferences, meetings and in interviews is not sufficient to meet this criterion.

As it relates to items 2, 3, and 4, the petitioner has failed to submit evidence to establish that these materials were published in a professional or major trade publication or other major media, if published at all. Additionally, while items 2, 3, 4, and 5 may briefly mention the petitioner's name or quote a comment made by the petitioner, they are not considered to be about the petitioner. For instance, item 4 only mentions the petitioner to the extent that he can be contacted for information about the article which deals with wireless access and is otherwise unrelated to the petitioner's field of endeavor. Moreover, items 4 and 7 do not list the date of the material as required by 8 C.F.R. § 204.5(h)(3)(iii). The petitioner must establish eligibility at the time of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Without the required date of the material, we are unable to confirm that it was published prior to the filing of the petition.

With regard to item 5, the petitioner submitted an Internet excerpt which indicates that this article was initially published in the *Portland Press Herald* on March 16, 2002. The record, however, does not contain the original article from the *Portland Press Herald* and the Internet excerpt from www.highbeam.com indicates that it is not the "full-text version" of this article. Even assuming *arguendo* that this article was published in the *Portland Press Herald*, the record contains no evidence to support that the *Portland Press Herald* or www.highbeam.com constitute major media. As it relates to material contained on the Internet, we note that in today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is "major media." The petitioner must still provide evidence, such as, a widespread distribution, readership, or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or major media in order for us to credit this article.

Lastly, items 6 and 7 were not accompanied by a certified translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). The AAO is, therefore, unable to determine whether the evidence supports the petitioner's claims. Accordingly, these articles are not probative and will not be accorded any weight in this proceeding.

For all of the above stated reasons, the petitioner failed to establish that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner initially submitted the following as evidence of his authorship:

1. An abstract entitled "Trade Issues and Sustainability of Fisheries Resources," September 2005;
2. An abstract entitled "The Precautionary Principle: Replacing Science for Caution?;"
3. "Sustainability and Selectivity;"
4. "Overfishing in the Global Village;"
5. "The Internet for Businesses-to-Business: Enabling Infrastructure for Competitiveness;"
6. "Dolphins, Lies and Videotape;"
7. "One More Call," dated May 14, 2003;
8. "Blood, Swear and Tears," October 4, 1998;
9. "Operation 'Caribbean Shower,'" dated January 15, 2001;
10. "Love with Famine," January 18, 2002; and
11. "Everything You Wanted To Know About Shrimp."

In his RFE, the director asked for evidence to establish that each article had been published. The director also requested an explanation as to why the translation for item 11 indicates that the petitioner was the author, while the original document does not indicate the same.

In response to the RFE, the petitioner attempts to explain the discrepancy referenced by the director regarding item 11 by provided a page purportedly from the article that was not previously submitted. The additional page references the petitioner. The petitioner failed to provide a certified translation of this page as required by 8 C.F.R. § 103.2(b)(3), and therefore it is unclear whether the additional page is from the same article and whether it credits the petitioner for authorship. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho* at 591.

The petitioner also contends that item 11 is an educational publication directed to an uneducated market about seafood. Next, the petitioner submits a certified written translation of a 2-day seminar he gave entitled "Essentials of Environmental Sciences" and a Business and Marketing Plan he prepared. These two additional submissions were not supplemented with any evidence to prove they were published in any professional or major trade publications, or other major media.

On appeal, the petitioner submitted evidence of an additional article entitled "The Policy of Hunger," which he states in a letter to his attorney dated May 12, 2008 was published multiple times between May and June of 2008. The petitioner submitted the original articles, several of which did not contain dates. Those articles that list a date, indicate dates in 2008, as stated by the petitioner in his letter to counsel. As previously discussed, because these materials were published after his petition was filed, they may not be considered. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49. A petitioner may not make material changes to a petition in an effort

to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner has failed to submit evidence which demonstrates that any of the material listed in items 1, 2, 3, 4, 5, 6, 8, 9, and 10 were ever published in professional or major trade publications or other major media. With regard to item 7, an Internet printout with the petitioner's article from gentiuno.com was provided as evidence. Yet no evidence about this source, the reliability of its contents or any other information to support the article's existence was submitted. As it relates to items 7, 8, 9, 10 and 11, the petitioner failed to submit certified translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without the proper certified translation, the AAO is unable to confirm the accuracy of the petitioner's statements regarding his claimed published materials. Accordingly, these articles are not considered probative and may not be accorded any weight in this proceeding.

Finally, item 11 appears to have been published by Ocean Garden Products, Inc., the petitioner's former employer. The petitioner contends that this document was published as an educational publication directed toward an uneducated market about seafood. However, the petitioner has failed to provide evidence to establish that this "educational publication" generated by Ocean Garden Products, Inc. can be considered a scholarly article that has been published in major media, or a professional or major trade publication.

As such, the petitioner has not established that he meets this criterion.

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

The petitioner initially submitted the following as evidence:

1. An internet printout from www.iwmc.org with a list of the IWMC Board of Directors indicating that the petitioner is the 3rd Vice President for the IWMC;
2. A letter from Inter-American Tropical Tuna Commission, dated April 17, 2002, indicating that the petitioner held officer positions in 1992 and 1993 and that he was "instrumental in achieving the accession of Venezuela to the Convention;"
3. A letter from Inter-American Development Bank dated June 23, 1997;
4. A letter from the United States Department of Agriculture dated March 10, 2002 detailing the selection of the petitioner to participate in their Cochran Fellowship Program;
5. A letter from Ocean Garden Products, Inc. dated April 17, 2002 confirming the petitioner's employment with the company from 1998 through 2002 as an International Sales Manager and providing him with a recommendation;
6. A letter from Venezuelan-American Chamber of Commerce stating his involvement on the Board of Directors from 2003 through 2005;
7. A letter from AMLA Consulting dated June 16, 2006 stating that the petitioner is a Managing Director of Ocean Pro 3 and is an "experienced international professional;"

8. A letter from the petitioner, given the title of Executive Director of the Latin American Fishing Business Association, dated June 11, 1997, to ██████████ in Washington, DC;
9. A letter from the petitioner to the Wall Street Journal of the Americas dated March 15, 1995;
10. A Seminar presented by the petitioner as President of the Inter-American Tropical Tuna Commission in Ancona, Italy on May 13, 1994;
11. A Speech given by the petitioner to the Committee on Fishing of the FAO in Rome, Italy on April 11, 1991;
12. A letter from the Latin American Fishing Business Association dated January 5, 1998 stating that the petitioner served as Executive Director from 1994 to 1997;
13. A letter from the Ministry of Foreign Relations of the Republic of Venezuela dated May 3, 1994;
14. A letter from OLDEPESCA certifying that the petitioner was President of this inter-governmental organization from 1994 through 1995 and stating that he was the “key-person in the draft of the United Nations’ FAO Code of Conduct for Responsible Fishing and several International Accords, such as the Marine Turtle Protection Agreement and the Dolphin-Tuna Protection Agreement;” and
15. A letter from IWMC World Conservation Trust dated June 25, 2006.

In the RFE, the director requested evidence of the criterion required in the selection of these official positions and also any accomplishments of the petitioner’s while serving in these capacities. In response to the RFE, the petitioner provided the criteria for the IWMC Board of Directors and a picture of himself with various heads of state. On appeal, no new evidence was provided for this criterion.

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The position should also be of such significance that the alien’s selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. In this instance, the petitioner and his references have merely listed the title held by the petitioner within these various organizations and companies. However, a title alone is not sufficient to establish the petitioner’s role within a particular company or organization. Item 14 is the only evidence that addresses the petitioner’s specific role within the organization and details his work and accomplishments for OLDEPESCA.

The regulation also requires that documentation be submitted by the petitioner to establish that the various organizations, in which he purports to have performed leadership roles, have a distinguished reputation. Similar to the aforementioned reasoning regarding the title of a position, the name recognition associated with a particular organization or entity is not tantamount to a distinguished reputation. The petitioner failed to submit any evidence demonstrating the above-referenced organizations enjoy distinguished reputations.

As such, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.