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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:

Office: NEBRASKA SERVICE CENTER

Date: NOV 10 2009

SRC 07 800 25654

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:

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 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).

  
Perry Rhew

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 in business. The director determined that the petitioner had not sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria 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, 60898-99 (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 sustained national or international acclaim at the very top level.

This petition, filed on July 29, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a human resources consultant. 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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(3).

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

In support of the petition, the petitioner submitted two photographs of plaques from the Alberta Heart Foundation. The director concluded that these plaques, as evidenced on the plaques themselves, were awarded to the petitioner based "in appreciation for [the petitioner's] time and dedication in establishing a C.P.R. training network in Alberta" and "for outstanding service and leadership in the management and promotion of C.P.R. programs in Alberta." It is noted that that plaques were awarded to the petitioner in 1979 and 1981.

On appeal, the petitioner submitted a letter, dated April 18, 1995, from [REDACTED], stating that the petitioner "specialized in recruiting to professional and technical positions, providing training and development to management and senior personnel medical and social services agencies." The petitioner also submitted two certificates from the American Management Association reflecting that the petitioner successfully completed a "Supervisory Management Course – Management Principles" on June 11, 1976, and "Supervisory Management Course – Leadership Skills" on April 12, 1978. On appeal, counsel claims that the petitioner's certificates are evidence of his "experience in recruiting for professional and technical positions and providing training and development to management and senior personnel in the medical field and for governmental entities."

We agree with the findings of the director. The petitioner's plaques are evidence of appreciation and accomplishment rather than a prize or award. Similarly, the petitioner's certificates reflect evidence of the successful completion of courses rather than a prize or award. Further, the plaques and certificates reflect regional or local recognition rather than nationally or internationally recognized prizes or awards for excellence in his field. In addition, the petitioner received the plaques and certificates between 1976 and 1981, a period of over 26 years from the date of filing of the petition. Even if we would recognize these plaques and certificates as nationally recognized awards under this

criterion, which we do not, the petitioner failed to establish the sustained national or international acclaim required for this highly restrictive classification.

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is **his burden to establish every element of this criterion**. In this case, there is no evidence demonstrating that the petitioner's plaques are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner's field of endeavor.

Accordingly, 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 submitted an article, received for publication on January 7, 1976, entitled "Frequency dependence of ventilation distribution in normal and obstructed lung," written by [REDACTED] and [REDACTED]. The article fails to reflect the publication in which it was published. Notwithstanding, the article is not written about the petitioner; in fact, the only time the petitioner is mentioned is at the end of the article gratefully acknowledging the petitioner's technical assistance.

The petitioner did not contest the decision of the director for this criterion on appeal. We agree with the finding of the director.

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

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

The petitioner submitted a PowerPoint presentation from the Department of Justice, Canada, Regional Human Resources Services, Prairie Region. In response to the director's request for evidence, counsel claimed that "[t]he presentation was the first of its kind and has set a standard to which Justice Canada's Regional Directors for Alberta, Saskatchewan and Manitoba have aspired." The petitioner submitted no documentary evidence establishing the significance of this presentation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner did not contest the decision of the director for this criterion on appeal. We agree with the finding of the director.

Accordingly, 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 submitted copies of several business cards reflecting the petitioner's positions as:

1. [REDACTED] Human Resources Branch, Public Works, Canada;
2. [REDACTED] Department of Justice, Canada;
3. [REDACTED], Treasury Board of Canada;
4. [REDACTED], Public Service Commission of Canada;
5. [REDACTED], Prairie Region, Department of Justice, Canada;
6. [REDACTED] University of Alberta Hospital; and
7. [REDACTED] c.

The petitioner also submitted a letter, dated October 5, 1992, from the Treasury Board of Canada, Comptroller General regarding the petitioner's performance for 1991-1992 and objectives for 1992-1993. It is noted that the letter indicated that the petitioner was manager of the financial officer and internal auditor recruitment and development programs.

In addition, the petitioner submitted an organizational chart of the Prairie Region Structure, in which the Regional Director, Human Resources is highlighted. However, we note that the position of Regional Director, Human Resources is one of six other Regional Directors, which is fourth in the chain-of-command, including the petitioner's direct supervisor, the senior regional director.

The director concluded that the petitioner failed to distinguish himself when compared to other human resource executives at a similar level or higher in the Canadian government and failed to establish that his contributions as a human resources executive led directly to any success that the Canadian Department of Justice may have enjoyed during his tenure so as to establish his leading or critical role. On appeal, the petitioner submitted a previously submitted letter, dated October 8, 2004, from [REDACTED] for the Department of Justice in Canada, highly praising the petitioner for his dedication and work.

The documentation does not establish that his positions were leading or critical to these agencies as a whole. For example, the record does not include detailed job responsibilities discussing the nature of the petitioner's duties and significant accomplishments and the importance of his role to the agencies' operations. The petitioner failed to establish that his leadership or critical roles directly led to the success and accomplishments at any of the agencies. There is no evidence demonstrating how the petitioner's roles differentiated him from the other managers or regional directors. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success

or standing to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim.

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

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted a letter, dated April 22, 2004, from the Department of Justice, Canada indicating that the petitioner’s position was reclassified, and he was promoted to the PE-06 group and level with a salary range of \$76,696 to \$89,384. In response to the director’s request for evidence, counsel claimed that the petitioner’s “salary was determined by using the top of the pay grid as the start for his performance pay and then adding bonus amounts plus benefits.” Counsel failed to submit any evidence supporting these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner failed to submit any documentary evidence establishing that he has commanded a high salary or other significantly high remuneration for services in relation to others in his fields.

The petitioner did not contest the decision of the director for this criterion on appeal. We agree with the finding of the director.

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

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 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 a national or international level. 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 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.

**ORDER:** The appeal is dismissed.