



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

B2



File: [Redacted] Office: NEBRASKA SERVICE CENTER Date:

DEC 22 2000

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)

Public Copy

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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 a company president with extraordinary ability. The director determined the petitioner had not established that he qualifies for classification as an alien of extraordinary ability.

On appeal, the petitioner submits a brief.

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 Service 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 seeks to classify the petitioner as an alien with extraordinary ability as the president of the company. 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 which, he claims, meets the following criteria.

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

The petitioner mentions the "development of patents, of intellectual property, and the review and testing of the company's technology by the highest authorities in the USA, both federal and state." The petitioner has not shown that either a patent, intellectual property, or the testing of technology by authorities at the federal and state level constitutes a significant prize, awarded to only a select few in his field of endeavor. A patent is a form of legal protection for an inventor or innovator, obtained by application, rather than a prize or award.

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.

The petitioner is a member of the American Society of Naval Engineers and the Society of Petroleum Engineers. The company belongs to the International Association of Drilling Contractors. The record, however, contains nothing from the associations to establish their membership requirements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

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, any necessary translation.

There is no evidence in the record which establishes that the petitioner 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.

There is no evidence in the record which establishes that the petitioner meets this criterion.

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

The petitioner states:

[REDACTED] was principal contractor for Amoco for its Wellsite environmental evaluation in Alaska. This involved the designing an investigative program and undertaking the technical operations drilling over 50 sites in remote Alaska utilizing helicopters for recovery of samples for investigation and integrating the data into complex models of each site. This work was technically required to be accurate and required absolute confidentiality to Amoco and to the State of Alaska. The data acquired over 1989 to 1992 is the most substantial and important dataset relating to the environmental impacts of oil and gas operations in Alaska and the arctic regions generally.

This program, the Amoco remote wellsite environmental evaluation program, allowed no publication of any kind. Dugald Roberts modelled each of over 50 sites and provided this to Amoco for their use in negotiations with the State of Alaska. The beneficiary participated in developing the protocols and the parameters of the program with the State of Alaska in Anchorage and with the Governor's office in Juneau, Alaska. . . . The science and results derived from this Alaskan program have important implications in all arctic oil and gas regions. Roberts Oil Co. Pty., Ltd. through the beneficiary has designed and applied non intrusive in situ amelioration and remediation techniques currently being evaluated for general industry use.

There is no evidence in the record which corroborates the petitioner's opinion that his work experience constitutes a contribution of major significance in his field.

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

There is no evidence in the record which establishes that the petitioner meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

There is no evidence in the record which establishes that the petitioner 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 states:

The beneficiary has a critical and leading role in all that Roberts Oil Co does and achieves. . . .

. . . The ability of [REDACTED] allowed [REDACTED] to build the helitransportable drilling equipment and operate the drilling program and the data analysis program for Amoco, provide the legal and technical expertise to present the findings to the company and to ensure Amoco the highest professional confidentiality. The ability of the beneficiary has created the only oilwell drilling contractor added to Amocos list of current drilling contractors in over two decades. . . .

While the beneficiary may have provided the above services, there is no evidence in the record which substantiates the petitioner's claim of the beneficiary's abilities or substantiates that the company has a distinguished reputation.

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 claims:

. . . . The financing by the company of technological developments in oilbooms and related pollution remediation techniques further evidence the high remuneration and financing skills of the beneficiary as well as evidencing a significant and extraordinary investment in the USA by the company and the beneficiary.

The petitioner also references an alien entrepreneur petition for the beneficiary in 1996 which contains the complete financial documentation of the company.

There is no evidence in the record which supports the petitioner's claims. It should be noted that any evidence filed with another petition cannot be considered as verifying eligibility in this case as each petition must be supported by sufficient evidence to establish eligibility at the time of filing on its own.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner/beneficiary does not meet this criterion.

Letters by the petitioner attesting to the petitioner's skill or the quality of his work cannot suffice. The statute demands that aliens seeking this highly restrictive visa classification must enjoy sustained national or international acclaim at the top of

their field. The evidence does not indicate that the petitioner is nationally or internationally known as a top businessman, engineer, or scientist, nor does it credit the petitioner with any specific contribution which has had significant influence in the oil business. The assertion that the petitioner has "talent" and "potential" do not indicate that the petitioner already enjoys national or international acclaim in the oil business. A finding of sustained acclaim must rest on objective documentation, rather than on the assertions of the petitioner.

On appeal, the petitioner states:

[REDACTED] Pty Ltd is recognized as an expert and qualified international oilwell drilling company, one of only 150 US companies with the recognition of the International Association of Drilling Contractors as a full member by that organization.

Uniquely the company through the beneficiary has over the past 5 years developed exceptional new technologies in drilling and oilspill equipment, the company facilities are the only privately owned [REDACTED] lab shop in these technologies in the US. The company has invested heavily in the future and in the US.

The petitioner and the beneficiary are practically inseparable, the former is the corporate persona of the latter. Investment by one is investment by the other, extraordinary ability evidenced by the company is the extraordinary ability of the individual.

The loss to the US of the petitioner's technologies through the loss of the beneficiary cannot be quantified but is substantial. The losses include financial and environmental losses as well as the loss of the entire investment made.

The oilspill technology developed by the petitioner has the ability to revolutionize the industry. Ribbon oil booms and related technologies allow spill responding organizations to be much more rapid and effective, ecologically and commercially. Currently our oilspill technology is undergoing evaluation by an MMS sponsored program among other parties, the technology is exceptionally advanced. . . .

The petitioner has established leadership as a member and director of a financially successful and highly innovative private company, as a member and director of a premier organization within the global petroleum industry and has established commercial success through the survival and development of the company. The beneficiary has established exceptional ability, in design and practical engineering, in the laws of intellectual property and in finance to establish and preserve the company.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself in the oil business 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 petitioner has merely provided letters written by himself in which he claims to have met the criteria for extraordinary ability. No corroborating evidence was provided for any of the petitioner's assertions. 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 met that burden. Accordingly, the appeal will be dismissed.

This dismissal is without prejudice to the filing of an immigrant petition for alien worker as a multinational executive or manager under section 203(b)(1)(C) of the Act with appropriate fee and supporting documentation.

ORDER: The appeal is dismissed.