



U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File:



Office: Texas Service Center

Date: NOV 15 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)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

NOV 15 2000

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 an alien of extraordinary ability in business. The director determined the petitioner had not established that he has earned sustained national or international acclaim.

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). These 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.

Counsel describes the petitioner's work in his field:

[The petitioner] is an electromechanical engineer by profession, whose patented innovations have significantly advanced the transportation industry, as well as other industries. . . .

[The petitioner] has twenty-nine years of business experience. His business expertise in the transportation industry has earned him international acclaim and the highest recommendations from the largest manufacturers and producers.

He has been designated by the Government of Ukraine as the Trade Director of the [REDACTED]. . . .

[The petitioner] has headed many scientific projects. He has been and continues to be a renowned and frequent speaker at the State University [REDACTED] where he demonstrates his scientific work to other engineers and researchers.

With regard to the petitioner's intended work in the United States, counsel states:

[The petitioner] will organize a vehicle transmission salvage operation and will export said transmissions to Eastern European countries, including the [REDACTED]. Removal of these transmissions from US landfills is not only environmentally advantageous, but would a priori increase US exports, as this is currently not being done. Tens of thousands of transmissions and spare parts will be exported from the United States to these countries.

Counsel asserts that the petitioner will also exploit various patents he holds, and technologies to which he holds exclusive rights. While the petitioner has established a U.S. corporation to further these ends, the record does not indicate what success (if any) his U.S. corporation has enjoyed to date.

The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The petitioner has submitted evidence which, he claims, meets the following criteria. (Owing to the organization of the evidence submitted, evidence submitted on appeal will be considered in the context of these criteria, rather than separately).

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

The petitioner states that he satisfies this criterion because he holds six [REDACTED] "Certificates of Invention." The petitioner asserts that a [REDACTED] Certificate of Invention "was a complete analogy to the Patent issued by [other] countries." The petitioner has not shown that a patent (by whatever name) 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.

On appeal, the petitioner states:

Even though there were many people who possessed an ownership of the Patent, only few of them became the Head Designers, and only one of the small percentage became the Directors of [the] greatest Business Establishments in the State. For example, I was the only person [in] my position delegated to the . . . former Yugoslavia for development of international, scientific and technical cooperation as a member of the Trade Mission.

The record contains insufficient information about international trade missions to allow an informed conclusion as to whether the petitioner's service in such a capacity amounts to a rare honor, indicative of sustained acclaim.

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.

On appeal, the petitioner states:

I was a Head of the Expert Commission of the Ministry of Automobile Industry of the [redacted] in connection with the certification of the production quality on the classified factories in the Saratov Region, Russia. . . . I was also a [redacted] in issuing the Sign of Quality (product satisfaction to the International Standard of quality) for factories of the Automobile Industry. Written evidence of the aforementioned achievements are in the category For Internal Use Only and can be supplied for INS only by the Special US Government Agency.

The petitioner does not identify the "Special US Government Agency" which purportedly has custody of the documentation of the petitioner's previous work for the then-Soviet government. The petitioner does not relieve himself of his burden of proof simply by asserting that an unnamed agency can supply that documentation. The burden is on the petitioner to actually supply the required evidence, not simply to instruct the Service to seek such evidence.

Service on government commissions does not constitute membership in associations which require outstanding achievements of their members. Given the absence of corroboration, the above claim merits no further discussion.

Published materials 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 submits an article from Socialisticheskaya Industriya, and asserts "[a]s it is well-known, the aforementioned newspaper was rated as a second biggest newspaper in the USSR (after 'Pravda')." The record contains no actual evidence of the paper's circulation. Furthermore, the article mentions the petitioner only once, as "one of the managers of the project" which converted a model of bus into a "trolley-bus."

The petitioner submits articles about himself from Avtobuso Budivnyk, which the petitioner describes as a "regional specialized newspaper of bus building company." An article in a "regional" publication does not contribute to national or international acclaim.

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

The petitioner states:

My level of knowledge and intelligence . . . allowed me to enter the position of the [redacted] of the [redacted] [redacted] Aforementioned Institute was The Highest Establishment in automobile-transportation industry in the State. Under my leadership and direction Electric Automobile (Trolley-Bus) and Automatic Transmission were designed and driven to multiple production. Furthermore, I supervised the building of the Cosmonaut (Astronaut) service bus, the dustful [sic] sterile ventilation system of the space-suit, the power supply unit for the Tele-Video-Radio device for psychological relief of cosmonauts before the flight under the Joint Cosmos [Soyuz]-Apollo Space Program. . . . I constantly used my knowledge of Technics [sic] to teach students of the University during my career. . . . Complete knowledge of the automotive technics was a basis for my successful competitiveness on the position of the Commercial Director of the Association "GalAvto." This Association grouped gigantic manufacture[r]s of buses, automatic transmissions, forklift trucks, cranes, etc. in the Western Ukraine. In 1994 I was elected by thousands of workers and businessmen [to] the position of the [redacted] th [redacted] [redacted] and the I [redacted] it was the greatest establishment in the automobile-transportation industry of Ukraine and one of the biggest in the world.

The petitioner's statement does not constitute evidence. 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). Furthermore, holding a positions at a business entity does not constitute an original contribution of major significance. The burden is on the petitioner to establish that his work has had significantly more impact on the automotive industry than have the efforts of others holding comparable positions.

The petitioner has submitted several brief letters of recommendation, but these letters do not portray the petitioner as a prominent or widely acclaimed leader in his field. The letters list individual projects or ventures with which the petitioner has been involved, but simply listing these accomplishments does not establish their importance. The petitioner does not establish international acclaim simply by virtue of submitting letters from several different countries, because any exporter will have contacts in other countries.

Counsel states:

[The petitioner] has become the exclusive representative authorized to bring to the United States the following technologies:

- technology that allows the rusted surfaces to be newly coated with a metallic coat and remain rust free for decades. . . .
- technology for the renewal of used shafts for any machines with frictional surfaces in the metallurgic, energetic, chemical industries, and transportation. This technology . . . brings the used part to a point that is "better than new."

Counsel does not explain how being "the exclusive representative" for these technologies represents an original contribution of major significance.

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

The petitioner has documented his authorship of several scholarly articles but he has not established that the articles appeared in "major" publications.

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

Counsel asserts:

[The petitioner] has worked, for the last twenty years, as the Head Designer of the National Institute of Bus Building.

He has been a senior Executive and Director of Commerce (heading the Marketing department and Export & Foreign Affairs) for the [redacted] (world renowned [redacted] and the [redacted], with over 9,000 employees, producing over 15,000 buses annually.

Since 1978, he has been in charge of the project of electrically driven trolley buses . . . and is a world-leading expert for this kind of electrically-powered moving locomotion.

He has directed [the] business of the [redacted] since 1991. This plant is among the largest transmission manufacturing plants in the World, and holds 90% of the market share of the former USSR.

It appears that the petitioner's high-ranking positions for national-level corporations satisfies this criterion.

The director requested further evidence, to which the petitioner responded by submitting untranslated foreign documents. Counsel asserted that the petitioner's high position at the [redacted] is, itself, evidence of recognition. While such a position satisfies one criterion (noted above), satisfaction of one criterion does not imply satisfaction of additional criteria, or overall eligibility.

The director denied the petition, stating that the petitioner "is an international businessman with many contacts in several countries," but that the record does not establish that the petitioner is among the best-known figures in his field. On appeal, the petitioner enumerates the exhibits submitted previously (and discussed above) and submits further documentation regarding his inventions.

The petitioner has amply demonstrated that he is a successful businessman, who has risen to positions of rank in his field. The evidence, however, is not sufficient to demonstrate that the petitioner is among the most successful business figures in Ukraine or elsewhere. Listing one's accomplishments does not demonstrate the relative importance of those accomplishments.

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 as a businessman 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 in business, and has enjoyed success, but is not persuasive that the petitioner's achievements set him significantly above others in his field. It has not been shown that the petitioner's entry would substantially benefit prospectively the United States, beyond the degree of benefit expected from any qualified worker 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.