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*

[redacted]

**Public Copy**

File: [redacted] Office: Texas Service Center Date: MAY 2 2001

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER: Self-represented

identification 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

**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 record is somewhat ambiguous as to whether the alien himself, or his employer, is the petitioner in this matter. For the purposes of this decision, we shall consider the employer to be the petitioner, and we shall refer to the alien only as the beneficiary.

The petitioner is a manufacturer of earth-moving equipment. It seeks to classify the beneficiary 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 the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 appear in the notice of decision, as well as in prior correspondence from the director, and it would serve no useful purpose to repeat them again here. It

 [redacted]

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 employ the beneficiary as a "welder manufacturer." The initial filing appears to have consisted of a Form I-140 petition with no supporting documentation of any kind. Subsequently, the director informed the petitioner of the criteria which the petitioner must meet in order to establish the beneficiary's eligibility for this highly restrictive visa classification. The director listed the criteria from the regulation at 8 C.F.R. 204.5(h)(3), both in this notice and in the subsequent notice of decision; to repeat them here a third time would serve no constructive purpose. The director specified that the Service has defined "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."

In response to this notice, Pat Esposito, comptroller of the petitioning company, states:

> In the United States within the Southern area, no Welder/Fabricator, Manufacturer can be found to manufacture the Clear-More Tree Chipper/Stumper, the tool that [the beneficiary] has produced for this company. . . . The several agencies throughout the United States who purchased this tool, rely upon repairs and services done by this company which [the beneficiary] is the only person who presently maintain for us [sic].

The assertion that the beneficiary is the only individual capable of performing maintenance and repairs on a given piece of machinery does not establish that the beneficiary has a national reputation as one of the very best in his field; national acclaim is not established by the difficulty that an employer would face in replacing a given alien.

The petitioner has submitted a letter from [redacted], CEO of [redacted] Support Services Co., Ltd., the company in Trinidad which employed the beneficiary from 1991 to 1995. Mr. [redacted] states that the petitioner's abilities as a "specialist welder/fabricator . . . placed him in great demand as he traveled throughout the country in an effort to satisfy the demands of his talent." The petitioner has contended that this letter is "evidence of the display of work." The petitioner here appears to refer to 8 C.F.R. 204.5(h)(3)(vii), which calls for evidence of the display of the alien's work in the field at artistic exhibitions or showcases. The duties described do not qualify as display at artistic exhibitions or showcases.

The director denied the petition, stating that the petitioner has not established that the beneficiary enjoys sustained national or international acclaim. On appeal, the petitioner argues that the beneficiary's work with the Clearmore Tree Chipper/Stumper has attracted national attention. To support this claim, the petitioner submits various published materials and trade show documents from late 1999 and early 2000. These documents are dated after October 1999, when the petition was filed, and cannot retroactively establish that the beneficiary was eligible before the documents came into existence. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. In any event, these documents establish only that the petitioner has actively promoted its product through trade displays and advertisements; the beneficiary's name appears nowhere in these materials and therefore a third party, examining the materials, would learn nothing about the beneficiary or his involvement with the manufacture and maintenance of the machine.

We note that, by statute, the classification sought is available only to aliens of extraordinary ability in the sciences, arts, education, business, or athletics. It is not immediately clear that the operation and maintenance of industrial equipment falls into any of these categories, or that performance of such duties, regardless of the level of skill involved, is conducive to sustained national or international acclaim.

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 beneficiary has achieved sustained national or international acclaim as an individual within the small percentage at the very top of 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.