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U.S. Citizenship and Immigration Services

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FEB 26 2004

FILE: WAC 01 242 60647 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

We note that the petitioner filed a motion to reopen, simultaneously with the appeal. Because the petitioner impermissibly sought simultaneous review under two different jurisdictions, the director should have dismissed the appeal. Instead, the director simply reaffirmed the denial of the petition. We need not discuss the motion any further, because the materials submitted on motion are essentially identical to those submitted on appeal.

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 the sciences, arts, education, business, or athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary for that visa classification.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed 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.

The petitioner deals in "infant and child care publications, lectures, and consulting, and on-line advice." The beneficiary, who founded the company, is described as an "infant care consultant and specialist."

The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

> *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 record contains numerous articles about the beneficiary. Some of these articles are from local publications, and others are in publications of undetermined significance, but other publications are readily recognized as major media, for example *Globe*, *In Style*, and the German magazine *Stern*. One article describes the beneficiary as "an unofficial nursing consultant to the stars," and the record shows that the beneficiary's clients include several top Hollywood stars. A piece about the petitioner appeared in the online version of *Time*, http://www.time.com. The petitioner asserts that this article appeared in the print version as well, but the record contains no documentation to confirm this. The beneficiary is the main focus of most of these articles; she is not merely mentioned in passing in the context of her celebrity clients.

The petitioner has also submitted evidence showing that national network television programs expressed an interest in interviewing the beneficiary and/or taping segments about her. We duly note this evidence of substantial national media interest, although the letters from producers do not prove that the segments ever aired. In any event, the materials in the record are sufficient to meet the regulatory criterion.

While the beneficiary has written best-selling books (see below), the record shows that the beneficiary received substantial publicity well before those books were released.

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

The beneficiary and her co-author shared a $750,000 advance for two child care books, *Secrets of the Baby Whisperer* and *Secrets of the Baby Whisperer for Toddlers*, published by Ballantine Books. While counsel incorrectly suggests that the beneficiary received the entire advance (rather than half of it, as contracts in the record show), the remaining amount of $375,000 is nevertheless a substantial sum. That the beneficiary would receive such an offer for what appear to be her first books is further evidence of her reputation in the field. The beneficiary is not, first and foremost, a writer, but her books are undeniably related to her work as a child care consultant and therefore it is appropriate to consider evidence relating to the books.

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

While the beneficiary does not work in the performing arts, we can consider comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). The petitioner submits documentation showing that both of the beneficiary's books ranked highly on national bestseller charts for the relevant category. The second book was published after the filing date, and thus cannot retroactively establish eligibility pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971), but the beneficiary's first book was available before the filing date. The success of the second volume does establish that the beneficiary's acclaim continued past the filing date. Documents in the record reflect preparations to translate the books into several foreign languages.

Counsel argues, on appeal, that the petitioner has satisfied additional criteria by demonstrating that the beneficiary played a leading or critical role for Ballantine Books, and that her books represent contributions of major significance in the field. These arguments are less persuasive, but as demonstrated above, the petitioner has submitted sufficient evidence to meet three criteria and thereby satisfy the regulatory threshold.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that the beneficiary has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in her field of expertise. The petitioner has established that the beneficiary seeks to continue working in the same field in the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.