

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B2

[REDACTED]

FILE:

WAC 97 158 51195

Office: CALIFORNIA SERVICE CENTER

Date: JAN 28 2009

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.

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 a 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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. Subsequently, the director issued a notice of intent to revoke (NOIR) the approval of the petition. In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner filed an appeal with the Administrative Appeals Office (AAO), which remanded the matter to the director for further action and consideration. The director again served the petitioner with a NOIR, and ultimately revoked the approval of the petition. The matter is now before the AAO on certification. The decision of the director will be affirmed, and the approval of the petition will remain revoked.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

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 arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability and that he is recognized as one of that small percentage who have risen to the very top of his field. The petitioner did not respond to the director’s notice of certification.

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). It should be reiterated that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on May 15, 1997, seeks to classify the petitioner as an alien with extraordinary ability as an Industrial Art Designer. 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).

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. On May 26, 2005, the AAO withdrew the director’s October 7, 2004 NOR and remanded the petition for further action and consideration. In its decision, the AAO agreed with the director that petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R.

§ 204.5(h)(3). While the director's decision was couched in the pertinent statute, binding precedent, and regulations, the petitioner was not afforded an opportunity to address all of the derogatory findings cited in the May 12, 2000 investigative report (such as [REDACTED]'s statements). As such, the matter was remanded to the director for the purpose of advising the petitioner of additional derogatory information from the investigative report and of additional deficiencies in his evidence for the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Upon remand, the director issued a NOIR on January 12, 2006, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence. In response to the NOIR, the petitioner resubmitted copies of documents already contained in the record.

With regard to the investigative report's findings regarding the September 10, 1990 Certificate of Award for "First Prize in the 2nd Provincial Academic Achievement Competition" from the Science and Technology Association of Shandong Province, the documentation submitted by the petitioner does not overcome the statement from [REDACTED], Director of the Department of Profession, indicating that the *Manual of Industrial Art and Painting* illustrated by the petitioner was not listed as a prize winner. The petitioner's response to the NOIR included an August 11, 2004 letter from [REDACTED] Ex-Vice Secretary of the Shandong Academic Society of Arts and Crafts, stating that the prize certificate was mistakenly issued to the petitioner as a result of a clerical error of the Society. As the prize certificate submitted by the petitioner bears the seal of the Science and Technology Association of Shandong Province rather than the Shandong Academic Society of Arts and Crafts, we do not find [REDACTED]'s explanation to be credible. The petitioner has not submitted rebuttal evidence originating from the Science and Technology Association of Shandong Province or the Department of Profession confirming his receipt of a first prize in the aforementioned competition or the existence of the clerical error. Further, the petitioner has not submitted a credible explanation or evidence addressing the investigative report's finding that [REDACTED] did not participate in the 40th Anniversary Commemorative Stamp Set competition, let alone win the "Second Place prize" (as claimed in the August 26, 1997 Letter of Verification from [REDACTED]). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On November 4, 2008, the director again revoked the approval of the petition, finding that the petitioner failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria 8 C.F.R. § 204.5(h)(3). The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief to the AAO within 30 days of service of the director's decision. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's findings. The relevant evidence as it relates to the regulatory criteria at 8 C.F.R. § 204.5(h)(3) was discussed in the director's decision and in the previous decision of the AAO. The petitioner has submitted no new evidence since the issuance of

the AAO's May 26, 2005 appellate decision. The evidence of 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. Consequently, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. at 452 n.1; *Matter of Ho*, 19 I&N Dec. at 589. Here, the petitioner has not sustained that burden.

ORDER: The director's decision of November 4, 2008 is affirmed. The approval of the petition remains revoked.