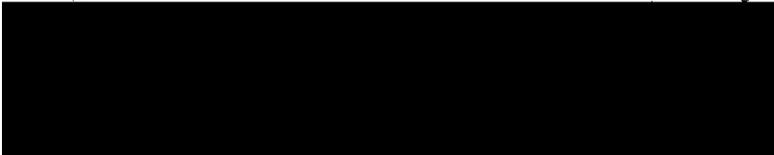




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U.S. Department of Justice  
Immigration and Naturalization Service

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



JUN 8 2001

File: EAC 99 144 52175 Office: Vermont Service Center Date:

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

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

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a quality assurance consulting firm.<sup>1</sup> 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 in the sciences. 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 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.

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<sup>1</sup>Various officials of the petitioning company have offered statements in support of the petition and the appeal. Because these statements are offered in an official capacity, all of these statements shall be collectively attributed herein to the petitioner.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a lead SPICE assessor. 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 not specified which of the ten criteria the beneficiary purportedly satisfies, but the evidence in the record appears to be intended to meet 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 beneficiary received the Standards Award from the Board of Standards Australia, which, according to a letter from the board's chief executive, "recognizes and acknowledges distinguished service by members of Technical Committees and Policy Boards. It is presented annually to members whose contribution is recognized by their peers to have been outstanding and extensive." Given that Standards Australia International is a member body of the International Organization for Standardization ("ISO"), which accepts only one member body from each nation, we conclude that an award of this level from the organization satisfies this criterion.

*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 submits documentation of the beneficiary's membership in the Institute of Quality Assurance, the New South Wales branch of the Australian Computer Society, and the Quality Society of Australia, but the record contains no evidence to establish the membership requirements of any of these groups.

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

Lt. Col. [REDACTED] Deputy Assistant Secretary of the Air Force, states:

As the Air Force representative to the international committee responsible for developing software standards (ISO/IEC JTC1/SC7) I have personally worked with [the beneficiary] on developing numerous software quality and life-cycle standards - most notably ISO/IEC 12207, "Standard for Information Technology - Software life-cycle processes." [The

beneficiary's] expertise and tactfulness directly contributed to resolving numerous divergent international positions. This standard is now recognized as the common framework by which software practitioners can create and manage software.

[The beneficiary] was also involved in the initial development and update of ISO 9000, the recognized standard on quality, and is a certified lead assessor and auditor. He is also a qualified assessor in the new international Standard for Software Process Assessment (ISO/IEC 15504, "Software Process Improvement Capability Evaluation," (SPICE<sup>2</sup>)). It should be noted that initial development of ISO 9000 was completed without United States participation, and SPICE expertise resides primarily outside our country. [The beneficiary], therefore, provides us a unique opportunity to not only understand the initial concept behind ISO 9000, but to gain much needed expertise in the important area of software process improvement.

[REDACTED] chair of the United States Technical Advisory Group to ISO/IEC JTC 1/SC7, Software Engineering, states in a December 17, 1997 letter:

[The beneficiary] is a recognized international expert in ISO 9000 and TickIT quality standards as well as being a certified lead assessor and auditor. He is able to assist companies in developing stepwise management plans and programs to assure compliance as well as obtaining ISO certification for software and hardware systems. . . .

For Year 2000 applications, [the beneficiary] is an acknowledged expert in developing approaches to identify and resolve issues relating to the capability of software systems to handle Year 2000 changeover. . . . Expertise in Year 2000 analysis and testing is currently in great demand and difficult to obtain since most corporations are vying for a limited number of technical experts.

The above letter, from 1997, clearly predates the actual year 2000 changeover, which ultimately occurred with minimal disruption to most major computer systems.

The petitioner submits further witness letters on appeal, which we discuss further below.

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

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<sup>2</sup>In one letter, the petitioner indicates that the acronym SPICE stands for "Software Process Improvement and Capability dEtermination" [sic].

The beneficiary was a committee chairman for the Standards Association of Australia, but the petitioner has not clearly established the reputation of the association or the significance of the beneficiary's role as a committee chairman.

Beyond the above criteria, the petitioner submits documentation regarding the beneficiary's training and certification as an assessor and auditor. While these documents establish the beneficiary's professional competence, they do not establish that the beneficiary is among the best-known or most highly acclaimed auditors at the national or international level.

On August 27, 1999, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the beneficiary as an alien of extraordinary ability. The director instructed the petitioner to submit evidence to place the beneficiary at the very top of his field of endeavor.

In response to the director's notice, the petitioner submits a "memorandum . . . in support of a request for a waiver of the job offer and subsequent Labor Certification, as required by INA Section 203(b)(2)(A)." Neither the cited section of law nor the waiver of the job offer requirement applies to the visa classification sought in this proceeding. The national interest waiver of the job offer requirement applies only to aliens of exceptional ability and members of the professions holding an advanced degree, which is a lesser classification.

The petitioner initially indicated, on the Form I-140, that it sought to classify the beneficiary as an alien of extraordinary ability under section 203(b)(1)(A), and the Service has consistently adjudicated this petition under this classification. This classification has no job offer requirement to waive, but the threshold for eligibility is higher than that for a national interest waiver in the lesser classifications named above. The petitioner's arguments regarding the national interest waiver are without effect in this proceeding except where they also apply to the statutory and regulatory criteria pertaining to extraordinary ability.

With regard to playing a leading or critical role for a distinguished organization, we note the following passage from the petitioner's response to the director's notice:

[The beneficiary] currently holds the position of Principal Consultant within the company since June 1997. In this role he has been responsible for key leadership in the company's Information Technology Quality Assurance contracts with HUD, Amtrak, Computer Sciences Corporation, Lockheed Martin, and CACI in software development, directing the Y2K projects that affect key clients and aiding the agencies of the federal government establish Quality Assurances for the next decade in Quality Assurance and Software development. . . . These

activities have a very strong bearing on the standards initiatives offered by the Office of the President of the United States, the Office of the Vice President, and the Congress of the United States. . . .

Based upon [the beneficiary's] contributions to the effort of designing and maintaining information systems for Amtrak and HUD he is facilitating the government's and the nation's ability to standardize the critical processes of defining, developing, testing, and implementing critical software needed by the US government and major corporations throughout the United States.

The petitioner did not include any documentation from ranking officials of Amtrak or the Department of Housing and Urban Development to confirm the extent or significance of the beneficiary's work for those entities.

The petitioner asserts that "[t]he efforts being undertaken are critical in light of the Y2K problems being faced by the United States Government, US Corporations, and citizens of the United States." As noted above, the Y2K crisis date of January 1, 2000 has now passed, largely without incident.

With regard to the petitioner's assertion that the beneficiary is one of only two certified SPICE auditors in the United States, the scarcity of a given qualification or credential does not necessarily imply extraordinary ability. The record does not establish that the vast majority of individuals who seek such certification fail to qualify, or that sustained acclaim is a prerequisite for certification.

The director requested evidence to address another regulatory criterion:

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

In response, the petitioner asserts that the beneficiary's salary documentation from 1996 and 1997 is "in Australia and cannot be submitted." Between June and December 1998, the petitioner paid the beneficiary "\$53,762.14 comprising salary, relocation expenses, medical costs, transportation, and temporary lodging allowance. In 1999 to date (November 17) he has been paid \$86,250 comprising the same elements as for 1998 with the exception of relocation expenses."

The petitioner submits a wage survey<sup>3</sup> to establish that "[t]he salary made by a SPICE Auditor is well above the national average of an IT Senior Professional and is regarded as a famous professional standard as well as a highly skilled individual." Arguments about the beneficiary's overall occupation are not persuasive. By the same logic, we could observe that neurosurgeons typically earn more money than general practitioners, but it does not follow that neurosurgeons are - simply by virtue of their professional qualifications - inherently more highly acclaimed than other physicians.

We note that the wage survey indicates that SPICE auditors command, on average, \$3,318 per day, which extrapolates to over \$860,000 per year assuming full-time employment, five days per week. The petitioner paid the beneficiary roughly one-tenth that amount in 1999. It appears unlikely that a SPICE auditor actually earns \$3,318 per day; it appears, instead, that this amount reflects the fee paid by a company which contracts such an auditor, with only a fraction of that amount being paid directly to the auditor. The information in the record is clearly incomplete, and does not allow us to conclude that the beneficiary is among the highest-paid SPICE auditors. Comparing the beneficiary's salary to that of a consultant with lesser qualifications is misleading.

With the response to the director's request for further information, the petitioner submits a letter dated September 30, 1998, from the organizing committee chair of the 1998 Australian Software Engineering Conference, indicating that one of the beneficiary's research papers "has been judged the Most Influential Paper" from the 1987 conference. The prize consists of free registration for an upcoming conference.

The beneficiary discusses, and produces some evidence to support, his recent activities in the field. These developments took place after the petition's April 1999 filing date and therefore cannot establish that the beneficiary was already eligible as of that date. [REDACTED] 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.

The director denied the petition, stating that the petitioner has not established that the beneficiary's achievements are more significant than those of others in his specialty. The director

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<sup>3</sup>This wage survey indicates the presence of at least 22 SPICE auditors in northern Virginia alone, which would appear to contradict the petitioner's claim that there are only two SPICE auditors in the entire United States. Of course, the auditors are employed only on an *ad hoc* basis, and it is conceivable that the survey simply counted the same two auditors at each of the eleven companies surveyed.

noted that the beneficiary's credentials are not *prima facie* evidence of extraordinary ability.

On appeal, the petitioner maintains that the beneficiary "is an International renowned expert in the field of Quality Assurance." The bulk of the petitioner's appeal consists of what appear to be presentation slides prepared by the beneficiary for training sessions; the remaining exhibits are new letters.

The witnesses on appeal have, for the most part, worked directly with the beneficiary in various capacities. Stan Magee, president of Software Engineering Process Technology, states:

In the entire world there are less than 500 people who are actively engaged in the creation of software standards. Of this group of 500 persons only about 10% of them are those who are really the shakers and movers in this field. [The beneficiary] is one of the people in the top 10%. He has had many leadership roles at this level and won many awards, and has unique expertise in the area of software quality assurance.

██████████ in his curriculum vitae, identifies himself as "a U.S. delegate to the International Plenary meetings since 1986" and a member of "the IEEE Computer Society Golden Core of 500 people who have significantly served the IEEE Society in standards development over its 50 year history." There is no indication that the beneficiary is a member of this group.

██████████ president of Quality Plus Technologies, Inc., states that the beneficiary "is a central U.S. figure in the authorship of several emerging international standards including ISO 12207, ISO 15504, and others." Ms. Dekkers adds "[w]ithout [the beneficiary's] astute advice about how to best leverage international involvement to advance U.S. interests, our U.S. based international organization would not have attained our current leadership strength within ISO and the functional size measurement community."

Other witnesses offer similar testimony, crediting the beneficiary with involvement in the development of various international software standards. We must consider, however, that many of these witnesses are or were major officials of national or international bodies, holding posts considerably more significant than the petitioner has shown the beneficiary to have held. Furthermore, the ISO appears to have designated thousands of international standards across a variety of industries. The development of such standards is inherently an international enterprise, involving a significant number of international, national, and local entities. We cannot conclude that every standard established by this body represents a major achievement. Furthermore, no top ISO official has attested that this beneficiary's contributions have significantly exceeded those of most other professionals engaged in the development of international standards.

The record demonstrates that the beneficiary has won some recognition for his software engineering activities, and that important figures in the field believe his contributions to have been significant. The petitioner, however, has not persuasively met at least three of the ten regulatory criteria. The record does not establish that the beneficiary is recognized nationally or internationally as one of the top figures in his field. In order to qualify for this highly restrictive visa classification, it cannot suffice for the petitioner simply to show that the beneficiary is respected in his field; he must be widely acknowledged to be at the very top of that field, and the petitioner must submit a variety of objective, documentary evidence to support such a finding, in keeping with the statutory demand for "extensive documentation" at section 203(b)(1)(A)(i) of the Act. The beneficiary may yet reach such a level, but the record does not support a finding that the beneficiary was at, or near, such a level at the time the petition was filed.

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 distinguished himself in the field of software quality assurance 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 beneficiary has met with considerable success as a SPICE assessor and formulator of international standards, but is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. 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.