

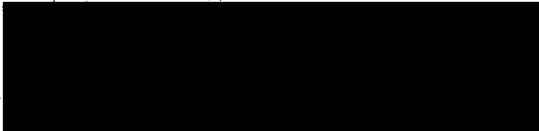


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U.S. Department of Justice
Immigration and Naturalization Service

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



File #: WAC-01-019-51350

Office: California Service Center

Date: 22 APR 2002

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: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision 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 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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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. The director determined the petitioner had not established 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

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(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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a computer engineer. 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 submitted evidence which, she now claims, meets 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 petitioner submitted two awards from her employer, Honeywell, Inc. One award was issued in June 1999 to the petitioner and three other employees "in recognition of their assistance in updating one of the CMTR test systems." The other award was issued in September 1999 to the petitioner in recognition of her "outstanding contributions to Industrial Automation and Control." The petitioner argues on appeal that these awards should constitute nationally or internationally recognized awards since Honeywell is a global company. Performance awards from one's employer, even if a global company, do not constitute nationally or internationally recognized awards for which national and international experts compete regardless of employer.

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.

Initially, the petitioner did not submit any evidence relating to this criterion. In response to the director's request for additional documentation, the petitioner submitted a letter from the Institute of Electrical and Electronics Engineers, Inc. (IEEE). The petitioner argues on appeal that this membership should meet this criterion because it is the highest international organization in the technical field. A review of IEEE's website, www.ieee.org/membership/grades_cats.html, provides:

The grade of Member is limited to those who have demonstrated professional competence in IEEE-designated fields. For admission or transfer to the grade of Member, a candidate shall be either:

- An individual engaged in IEEE-designated fields
 - Who shall have received a baccalaureate degree or its equivalent in those fields from a program on the Reference List of Educational Programs, or
 - Who shall have had at least three years of experience in a position normally requiring the qualification listed above, which may be accepted in lieu of the educational requirements at the discretion of the Admission & Advancement Committee.
- A teacher of a subject in an IEEE-designated field who shall have received a baccalaureate degree or its equivalent in those fields from a program on the Reference List of Educational Programs, or who has had at least three years of professional teaching experience and shall have participated in planning and conducting courses.
- A person regularly employed in IEEE-designated fields for at least six years who, by experience, has demonstrated competence in work of a professional character.

- An executive who, for at least six years, has had under his/her direction important technical, engineering, or research work in IEEE-designated fields.

As such, it is clear that IEEE only requires “professional competence” and not outstanding achievements. A baccalaureate degree or a specific number of years of experience in the field are not outstanding achievements. Moreover, the letter from IEEE is dated January 9, 2001, two months after the petitioner filed the instant petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). As the petitioner was not a member of IEEE at the time of filing and as IEEE does not require outstanding achievements of its members, the petitioner has not established that she meets this criterion.

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.

On appeal, the petitioner states, “I have submitted my published book, ‘A Who is Client Implemented with Java and Unit Debugging Tools.’ I think this evidence should be good enough for this item.”

A review of the record reveals that the petitioner submitted a bound edition of her thesis in response to the director's request for additional documentation. While bound, the book contains no evidence that it has been published. Regardless, the petitioner's thesis, even if published, would constitute published material *by* the petitioner, not *about* the petitioner. The record contains no evidence that major newspapers, magazines, trade journals or other major media have published articles about the petitioner related to her accomplishments in the field.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The evidence for each criterion must demonstrate national or international acclaim. As such, “judging” duties inherent in one's job are not evidence which can meet this criterion. That said, the record contains no evidence that the petitioner has participated as a judge of the work of others.

On appeal, the petitioner states, “I have submitted my employer's letter. It states what they ask for.” The record contains a performance appraisal and letter from Honeywell, Inc. discussing the elements of the petitioner's job, mostly developing software, and the petitioner's qualifications for the job. Neither document discusses any judging activities.

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

The petitioner once again relies on her “published” book to meet this criterion. As stated above, however, the record contains no evidence that the petitioner's thesis has been published. Moreover,

a thesis is generally required of all Master's students. In order to meet this criterion, the petitioner would need to demonstrate that her thesis is a major contribution to the field. The record contains no evidence that the petitioner's thesis has been widely cited, or even cited at all.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner relies on her website designs to meet this criterion. The Internet is not an artistic exhibition or showcase. Anyone can purchase the right to post a website regardless of artistic ability. Creating websites for others is inherent to the job of web design. That others have hired the petitioner to create websites for their businesses or personal use is merely evidence that the petitioner is a successful web designer, not that she is one of the very few at the top of her field or that she has attained national or international acclaim as a web designer.

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

On appeal, the petitioner relies on a State of Arizona Certificate of Trade Name for HotWeb Design Company issued to her name as evidence for this criterion. The record contains no evidence that the petitioner's web design company has a distinguished national reputation. In fact, the company was only registered in April 2000. The petitioner has not demonstrated how this company could have acquired a distinguished national reputation in the six months it was in existence prior to the date of filing. The petitioner submits HotWeb's own website, a website for a company, an individual, and herself. Assuming HotWeb designed its own website, a company website and two individual websites, these designs are evidence that it does business, not that it has a distinguished reputation.

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

On appeal, the petitioner states:

I have submitted a State of Arizona Certificate of Trade Name for HotWeb Design Company issued to my name. If I have a green card, I can run my own company without any problems. In fact, I can make more money than what I have now (\$61,800).

As stated above, the petitioner must demonstrate eligibility at the time of filing. Speculation that the petitioner might earn a significantly high salary at some point in the future is insufficient. To meet this criterion, the petitioner must demonstrate that she already receives a significantly high salary or other remuneration. The petitioner has not provided evidence which would allow us to compare her salary with the salaries of experienced experts at the very top of her field.

Finally, on appeal, the petitioner notes that she has submitted evidence of her advanced degree and letters reflecting 10 years of employment in the field. The petitioner, however, is not seeking

classification as an advanced degree professional or an alien of exceptional ability. As such, the petitioner's academic degree and years of experience are simply not relevant as they do not relate to any of the 10 criteria for the classification sought by the petitioner, aliens of extraordinary ability.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a computer engineer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a computer engineer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.