

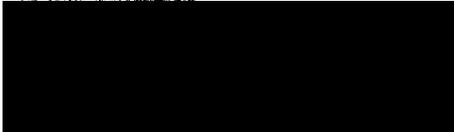


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-01-125-50393 Office: Vermont Service Center Date: AUG - 5 2002

IN RE: Petitioner: [Redacted]
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:



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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 business. 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 product strategist and senior financial consultant. 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 claims, meets six of the regulatory criteria.

Specifically, she submitted letters, mostly from colleagues, attesting to her various projects in the field. Counsel asserts that these letters establish the petitioner's contributions of major significance to the field and also establishes that she has played a leading or critical role for distinguished institutions. Counsel further asserts that the petitioner's management role, inherent to her position, constitutes participating as the judge of others in the field. The petitioner also submits prospectus supplements composed by the petitioner. Counsel classifies these supplements as "writings and publications" presumably intended to fulfill the criterion requiring "scholarly articles in the field, in professional or major trade publications or other major media." The petitioner also submitted a letter from *Who's Who in the World* offering to include her biography among the 55,000 to be published in its 18th edition. Counsel classifies this offer under "honors and awards." Presumably, counsel intends this evidence to be considered for the criterion which requires "documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor."

The director, however, in his final decision, focused solely on the following criterion. As evidence "that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field," the petitioner initially submitted an undated letter from Shak-T, LLC, asserting that the petitioner was employed as a director for that company and that her "total compensation" for the current year would be approximately \$200,000. The petitioner also submitted a 2000 Financial Services Industry Salary Survey. Counsel compares the petitioner's projected compensation with those of a "financial analyst" who earns between \$64,000 and \$82,000.

On September 9, 2001, the director requested the petitioner's Form W-2 wage and tax statements for 2000 and a copy of her resume. In response, the petitioner submitted the requested documents, her W-2 from PricewaterhouseCoopers reflecting wages of \$16,156.02 and her W-2 from Shak-T reflecting wages of \$22,833.33. Counsel asserted that the W-2 from PricewaterhouseCoopers represents her employment for that company from January 2000 to March 2000 and that the W-2 from Shak-T represents her employment for that company from June 2000 to December 2000. The petitioner's resume reflects that she was at that time the Senior Vice President, Product Strategy for Shak-T and had worked as a Senior Consultant for PricewaterhouseCoopers from 1998 to 2000. The petitioner also submitted an "Options Agreement" between the petitioner and BondGlobe, Inc., one of Shak-T's clients. The agreement, dated June 30, 2001, provides the petitioner the option of purchasing 400,000 shares at \$0 vesting December 31, 2000, 400,000 shares at \$.01 per share vesting December 31, 2001, and 200,000 shares at \$.01 per share vesting December 31, 2002. As of the date of filing, March 9, 2001, this agreement had yet to be signed. In addition, counsel asserts that these shares amounted to four percent of the company and that the value of the company in December 2000 was \$40,000,000, making the petitioner's share worth \$800,000. Counsel provides no support for this assertion.

The director noted that the petitioner's salary at PricewaterhouseCoopers amounted to approximately \$70,000 annually (\$16,000 for three months times four is \$64,000) and that the petitioner's salary at Shak-T amounted to approximately \$50,000 (\$23,000 for six months doubled is \$46,000). The director concluded that, even considering the stock options, these salaries did not appear to reflect national or international acclaim as one of the top individuals in the field.

On appeal, counsel argues that the petitioner's compensation, including \$800,000 in alleged stock options, is nearly five times the \$72,000 average salary for financial analysts. Counsel argues that only the firm's major shareholder has earned a higher salary than the petitioner. Finally, counsel asserts that there are factors other than salary which prompted the petitioner to work for the relatively small firm, Shak-T.

Counsel's arguments are not persuasive. The options agreement provides that should BondGlobe have an initial public offering (IPO) prior to the vesting dates, the options will become vested at that time. As such, even if we consider the agreement evidence of the petitioner's salary at the time of filing since it refers to options vested prior to the date of filing, the company had yet to have an IPO. Thus, the fair market value of those shares is difficult to assess as of the date of filing. Regardless, as stated above, the record includes no evidence supporting counsel's assertions of the petitioner's ownership percentage of BondGlobe or its value.

In addition, even if we accepted counsel's evaluation of the value of the stock options, they vested over three years. As such, they amount to \$266,667 annually, closer to Shak-T's undated letter asserting the petitioner's total compensation would amount to approximately \$200,000 for that year. While this salary may be higher than the average salary for financial analysts, we reject counsel's attempt to use the average salary for that position as a comparison. The petitioner is a director for Shak-T, holding the position of senior vice president, product strategy. Directors of Trading-Equities earn between \$150,000 and \$230,000 plus benefits. The petitioner's base salary at Shak-T does not compare with those base amounts. Prior to that position, the petitioner was a senior consultant for PricewaterhouseCoopers where she earned approximately \$70,000. Even if we considered this a financial analyst position, the petitioner's salary is comparable with the average salary for that position and less than the upper end listed as \$82,000.

Finally, that the petitioner is highly compensated in relation to others at her company is insufficient. A petitioner must establish a high compensation in comparison with those in the field nationally in order to meet this criterion. While there may be legitimate reasons for choosing to work for a small company, it remains that the petitioner's salary must compare with those who fill similar positions with larger companies in order to meet this criterion. Nevertheless, we do recognize that someone at the top of her field may choose for a number of reasons to take a job with a moderate salary. Thus, we do not concur with the director that the petitioner's failure to meet this one criterion mandates a conclusion that the petitioner does not have national or international acclaim. The petitioner claimed to meet five other criteria which the director failed to discuss.

Therefore, this matter will be remanded for consideration of the remaining five criteria claimed by the petitioner. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.