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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.
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Washington, D.C. 20536

[Redacted]

AUG 29 2002

File: [Redacted] Office: Nebraska Service Center

Date:

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:

[Redacted]

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

In this decision, the term "prior counsel" shall refer to Donald C. Slowik, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

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. 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 Service 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 is a user researcher, in which capacity he “researches [the] emotional needs & reactions of product users in order to design products.” When he filed the petition, he worked for Fitch, Inc. Subsequently, he and other Fitch employees left the company to establish SonicRim Ltd.

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. 8 C.F.R. 204.5(h)(4) states that, if the criteria in 8 C.F.R. 204.5(h)(3) “do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility.” Prior counsel has asserted that the above criteria do not readily apply to the beneficiary’s occupation, thereby triggering the comparable evidence clause. Prior counsel then appears to contradict this statement, asserting that the petitioner satisfies six of the ten criteria, to be addressed further below.

We note that prior counsel has stated:

The [director’s notice] requests additional evidence to show that [the petitioner] has sustained national or international acclaim and that his achievements have been recognized as extraordinary by others in the field. We respectfully submit that this standard does not readily apply to [the petitioner’s] occupation, and that he should be permitted to submit comparable evidence of his eligibility as an alien of extraordinary ability.

The plain language of the statute at section 203(b)(1)(A)(1) of the act requires the petitioner to demonstrate “the alien has extraordinary ability . . . which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.” The regulatory criteria at 8 C.F.R. 204.5(h)(3) spell out particular forms that this “extensive documentation” may take. The specific criteria may be replaced with “comparable evidence,” pursuant to 8 C.F.R. 204.5(h)(4), but that “comparable evidence” must still establish sustained national or international acclaim. The underlying requirement of sustained national or international acclaim is a fundamental and essential part of the immigrant classification, and it cannot be waived or substituted with a less stringent standard. The approval of this petition rests on evidence which, notwithstanding prior counsel’s assertions, does establish acclaim. It does not in any way rest on the contention that some occupations are not conducive to acclaim and therefore an alternative standard should be applied. While it is true that some occupations are extremely unlikely to result in sustained acclaim, the petitioner’s occupation does not appear to be one of them, and the assertion that such acclaim is impossible is a concession of ineligibility rather than an argument for an undefined different standard.

The six evidentiary criteria claimed by prior counsel are as follows. While the petitioner has not met all of the claimed criteria, he has nevertheless met a sufficient quantity to establish eligibility.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Prior counsel states that the petitioner won “academic awards and professional recognition for the originality and quality of his graduate work in user research.” Academic awards, presented by a specific university and limited to students at that university, are not national or international in scope. Furthermore, student awards are by nature limited to those individuals who have yet to complete their professional training, excluding the most accomplished professionals from consideration. At best, such an award may help to place the recipient among the top graduate students, but graduate study is not a field of endeavor.

Prior counsel asserts that the petitioner “was directly responsible for Siemens, a major client, receiving an internationally recognized award for the design of its ‘E. CAM.’” The record shows that Siemens won a Best of Category 1997 iF Product Design Award at the *Industrie Forum Design Hannover* for the E.CAM Nuclear Medicine Imaging System. The petitioner did not receive this award, and thus evidence of the award is not evidence of his receipt thereof. The record contains no evidence from Siemens, the awarding entity, or any other authority to establish the extent to which the petitioner is responsible for Siemens’ receipt of the award. Assertions by the petitioner’s employer that the petitioner is responsible for the award are speculative unless based on some kind of evidence. Thus, we cannot find that the petitioner has satisfied 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.

Prior counsel asserts that the petitioner’s “work has been featured in professional publications” but in the initial submission the petitioner neither identifies those publications nor submits copies of the materials. Prior counsel appears to refer, in part, to an article written by the petitioner. Articles by the alien fall under a separate criterion, addressed further below.

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

Many of the letters accompanying the petition offer commentary regarding the significance of the petitioner’s contributions. [REDACTED] interim chair of the Department of Visual, Interior and Industrial Design at the Ohio State University (“OSU”), where the petitioner studied, states:

[The petitioner] ranks as one of the foremost experts in the nation on user empathy in the product design process. . . .

When he entered our graduate program in 1993, he already had established a distinguished career in India incorporating users' emotional responses to products into the product design process. . . .

[The petitioner's master's] thesis . . . proposed the intriguing idea that some of the methods currently used to investigate interpersonal relationships would be useful to product developers trying to understand the nature of the emotional link between people and products. [The petitioner] believed that people working on product development teams should attend to improving their ability to recognize and to elicit the emotions and feelings of product users.

OSU Professor [REDACTED] who identifies himself as "a co-inventor of the discipline of Product Semantics," states:

[The petitioner's] work at the Department of Design was of high quality, original and very relevant to emerging thinking in the field. His thesis . . . provided new insights in the discipline of Product Semantics and laid the foundation for his subsequent research work in User Research at Fitch Inc. where he distinguished himself by developing new methods of understanding user experiences as related to design.

[REDACTED] senior industrial designer for Polymer Solutions Inc., a joint venture between GE Plastics and Fitch Inc., states:

We commissioned Fitch Inc. to study the needs of product users in different sectors of the economy, with the purpose of identifying opportunities for improving the design of products. . . .

[The petitioner] was a critical part of these studies because of his unmatched expertise in incorporating user empathy into the product design process. In the work that Fitch Inc. performed for us, [the petitioner] was responsible for:

1. Developing user research methodologies and tools to elicit information about user needs.
2. Collecting and analyzing the data to identify ways to improve the customers' experience of using the product.

The results of [the petitioner's] studies were truly eye opening. The input we received from his user research enabled us to help the industries served by GE Plastics to have a deeper understanding of their customer needs and use that information to make strategic decisions that impact the growth of their businesses.

Mr. Watts states that the petitioner's specific products involved "lawn and garden products" and "the recreational vehicle market."

The initial witnesses tended to be co-workers and clients who had worked directly with the petitioner, and whose statements are not direct evidence of a national or international reputation. Subsequent to a request for further evidence, however, the petitioner has submitted statements from other sources attesting to the importance of his work.

dean of Environmental Design at Columbus College of Art and Design, states:

I have a keen interest in individuals and firms who experiment with the product design process itself. However, since most of the product design work done is for private clients, this sort of information is not often published in journals or shared at seminars. I learn much of it through informal exchanges with other designers and professors around the United States. . . .

[The petitioner] approaches the product design process in a fresh and original way. He understands that products not only should be usable, but also should have emotional meaning for the end-user. He believes that before a product is ever conceived, this is where the product design process should begin, and he has created novel methods to learn the emotional needs of potential users since these needs cannot always be expressed in words. . . .

[The petitioner's] work in this area is important mainly because his research produces results that are directly applicable to supporting the design conceptualization process.

[The petitioner] also invented the time icons, a set of icons that emerged from his internet based global research on ways in which people sense time. He then used time icons to develop a research methodology called Life Cycle Scenarios which allows design researchers to understand how time dimension affects ways in which people associate meanings with products. This method is now widely used in the design research community.

Professor chair of the Design Department at California State University, Long Beach, states:

I have concluded that the most crucial phases of design development are the up-front discovery and staging of activities. This is where [the petitioner] and his colleagues are re-inventing research. . . .

[A]t Fitch, the nation's premier design consulting firm . . . [the petitioner] build a reputation as a young and innovative design researcher who had a profound impact on the way design research was conducted. I have read his publications on new design research techniques that will change the way we learn about people and their needs. I have also known him as the person who first drafted the Postdesign manifesto, a

document that has generated much debate, introspection and inspiration in the field of design because it challenges the now generic methodology of so many organizations.

Prof. Leinbach had previously worked at Fitch, but left that company before the petitioner began working there. Prof. Leinbach deems the petitioner's new company, SonicRim, "a pioneering design research firm" the services of which are in "high demand."

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

The petitioner has been making presentations at professional conferences since the 1980s. The petitioner has also provided an article for a web site described by its founder, Ed Dorsa, an associate professor at Arizona State University in a letter to the petitioner:

I believe that Industrial Design needs an ongoing discussion of current issues and this discussion should be disseminated as widely as possible within our profession. . . .

As a recognized leader in Industrial Design I am asking you to be one of the founding contributors to this discourse, providing an essay or "position paper" on an issue that you feel warrants serious discussion. In turn, this "paper" will be posted on a web site hosted here at Arizona State University.

The petitioner submits a printout from the web site, showing that his paper indeed appears there. Given that the originator of the site specifically solicited the petitioner's involvement based on the petitioner's reputation, the petitioner appears to have satisfied this criterion. Other witnesses have attested to the impact of the petitioner's published material.

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

The record establishes that the petitioner has fulfilled such a role for Fitch. The record also establishes that Fitch enjoys a distinguished reputation (as attested, for instance, by high-profile clients including Microsoft and General Electric). The petitioner has even more of a leading role as a principal of SonicRim, but that company did not exist yet at the time of filing and therefore the petitioner's work with SonicRim cannot establish his eligibility as of the filing date. See Matter of Katigbak, 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.

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

Prior counsel asserts that the petitioner's salary at Fitch, Inc., satisfies this criterion. Fitch officials state that the petitioner earns an annual salary of \$66,563. The record contains no basis for comparison to

show that this salary is among the highest in the field. The Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, states on page 123 "[m]edian annual earnings for commercial and industrial designers were \$48,780 in 2000. The middle 50 percent earned between \$36,460 and \$64,120. . . . [T]he highest ten percent earned more than \$77,790." A later submission indicates that the petitioner earns \$80,000 at [REDACTED] but he did not yet command that salary as of the filing date.

The director denied the petition, finding that the petitioner has relied too heavily on witness letters rather than more objective sources of documentation. On appeal, counsel contends that the director disregarded crucial evidence. Review of the record reveals sufficient documentary evidence to warrant approval of the petition. The petitioner's published work is in the record, and witness statements are a valid source of explanations as to the significance of the petitioner's work, and the leading or critical nature of the petitioner's role at Fitch. While it is certainly possible to imagine a stronger set of supporting documents, the materials submitted by the petitioner include objective documentation and are sufficient to establish the petitioner's eligibility.

We note that, on appeal, counsel has discussed the potential consequences of the dismissal of this appeal, such as hardship to the petitioner's family, peril to [REDACTED] continued viability, and a then-existing backlog for immigrant visa numbers for the petitioner's native country. While the issue is moot, because we are sustaining the appeal, it is nevertheless worthwhile to note that the outcome of the appellate decision must rest on the question of eligibility for the benefit sought. If an alien is not eligible for the classification sought, the petition must be denied, regardless of hardship to the alien or other factors. Employment-based immigrant classifications are intended to benefit the U.S. through the entry of qualified workers; they are not humanitarian measures intended to benefit individual aliens.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States, and the record establishes the continuing benefit arising from the petitioner's work. 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.