

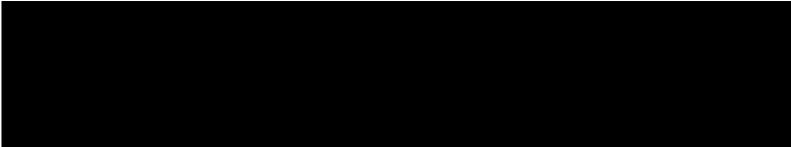


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC 02 013 53930

Office: Vermont Service Center

Date: DEC 09 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:



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

for
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 appeal will be dismissed.

The petitioner is an International Banking Company. 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 business. The director determined the petitioner had not established that the beneficiary qualifies 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.

This petition, filed on October 3, 2001, seeks to classify the beneficiary as an alien with extraordinary ability in business. The petitioner seeks to employ the beneficiary as a Vice President of Risk Methodology. 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 sustained

acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

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 two letters confirming the beneficiary's membership in the Bachelier Finance Society and the International Society on Multiple Criteria Decision Making. In order to demonstrate that membership in an association would meet this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that evaluates membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association's overall reputation.

Dr. Ernst Eberlein, Secretary of the Bachelier Finance Society, states: "The members of the society are international experts in Economic Sciences having outstanding achievement in the field of mathematical finance." Dr. Eberlein, however, offers no information regarding the society's specific membership requirements. According to the society's website at www.bachelierfinance.com, "[a]ny person supportive of the objectives of the Society may become a member by writing a letter to the Executive Secretary expressing his or her desire to become a member and willingness to pay the dues."

Dr. Ralph Steuer, Professor, University of Georgia (where the beneficiary earned his Ph.D. in May 2000), and Past President, International Society on Multiple Criteria Decision Making, states: "Members of this international professional society come from over 80 countries and most of them are professors, high ranking people from industry and government, and Ph.D. holders."

Dr. Kaisa Miettinen, Secretary, International Society on Multiple Criteria Decision Making, states: "The members of the society are internationally professionally qualified people who develop, apply and utilize tools for multiple criteria decision making."

The letters from Drs. Miettinen and Steuer offer no information regarding the society's specific membership requirements. The society's website at www.terry.uga.edu/mcdm states: "Any interested and professionally qualified person can apply for membership. If you are interested in becoming a member of the Society, contact the Secretary of the Society, Kaisa Miettinen."

The petitioner in this case has not shown that the beneficiary's membership in the above societies requires outstanding achievement, as judged by experts at the national or international level. The record does not reflect that these societies require outstanding achievements for their members in the manner of highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

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 petitioner submitted a letter from Dr. Jay Aronson, Professor, University of Georgia, and Chair, 1993 Decision Sciences Institute Meeting, thanking the beneficiary for reviewing papers for the 1993 Decision Sciences Institute Meeting held in Washington, D.C. The record contains no evidence that the beneficiary's notoriety in the financial field resulted in his being selected as a reviewer for this meeting. It would be more reasonable to conclude that the beneficiary was selected because of his direct ties to Dr. Aronson at the University of Georgia.

The petitioner also submitted a letter from the editor indicating that the beneficiary reviewed a paper prior to its publication in *INFOR* (2000). Additionally, the record contains a letter from Dr. Andrew Seila, Professor, University of Georgia, stating that the beneficiary refereed papers for the *European Journal of Operational Research* and *Computers and Operations Research*. As evidence of the beneficiary's service as a referee, the petitioner provides Volume 135 (December 2001) of the *European Journal of Operational Research* which lists the beneficiary (on page 636) as one of approximately 1,300 referees.

The regulation at 8 C.F.R. 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the beneficiary's participation as a judge must reflect these requirements. While the petitioner has submitted evidence confirming that the beneficiary judged the writings of other authors, we find that this evidence carries diminished weight because it has not been shown that beneficiary was specially selected due to his national or international notoriety in risk management. Nevertheless, the evidence submitted is sufficient to minimally satisfy this criterion.

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

The petitioner submits a letter dated February 5, 2002 from the editor of the *European Journal of Operational Research*. The letter states that an article co-authored by beneficiary entitled "Multiple Criteria Decision Making Combined with Finance: A Categorized Bibliographic Study" will appear in the journal "during year 2002." This evidence came into existence subsequent to the petition's filing. 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. New circumstances that did not exist as of the

filing date cannot retroactively establish eligibility as of that date. Counsel claims other articles “listed in [the beneficiary’s] resume” satisfy this criterion; however, the petitioner has provided no evidence that these articles were published in “professional or major trade publications or other major media” prior to the filing of the petition.

We further note that the mere publication of the beneficiary’s work would not automatically satisfy this criterion. Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the beneficiary’s work. If a given article in a prestigious journal attracts the attention of other scholars, those scholars will cite the source article in their own published work. Numerous outside citations would provide firm evidence that other individuals have been influenced by the beneficiary’s work. Their citation of the beneficiary’s work would demonstrate their familiarity with it. In this case, the petitioner has offered no evidence demonstrating independent citation of the beneficiary’s scholarly articles. Few or no citations of an alien’s work suggests that that work has gone largely unnoticed; it is therefore reasonable to question how widely that alien’s work is viewed as being noteworthy. It is also reasonable to question how much impact — and national or international acclaim — a financial scholar’s work can have, if that work attracts little attention from the financial research community.

In this case, we find no evidence to significantly distinguish the beneficiary’s articles from those of other financial scholars. The petitioner has failed to demonstrate that the beneficiary’s articles have earned him national or international acclaim.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien’s role within the entire organization or establishment and the reputation of the organization or establishment. In this case, the record adequately establishes that the petitioner is an organization with a distinguished reputation. However, the record fails to establish the specific nature of the beneficiary’s role within the petitioning organization.

The record contains two brief letters from Wilfried Freudenberger, Senior Executive Vice President and General Manager, Bayerische Landesbank. [REDACTED] first letter states the following:

It is with great pleasure that we are able to say that [the beneficiary] works for us as our Vice President of Risk Methodology. This is a department which under him has been extremely successful. It is through [the beneficiary’s] contribution that the total assets of the Bank, 38.6 [billion U.S. dollars] have been managed as to any respective risks. He is an extremely valued employee. We really cannot say enough flattering things about him.

██████████ second letter is devoted entirely to describing the beneficiary's compensation and offers no further information about the beneficiary's specific role within the company. The record does not indicate that the beneficiary is a top executive for Bayerische Landesbank or that he has authority over the company's business decisions at the national or international level. We note that Bayerische Landesbank has several branch locations throughout the world and the record contains no evidence that the beneficiary exercises substantial control beyond the New York branch. Furthermore, we also note the existence of positions at Bayerische Landesbank above that of Vice President. ██████████ holds the title of Senior Executive Vice President. It is not clear how many individuals within the New York Branch and throughout the world hold positions of equivalent or greater authority than that of the beneficiary. Finally, it has not been explained how the beneficiary's risk management duties are critical to the company's national and international operations. The two vague letters from ██████████ fail to show that the beneficiary plays a leading or critical role for the petitioning organization.

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 submits a letter from Bayerische Landesbank reflecting that as a Vice President of Risk Methodology the beneficiary earned a salary of \$123,600 plus a \$25,500 bonus in 2001. The director's decision acknowledged the beneficiary's "substantial salary" and on appeal counsel asserts that the director "concede[d], or partially concede[d], that the beneficiary does have a substantial salary..." We disagree, however, with the conclusion that the beneficiary's earnings for 2001 satisfy this criterion. The petitioner offered no basis for comparison to show that these amounts were significantly high "in relation to others in the field." The petitioner has not shown that the beneficiary commands a salary placing him among the highest paid bank vice-presidents or risk managers (at a national or international level).

The fundamental nature of this highly restrictive visa classification demands comparison between the alien and others in the field. The regulatory criteria describe the type of evidence that the petitioner may submit, but it does not follow that every vice-president/risk manager working for a major bank is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field. We cannot ignore that several of the petitioner's witnesses appear to have earned considerably more prestige and authority in the financial world. A simple comparison of their positions with those of the beneficiary shows that the beneficiary has not amassed a record of accomplishment placing him at or near the top of his field.

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. The petitioner has failed to demonstrate the beneficiary's receipt of a major internationally recognized award, or that the beneficiary meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

A review of the record does not establish that the beneficiary 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. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field, nationally or internationally. Therefore, the petitioner has not established the beneficiary's 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.