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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: [redacted] IN-01-218-51993) Office: Nebraska Service Center Date: 20 DEC 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*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center and reaffirmed on motion. The matter 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 --

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

As noted by counsel, 8 C.F.R. 204.5(h)(4) provides:

If the above standards [set forth 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.

Asserting that the criteria set forth in 8 C.F.R. 204.5(h)(3) do not apply, the petitioner in this case purports to rely on comparable evidence. At no point, however, has he explained how the evidence submitted is comparable to the evidence listed in 8 C.F.R. 204.5(h)(3). For example, as comparable evidence the petitioner submits a published article that discusses his area of work but not him personally. The criteria set forth under 8 C.F.R. 204.5(h)(3)(iii) requires published material about the petitioner personally. Published material that is not about the petitioner personally is not comparable evidence of the petitioner's national acclaim. Moreover, the petitioner initially claimed to meet four of the regulatory criteria. In response to the director's request for additional documentation, the petitioner indicated that he also met another criterion. In cases where the original criteria do, in fact, readily apply to the beneficiary's occupation, the beneficiary's own inability to meet those criteria does not trigger the "comparable evidence" clause. Thus, we will consider the criteria in 8 C.F.R. 204.5(h)(3) below.

The petitioner did not complete part 6 of the petition. As such, the petitioner did not identify on the petition his claimed area of expertise. In a letter accompanying the petition, the petitioner asserted that he intended to continue developing software and equipment for remote ultrasonic measuring and orienting systems for borehole mining. As such, it appears that the petitioner claims extraordinary ability as a systems analyst. 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 that, he 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.*

In response to the director's request for additional documentation, the petitioner submits internet materials about the Society for Mining, Metallurgy, and Exploration (with 13,000 members, the world's largest society of mineral professionals) which requires five years of experience in the field for membership, and the International Marine Minerals Society which appears to require only the completion of an application and the payment of dues for membership. The evidence suggests the petitioner joined these groups after the petition was filed; thus, they cannot establish his eligibility at the time of filing. See *Matter of Katighak*, 14 I&N Dec. 45, 49 (Comm. 1971). Regardless, the petitioner has not submitted evidence that any of these groups require outstanding achievements of their members. We note that working in the field for five years or paying membership dues are not outstanding achievements.

*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.*

The petitioner submitted an "excerpt" from *Dengi/Money* from 1997. While counsel asserted that the article is entitled, "[The petitioner], bank analyst," the excerpt is not about the petitioner. Rather, it is an advice column on dealing with banks. As the article is not about the petitioner's career and achievements, the director concluded that the article was best considered under the scholarly articles criterion, discussed below. Counsel does not challenge this conclusion on appeal and we concur.

In addition, as stated above, the petitioner submitted an article in *Mining Engineering* on borehole mining (BHM). The article extols the environmental advantages of the procedure. The article does not, however, attribute innovations in the procedure to the petitioner. Rather, it discusses the success of the procedure in West Virginia by Borehole Mining International through Wiley Engineering. We note that the article is written by Grigori Abramov, president of Borehole Mining International, and Mark Wiley, president of Wiley Engineering and ends with [REDACTED] phone number. Thus, the article is not the result of independent reportage.

The director noted that the article does not mention the petitioner by name or reflect that the petitioner has made recognized contributions to the industry. On appeal, counsel acknowledges that the article does not mention the petitioner by name, but notes that the record does contain a letter from one of the authors, Grigori Abramov, who asserts that the petitioner's work on BHM in Russia as part of Mr. Abramov's team was "one of the most valuable parts of the US patent application."

First, the significance of the article is somewhat diminished since it was written by the presidents of the two companies attempting to promote their own technologies by having the article published. In addition, the fact that one of the authors is the petitioner's former team leader does not resolve the issue that the article makes no mention of the petitioner and, as such, cannot be considered indicative of his personal national acclaim.

Finally, the letter from [REDACTED] does not make the article "comparable evidence" for this criterion under 8 C.F.R. 204.5(h)(4). The existence of the article reveals that there are major trade publications in the field and that they publish articles about new innovations in the field. That the petitioner does not meet this criterion is not evidence that the criterion does not apply to his occupation. Thus, the petitioner has not established that we need to accept comparable evidence. Moreover, as stated above, [REDACTED] was the petitioner's team leader in Russia. The fact that he is aware of the petitioner's work on a project he headed is not evidence that the petitioner has national or international acclaim in the field beyond his immediate colleagues. Thus, Mr. Abramov's letter does not cure the deficiency that the article does not mention the petitioner.

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

Grigori Abramov, president of Borehole Mining International, Inc., asserts that he began researching borehole mining in the Soviet Union in the 1980's and that in 1992 he came to the United States to pursue the technology in the United States. He continues:

[The petitioner] joined my work team in 1983 and participated in different types of projects. In laboratories and then under field conditions, [the petitioner] thoroughly studied the main BHM stages, including the variety of rock-mass behavior and the nature of rock-mass collapsing, while the BHM was in operation. Based upon his studies, he developed a computerized approach and a concept of rock-mass control, which includes instantly obtaining, translating the PC code, and interpreting BHM cavern penetration database during the BHM operation. This technology is referred to as Logging While Mining (LWM).

[The petitioner's] main contribution to the development of BHM technology is the development of a computer-based concept of the LWM system. This system consists of the penetration of the "down-whole-working-space" while operating, coding these data to a radio-signal mode for safely sanding it to the land surface, then surface and decoding it, and finally, translating it to a computer language. He also developed a program which enabled not only the creation of both 1) a two dimensional profile of a driving cavern at any cross section, and 2) its three dimensional image, but also a program which provides current information of the consistency of the mining slurry, current and overall cavern volume and finally the mining productivity.

Mr. Abramov further states that the work slowed when the Soviet Union collapsed and, ultimately, ended when Mr. Abramov left for the United States in 1992. As stated above, however, Mr. Abramov indicates that the petitioner's work on LWM was a valuable part of a 1999 US patent application that includes the petitioner as an applicant. A "testimonial" from the Moscow State Food Production University reflects that the petitioner has been involved with information systems relating to sugar production since 1995, during which time he implemented three systems. From November 1992 to March 1995, the petitioner worked as a sales representative manager and business development manager for LVS Corporation. Currently, the petitioner is the Chief of Documents and Knowledge Control System Department at Information Business Systems where he has developed "several unique program platforms" that have allowed more effective "exploration and development of petroleum resources for the Russian Government and major Russian's [sic] oil and gas companies, such as GasProm, MezRegionGaz, and several others."

In response to the director's request for additional documentation, the petitioner submitted another letter from a member of the BHM research team with which he worked prior to the collapse of the Soviet Union. While Nikolai Babichev praises the petitioner's skills and asserts that the petitioner is one of the few in the world with his level of knowledge about information systems relating to BHM he fails to explain how this knowledge has resulted in national or international acclaim. The petitioner also submitted a letter from Thomas Pool, vice president of Nuclear Fuels Corporation, and Mark Isto, senior advisor to the president at Palcer Dome America. While both men discuss the virtues of BHM and Mr. Isto concedes that it was developed in the Soviet Union, neither mentions the petitioner or indicates that he became aware of the petitioner's reputation prior to being requested to provide a letter in support of the petition.

The director concluded that the record, including the petitioner's patent, suggests that any benefits of the petitioner's alleged contributions "lie in the future."

On appeal, counsel argues that many significant contributions provide benefits in the future.

As discussed below, the petitioner's articles were published in 1987 and 1991 and have only been cited by the petitioner's co-author and thesis supervisor. A patent application suggests only that the tool for which the petitioner seeks patent protection is original. Even an approved patent doesn't attest to the significance of an invention, only its originality. While independent experts have attested to the significance of BHM, the record contains no letters from disinterested experts in the information technology field attesting to the significance of the *petitioner's* contributions. The letters of support from the petitioner's immediate circle of colleagues cannot establish that the petitioner himself, as opposed to BHM, is known outside of his collaborators.

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

The petitioner submitted his article published in *Automation and Remote Control* in 1991 and two articles by Dr. Alexander Belenky that cite to two other articles authored by the petitioner and Dr. Belenky published in 1987 and 1991. As stated above, the petitioner submitted a letter from Dr. Belenky in which he indicates that he was the petitioner's thesis supervisor.

The director concluded that the petitioner met this criterion. We disagree. The evidence submitted in support of each criterion must be evaluated as to whether it is indicative of national or international acclaim. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The petitioner's last article was published in 1991. His articles have only been cited by his co-author. While self-citation is a normal and expected practice, it is not evidence that the petitioner is known beyond his circle of collaborators.

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

The petitioner has documented his positions as a consultant for Moscow State Food Production University, a sales representative and business development manager at LVS, and a department chief for a single department at Information Business Systems. Vladimir Rozin, General Director Advisor for Information Business Systems, asserts that the petitioner monitored and programmed "documents, materials, and finance flows" and created databases. Subsequently, the petitioner developed several unique program platforms, permitting more effective exploration and development of petroleum resources. In response to the director's request for additional documentation, the petitioner submitted a November 18, 2001 article in the Denver Post quoting the vice president of Information Business Systems as saying that his business is benefiting from a 17 percent increase in Russian demand for computer hardware. That the company is successful is not necessarily evidence that it enjoys a distinguished reputation nationally.

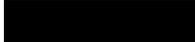
The record contains some evidence that International Business Systems is a large company and has acquired at least a positive reputation nationally, but is minimal regarding the reputation of the petitioner's other employers. Further, the positions at LVS do not appear to be within the petitioner's claimed area of expertise. While International Business Systems may be a large company nationally known and respected, the petitioner has not established that the chief of a single department in this large organization plays a leading or critical role for the company as a whole.

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

The President of LVS Corporation indicates that he sold Oracle products for \$1,300,000 in 1994. As stated above, he was a sales representative at the time. Moreover, the letter is not clear whether that is the price of the products or the remuneration the petitioner received. Regardless, at this time he was not working in his field of claimed expertise. In addition, the General Director and Chief Accountant for Information Business Systems indicate that the petitioner earns 5,200 rubles per month. The vice president of International Business Systems asserts that "among the other computer experts, [the petitioner] has the biggest salary all the time of [sic] his work in IBS." This statement is unclear as to whether the petitioner earns a high salary compared with others at International Business Systems or nationally. Further, the record does not contain evidence of high-level salaries in the field in Russia in support of the assertions made by the vice president. As such, the petitioner has not established that he earns a significantly high remuneration for his services.

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 himself as a systems analyst 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 petitioner shows talent as a system analyst, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.