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*

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: EAC-99-204-53076 Office: Vermont Service Center Date: JAN 03 2002

IN RE: Petitioner:
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: Self-represented

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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 petitioner subsequently submitted a second appeal; the information in that appeal will be considered in this decision as well. 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 in the sciences. 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.

In his second appeal, the petitioner requested oral argument. Oral argument is limited to cases in which cause is shown. A petitioner or his counsel must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Therefore, the petitioner's request for oral argument is denied.

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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a computer scientist. 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. While the petitioner mostly relies on the subjective opinions of his references, he does address 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.*

In his initial index of evidence, the petitioner includes the heading, "awards, recognitions." It is noted that the regulation requires awards and prizes, not merely "recognition." The petitioner then lists several exhibits: his high school teachers' recommendation letters submitted in support of his college application, his high school diploma, a freshman recognition certificate for outstanding scholastic achievement in the first semester at Baruch College, evidence that he made the Dean's Honor List in the fall of 1996, an invitation letter to join the honor society Eta Kappa Nu, and a certificate from NYNEX verifying that the petitioner completed the "working aloft" course at their technical training center.

Most of these documents do not represent awards or prizes. The recommendation of a high school teacher is not an award or a prize. Nearly every college applicant must obtain recommendations from his teachers. Moreover, these recommendations, which refer to his performance in English and History classes, have little relevance to the petitioner's current field of endeavor, computer science. Similarly, a high school degree is not an award or prize. It is certainly not evidence that the recipient is one of the very few at the top of his field or that the recipient has sustained national acclaim. Further, joining an honor society is not an award or prize, and is based on academic achievement only, which, as discussed below, is not a field of endeavor. Additionally, a certificate for the completion of a technical course is not an award or prize. Finally, a telephone company's course on "working aloft" does not appear related to the petitioner's field of computer science.

The freshman recognition certificate and Dean's List verification might be characterized as awards, but they are certainly not national. The petitioner was compared only with other students at his college for these awards, not with computer science experts nation-wide. Moreover, academic study is not a field of endeavor, but training for a future endeavor. Thus any award based on academic achievement is not an award for excellence in a field of endeavor.

As stated by the director, the petitioner did not obtain any degree in computer science until after he filed the petition. In response to a request for additional evidence, the petitioner submitted evidence that he had obtained his bachelor's degree in May 2000. On appeal, the petitioner argues that the law does not require a degree to demonstrate extraordinary ability. Since extraordinary ability classification is available in the arts and athletics, a requirement for an advanced degree would be detrimental. Even in other fields, those without advanced degrees, such as Bill Gates, are occasionally able to reach the top of their fields. Nevertheless, the petitioner must demonstrate more than academic accomplishments. He must demonstrate that he is at the top of his field, even when compared with highly educated experienced experts in the field. As all of the petitioner's awards that can truly be considered awards are based on academic achievement, they cannot demonstrate that he compares favorably with experienced experts who have completed their studies and are working in the field.

*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 evidence of his student membership in the Association for Computing Machinery and the Institute of Electrical and Electronics Engineers. The record contains no evidence that these associations require anything other than enrollment as a student and the payment of dues for student membership. Thus, the petitioner has not established that these associations require outstanding achievements of their members, including their student members.

The petitioner also submits evidence of his membership in the U.S. Chess Federation and, as stated above, an invitation letter to join Eta Kappa Nu. The U.S. Chess Federation is not an association in the petitioner's field of computer science. Similarly, as stated above, academic study is not a field of endeavor. Thus, an academic honors society is not an association in any field of endeavor.

*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.*

In response to the director's request for additional documentation, the petitioner submitted a copy of an article in Nedelnik, a Bulgarian weekly newspaper distributed in the United States, Canada, and Australia. The article is mostly a human-interest story about the petitioner, a Bulgarian, living in the United States. The article does discuss the petitioner's field insofar as it mentions the petitioner's involvement with a database containing the information of those who passed through Ellis Island. The record, however, contains no evidence that Nedelnik can be considered major media. A Bulgarian community newspaper for Bulgarians living outside Bulgaria, even if distributed in three countries, does not appear to be major media. Regardless, the newspaper article was published several months after the petition was filed. Thus, it cannot establish the petitioner's eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

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

Todorka Mineva, an assistant engineer for Edwards and Kelcey, indicates that the petitioner "developed NT Workstation software for controlling the traffic controllers." The petitioner submitted this letter after the petition was filed. It is not clear whether the petitioner had developed this program prior to the date of filing. Moreover, developing new software is inherent in the job of software engineers. It is not clear that the development of every new program constitutes a contribution of major significance to the field.

*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 papers prepared for courses he was taking, but the record contains no evidence that these papers were ever published.

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

The petitioner submits several letters from former employers. For example, Andrew P. Weinreich, President and CEO of Sixdegrees, Inc., discusses the petitioner's involvement in several projects at

the company as a computer systems administrator and subsequently as a member of the software development team. While the petitioner may have played important roles in several projects at that company, Mr. Weinreich does not indicate that the petitioner played a leading or critical role in the company itself. Nor does the record establish that Sixdegrees, Inc. is an organization with a distinguished reputation. A similar analysis can be applied to the other employer letters submitted initially.

In response to a request for additional evidence, the petitioner submitted evidence that he had worked on several projects for Reuters and had been hired by Barclays. The petitioner has not demonstrated that he performed a leading or critical role for Reuters or Barclays as a whole, as opposed to performing a primary role in specific projects or a single department. Moreover, the projects for which the petitioner played an important role at Reuters, were initiated after the petition was filed. Similarly, Barclays hired the petitioner after the date of filing. 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, supra. Thus, the petitioner's employment at these companies is not evidence of the petitioner's eligibility at the time of filing.

Throughout the petition process, the petitioner has relied mostly on numerous reference letters. On appeal, the petitioner refers to a letter from Aleksandr Tarasula at Reuters, who describes the petitioner as "the most efficient programmer I have met." He further states, "despite [the petitioner's] young age, his professionalism and experience place him among the absolute top in his field." The petitioner questions on appeal:

> What more evidence is needed to complete the requirement of Title 8, Code of Federal Regulations, Part 204.5(h)(2), which defines "extraordinary ability" as: "a level of expertise indicating that the individual is one of that small percentage who have rise to the very top of the field of endeavor."

8 C.F.R. 204.5(h)(3), however, states that the classification sought by the petitioner requires *sustained national or international acclaim* and sets forth 10 objective criteria under which to evaluate a petitioner's claim. A petitioner cannot avoid demonstrating that he meets at least three criteria with evidence reflecting sustained acclaim by relying instead on the subjective opinions of his employers and professors. Furthermore, some of the letters are from non-computer experts for whom the petitioner has set up networks. The opinions of those outside the petitioner's field cannot be given much evidentiary weight, including a letter from a member of the Institute of Bulgarian Academy of Science, Gueorgui Spassov. Mr. Spassov is a physiologist, not a computer scientist, and merely asserts that the petitioner was helpful in showing him how to use his personal computer for data processing, systemization and analysis. Other letters are from friends of the petitioner's family. These letters carry no evidentiary weight. Regardless, few of the letters address how the petitioner might meet any of the ten regulatory criteria.

Even considering these letters, many of the references fail to indicate that the petitioner has already reached the pinnacle of his field. For example, Mr. Weinreich states that the petitioner has "outstanding promise." Susan Kliavkoff, former director of the Baruch College Technology Center, defines the petitioner as having "ability and interest," and as a "motivated self-starter." She concludes by stating that he is a "technologically able talent." Valentin Atansoff, CEO of a Bulgarian software company which used the petitioner as a consultant, states that the petitioner was

"one of the most useful consultants with whom we maintain contact." Christo Konowsky, an accountant, simply recounts how the petitioner was able to connect his computers to a network and recommend an accounting software package compatible with his computers. Mr. Bader of Informat Systems merely asserts that the petitioner demonstrated "a high level of competence."

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 computer scientist 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 computer scientist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. The petitioner acknowledges on appeal that all of his colleagues are talented and perform "extraordinary" work. 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.