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: [redacted] Office: Nebraska 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, Nebraska Service Center, and 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 in the sciences.[1] 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.

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[1] On his accompanying cover letter, the petitioner indicated he was an alien of *exceptional* ability," an entirely separate classification, but cited Section 203(b)(1)(A) of the Act, the section applicable to aliens of *extraordinary* ability. While the petitioner provided conflicting information regarding the classification sought, in such cases it is appropriate to rely on the classification checked on the petition, as the director did. On appeal, the petitioner does not challenge the director's determination that the petition seeks to classify the petitioner as an alien of extraordinary ability and argues that he is eligible for such classification.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a structural engineer. 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. Initially, the petitioner claimed to meet seven of the criteria set forth in 8 C.F.R. 204.5(h)(3), which he cites. In the footnote to this claim, the petitioner listed seven categories of evidence. The first six categories, however, appear to relate to the criteria for a lesser classification, exceptional ability, which normally requires a labor certification. On appeal, the petitioner claims to meet the following extraordinary ability criteria.

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

The petitioner asserts that he meets this criterion based on receiving the Valle Scandinavian Exchange Scholarship for graduate study at the University of Washington. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, an academic scholarship cannot be considered an award for excellence in the field of endeavor.

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 provides evidence of his associate membership in the Structural Engineering Association of Washington (SEAW). Initially, the petitioner provided no evidence of the membership requirements for SEAW. On appeal, the petitioner asserts:

> Each membership application is reviewed by a SEAW professional member and accepted or not based on the applicant['']s ability, status in the profession, and professional involvement in the field of structural engineering.

The petitioner provides no evidence to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the petitioner asserts that current members select the new members. As SEAW appears to be a statewide association, it appears that its membership is not national. Thus, if membership is simply judged by local experts, it is not an association where members are judged by recognized *national or international experts* as required by the regulations.

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

In his initial letter the petitioner claims:

> My contribution to the development of performance based design approach has been a significant asset to the business success of my firm (Skilling) as well as providing safer and better performing buildings. Although US building codes are in the process of adopting this new design approach, very few engineering firms use this method for design due to the complex nature of it, but instead choose to use the conventional design approach.
>
> The reason US building codes are adopting performance design approaches is that buildings will perform better which directly concerns public safety. [Citation to exhibits omitted.]
>
> The fact that Skilling has taken a leading role by adopting this approach has put them one step ahead of its competitors. I am among few experts in the firm who have helped made [sic] possible by assembling and study [sic] research documents [citation to exhibits omitted] on this subject and come up with practical design.

The petitioner submits several reference letters as evidence of his contributions to his field. Ron Klemencic, President of Skilling Ward Magnusson Barskshire Inc. (Skilling), the petitioner's employer, writes:

> Most of [the petitioner's] projects involved the design of high-rise structures, where he has been responsible for the design of the life-safety earthquake-resisting systems. Those designs require high-end computer analysis skills, a complete understanding of earthquake engineering, and the ability to develop solutions to challenging design issues. [The petitioner] has shown exceptional skills in these areas, and has developed into one of our leading engineers in the design of high-rise structures potentially subject to earthquakes.
>
> Within the firm, [the petitioner] is a member of our Earthquake Engineering Expert Team, and he has helped to develop a state-of-the-art design approach known as "performance-based design." This innovative design approach, pioneered by Skilling, has been used by just a few consulting engineering firms around the world. Performance-based design challenges even the most advanced computer analysis tools and requires an exceptional understanding of earthquake engineering and behavior. Skilling has utilized this approach on various high-rise buildings in high-risk seismic zones throughout the U.S. and abroad, and [the petitioner] has been a key member of the team doing the design work. [The petitioner's] unique qualifications and outstanding performance in the area of performance-based design have contributed significantly to Skilling's reputation as one of the top engineering firms in the world.

development and application of this performance-based design methodology." Don Davies, Vice President of Skilling provides similar information.

John D. Hooper, Senior Vice President of Skilling, writes:

> Although performance-based design concepts are being discussed on numerous committees for which I serve or chair, the method our firm has developed for concrete-framed structures is unique, and [the petitioner], once again, has been a key member on both the development and implementation of this concept.

The petitioner also submits a building code section for boundary zones. The record does not adequately explain how this highly technical section relates to the petitioner's work or how it demonstrates that building codes are in the processing of adopting performance design approaches. Finally, the petitioner submits technical engineering articles as evidence of the research documents he has studied while developing performance design approaches at Skilling. None of these articles reference the petitioner or cite his work. This documentation does not demonstrate that the petitioner's alleged contributions to performance design approaches have brought him national acclaim in his field. The letters from Skilling officers and the articles reflect that the petitioner has demonstrated expertise in an area which appears to have been pioneered by others. While he may be one of the experts at Skilling in this area, expertise in the techniques developed by others is not a contribution to the field. It is noted that all of the references discuss the petitioner's work as it relates to the national interest, a factor which is not relevant to the classification sought by the petitioner.

On appeal, the petitioner refers to his Master's thesis as a major contribution. John Stanton, one of the petitioner's thesis advisors at the University of Washington, writes:

> [The petitioner] studied the behavior of skew bridges in earthquakes, which is a problem that has never been addressed satisfactorily, and which was shown to need proper attention after the much-publicized collapse of the Gavin Canyon overcrossing during the 1994 Northridge earthquake. He created a versatile computer model and conducted a wide-ranging parameter study of different bridge geometries, in order to identify the characteristics that control the behavior. His work was of the highest caliber, and forms the genesis of change that are being prepared for the national bridge code.

Marc Eberhard, the petitioner's other advisor at the University of Washington, provides similar information, asserting, "as a researcher, [the petitioner] made significant advances in our understanding of the seismic vulnerability of highway bridges."

References from advisors are useful in detailing the petitioner's role in his research. Such letters, however, by themselves, cannot demonstrate national acclaim resulting from an alleged contribution to the petitioner's field. It remains, the petitioner failed to provide letters from independent experts who have been influenced by the petitioner's alleged contributions.

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

The record includes the petitioner's report in *Structural and Geotechnical Engineering and Mechanics* entitled "Seismic Behavior of Skew Bridges," published by the University of Washington. In addition, the petitioner's article, "Seismic Response of Skew Bridges," was published in the proceedings of the 6th U.S. National Conference on Earthquake Engineering. 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 record contains no evidence of the research community's reaction to the petitioner's presentation and article. For example, the petitioner failed to provide letters from renowned experts verifying that his presentation or article has influenced their own work or evidence that his article has been widely cited by independent researchers.

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

The petitioner claims on appeal to serve a leading or critical role for Skilling. The record adequately demonstrates that Skilling has a distinguished reputation. The petitioner relies on the letters discussed above from Skilling executives to establish his alleged critical role. The letters, however, reveal that the petitioner is simply one of several design engineers. While he may have played a "key role" on developing performance based design approaches, that is one of many projects at Skilling, a corporation with engineering projects around the world. The petitioner has not demonstrated that he plays a critical role for the entire corporation.

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 structural engineer 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 structural engineer, 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.