

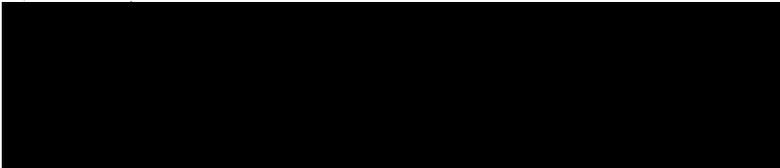


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: EAC-00-014-53624

Office: Vermont Service Center

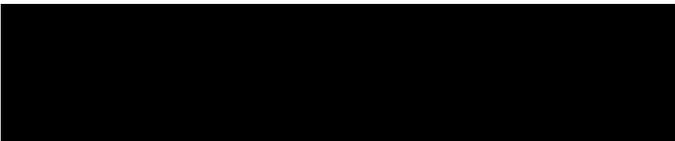
Date: 03 MAY 2002

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

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 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, in general terms, that the petitioner had not established that the beneficiary has the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel asserts that the director's general statements are contradicted by the evidence which, according to counsel, establishes that the beneficiary meets six of the ten criteria for this classification. An alien need only meet three to be eligible under this classification.

We concur that some of the director's statements are poorly worded. For example, a petitioner need not, in addition to the regulatory evidentiary requirements, establish the caliber of every other person practicing in the field for comparison, as is suggested by the director. Rather, a petitioner need only demonstrate that the beneficiary meets three of the ten regulatory criteria with evidence for each criterion reflecting national or international acclaim. Nevertheless, for the reasons discussed below, we concur with the director's ultimate conclusion that the record does not reflect sufficient "recognition," i.e. acclaim, for this 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

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(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 seeks to classify the beneficiary as an alien with extraordinary ability in business. 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 which, it claims, meets 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.

The petitioner asserts that the beneficiary meets this criterion through several academic awards. Specifically, the beneficiary received the IBM Graduate Fellowship Program (The Manufacturing Research Fellowship), the Watumull Award awarded annually to two graduate students at Columbia University, a "loan" scholarship by J.N. Tata Endowment, and the Jamsetji Tata "gift" scholarship. The beneficiary was also awarded the "Institute Silver Medal" by the Indian Institute of Technology, Bombay. Academic study is not a field of endeavor. As such, fellowships and scholarships based on past academic achievement are not awards in a field of endeavor. Moreover, the competitors for such awards are all other students. Thus, these awards do not compare the beneficiary with other experienced experts in the field.

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 letters from *Management Science* and *Operations Research* confirming that the beneficiary has refereed articles for those publications. The letters do not specify, however, whether the beneficiary was solicited to referee these articles. For example, it is not uncommon for professors to be solicited to referee articles and assign the task to a student. In fact, Michael Pinedo, one of the beneficiary's former professors states that he was an area editor and requested that the beneficiary review publications. The letters also fail to specify the criteria for selecting referees. As such, the petitioner has not established that the beneficiary's service as a referee is evidence of national or international acclaim.

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

Donald Goldfarb, a professor at Columbia University, discusses the beneficiary's academic history at that institution. He states:

[The beneficiary] excelled academically; he was a recipient of the Watumull award for academic performance and even completed a stringent exam for the doctoral program before being formally admitted into the program itself. While at Columbia, he was associated with the Center for Applied Probability. His early research was supported by the Center for Telecommunications Research; this work was presented to an industry consortium of leading companies like AT&T, GTE and IBM that are associated with the Center.

Michael Pinedo, a former professor at Columbia University, writes:

Over the course of his doctoral program at Columbia, [the beneficiary] independently developed a deep relationship with Bell Atlantic Science and Technology where his insights and opinions on business issue[s] were highly valued. [The beneficiary's] work convinced Bell Atlantic to substantially increase its investment in MS-OR capabilities to solve business problems. Accolades and awards for his applied work include being invited to chair a session at an international conference on quantitative and operations management, [being awarded an] IBM manufacturing fellowship and [receiving] a patent award. The scale of his impact is truly amazing and I can't think of any doctoral candidate who has independently achieved the kind of impact [the beneficiary] has had with industry in so short a time.

Karl Sigman, another professor at Columbia writes:

Based on [the beneficiary's] work, for the first time we have an analytic proof of a conjecture postulated in the late sixties for complex supply chain systems. It is interesting to note that a proof to this result had been elusive despite repeated attempts in the past. Results from his thesis have also been used to prove for the first time empirical results on performance degradation in telecommunication networks, a phenomenon known for a long time but for which analytical proof had been elusive.

The record contains no support for the significance of this work, such as evidence that it was published and widely cited or that it was patented, licensed, and is widely used in the field.

Henry Rabinowitz, a senior member of the technical staff at Bell Atlantic Science and Technology writes:

[The beneficiary] helped devise a new risk management algorithm using the theory of point processes and applied it to scheduling and collection operations. The approach develops unique ways of capturing uncertainty and randomness in the operating environment.

Mr. Rabinowitz continues that this research was not published since Bell Atlantic (then NYNEX) was seeking to patent the algorithm. The record confirms that the algorithm has now received a patent. A patent simply designates an original concept without reflecting on its significance. The record contains no evidence that Bell Atlantic has licensed the algorithm and that it is widely used. Finally, Mr. Rabinowitz states:

[The beneficiary] continued to contribute in a significant way during his tenure at BAST, specifically in areas of switch performance modeling, capital allocation and supply chain uncertainty and randomness. His pioneering research in the area of inventory management specific to the telecom and high technology sector has wide international recognition, as is evidenced by his being invited to chair a session on inventory management at the international conference on operations and quantitative management.

James Euchner, a former Vice President of Network Systems Advanced Technology at Bell Atlantic, provides similar information. Jianxiu Hao, a researcher with GTE, discusses the beneficiary's work with GTE designing optimal high bandwidth fiber optic cables for residential communities. He also praises the beneficiary's ties with industry developed while obtaining his doctoral degree. The above letters are all from professors or managers who worked with the beneficiary while he was obtaining his degree. They do not demonstrate that the beneficiary's reputation extended beyond Columbia University or the businesses with whom the beneficiary worked while he obtained his degree.

[REDACTED] of the petitioner's New Jersey office writes that the beneficiary has participated in "high profile consulting assignments," resulting in Dr. Samdani's request for the beneficiary's assistance on one of his own buyout analyses. [REDACTED] states, "the magnitude of uncertainty in possible outcomes from the buyout decision was huge. [The beneficiary] brought unique insights to identify the impact of such uncertainties." [REDACTED], a partner with the petitioner firm, provides general praise of the beneficiary's "unique skill set," and continues:

[The beneficiary's] work with telecommunication companies on supply chain and other operational issues is widely regarded in academia and industry, and as a recognition of his professional stature, he has been invited to chair sessions at international conferences and give talks at universities overseas.

As will be discussed below, the record reflects that the beneficiary was invited to chair one session at one international conference where he also gave a presentation and to give another presentation at a university in Paris. [REDACTED] continues:

[The beneficiary] played a key role on an operational efficiency engagement I was leading for a long-time semiconductor industry client. His work was pivotal in achieving very aggressive efficiency targets.

The record also includes several letters from the petitioner's clients whom the beneficiary has served. David Smith, Director of Materials Management at MEMC Electronics Materials, Inc., and Robert G. Rohlfing, Manufacturing Director of MEMC Pasadena, Texas, assert that the beneficiary's work has the potential to save the company 25 percent in raw material costs. Dr. Andrew Weber, Global Business Development Manager for DuPont Microcircuit Materials, writes that the beneficiary developed a plan to manage and mitigate risks for high-risk development technology areas. Arindam Banerji, Chief Operating Officer for J.P. Morgan, India, writes that the beneficiary "played a critical, anchor role in zeroing in on the key source of uncertainty and developing a recommendation for the global operational leadership at JP Morgan." David Allen, Jr., Vice President of Strategy and Business Development at ConnectSouth, Inc., provides general praise of the beneficiary's abilities. While these letters reflect that the beneficiary has been able to impress the petitioner and its clients with his abilities, they do not reflect national acclaim outside the beneficiary's circle of colleagues and clients. None of these clients indicate that they had heard of the beneficiary prior to contracting with the petitioner or that they specifically requested his assistance on their projects due to his prior national acclaim.

Professor Bruno Baynat at the Laboratoire d'Informatique de Paris 6 writes:

One year ago we invited the [beneficiary] to present his path-breaking research in modeling queuing systems that have dependent random variables as input. Such abstract systems are both very relevant in the high technology world and yet very poorly understood. Through his work, [the beneficiary] has made a significant contribution to our understanding in this area and is considered a leading international expert in the field.

The record also contains an invitation to chair a session at the International Conference on Operations and Quantitative Management in Jaipur, India. The record does not demonstrate that it is unique in the field for successful business consultants to receive invitations to chair sessions or give presentations at international conferences. The evidence in the record of two such invitations cannot be considered evidence of sustained national or international acclaim as one of the very few at the top of one's 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 the beneficiary's unpublished thesis; an article "under review" with *Operations Research*; a private report for GTE; and Race for the World, Strategies to Build a Great Global Firm, a book by Lowell Bryan, Jane Fraser, Heremy Oppenheim, and Wilhelm Rall published by the Harvard Business School Press which names the beneficiary in the acknowledgements as part of the research team. The article had not been published as of the date of filing and while the beneficiary may have participated in some of the research for the book, he is not credited as an author. As of the date of filing, the beneficiary had not authored any published articles or books.

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

On the Form I-140, the petitioner listed the beneficiary's job as "Associate (Management Consultant.)" Throughout these proceedings, the petitioner has claimed that the beneficiary serves a critical role for the petitioner and provided examples of several projects for which the beneficiary played a critical role, many of which were performed after the date of filing. Prior to the date of filing, the beneficiary developed a new growth strategy for flat panel displays, "led the analysis needed to reposition the strategy for consumer long distance in the face of a very competitive market place and uncertain pricing behavior by the competition," "led the team that came up with a highly innovative solution" for a United States based silicon wafer manufacturing company, "developed the recommendations for [a wireless messaging company] that led ultimately to an equity alliance . . . maximizing its payoff . . . while hedging its downside risk," developed a strategy for a telecommunications equipment company in offering services to complement its equipment sales which led to significant acquisitions, designed a matrix organization that would substantially reduce a wireless company's product development cycle time, and assisted on a multi-year research project launched by the petitioner.

In response to the director's request for additional documentation relating to the petitioner's distinguished reputation, the petitioner submitted articles and a BBC interview with the petitioner's upper management. While these documents establish the petitioner's reputation as the most influential consulting firm. The 1993 article "How [the petitioner] Does It" in *Fortune* reveals that the petitioner has 3,100 consultants and analysts. The Firm's hierarchy includes committee chairs, directors, managing directors, and partners. The record does not reflect that the beneficiary holds any of these positions. Only one out of five consultants goes on to become a partner and one out of ten makes it to director. Fred Gluck, the managing director in 1993, stated that the petitioner hires 10 times as many consultants as it needs to weed out those who are not developing into the right type of consultant. We cannot conclude that all 3,100 consultants and analysts play a critical role for the petitioner as a whole, regardless of their role on individual projects.

The petitioner claims that the beneficiary, as an associate, has been a team leader for several projects. As such, it appears that the beneficiary may have been the "engagement manager" for those projects, described as follows in the *Fortune* article:

To coordinate the effort, [the expert who participated in negotiating the deal] assigns an "engagement manager" -- not a partner but an associate with three or four years' . . . experience. This is typically someone who has survived the sweatshop conditions endured by rookies and proved he can travel constantly, sleep little, perform brilliantly, and inspire immediate confidence of much older clients who might otherwise wonder why they're paying so much money to wind up with a 29-year-old greenhorn MBA in their face -- but who is still busting his hump because he has only two or three years left to make partner.

The petitioner is a global company with thousands of individuals working in the same capacity as the beneficiary. While he may have played a leading role for individual projects and earned the respect of the petitioner's clients, the petitioner has not established that the beneficiary has distinguished himself beyond other team leaders working for the petitioner. Nor do these projects represent evidence of national or international acclaim beyond his employer and its clients. The record does not establish that the beneficiary, as one of thousands of associates working for the petitioner, played a critical role for the petitioner 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 petitioner did not initially claim that the beneficiary met this criterion. In response to the director's request for evidence relating to this criterion, the petitioner submitted the beneficiary's wage and tax statements and estimated mean annual base salaries for operations research analysts and operations research managers in the New York area. It is insufficient to compare one's salaries with local prevailing wages, an alien must earn a high salary in relation to others in the field nationally. That said, business consultants in New York probably earn relatively high salaries compared with the rest of the nation. In the cover letter submitted in response to the request for additional documentation, the petitioner compares the beneficiary's total salary, including bonus, with the 90th percentile base salaries. While "high remuneration" includes bonuses, we cannot compare salaries plus bonuses with base salaries alone. The 90th percentile base salary for the most experienced operations research managers is \$130,551. The beneficiary's base salary for 1998 is not documented but the beneficiary's base salary for 1999 was \$110,000. Further, while the beneficiary is not a partner, those who have achieved this status represent the top experts in his field. The 1993 article in the record reflects that junior partners working for the petitioner made \$250,000 per year at that time. As such, the petitioner has not established that the beneficiary meets this criterion.

Finally, the petitioner submitted two advisory letters from experts in the field. Both experts were unaware of the beneficiary prior to being requested to review his resume and provide an opinion as to his skill level. An opinion from an independent nationally known expert who was not previously aware of the alien, and is simply reviewing a resume or list of accomplishments, cannot establish national acclaim. Such a letter may, in fact, simply reinforce the conclusion that the alien is not well known in the field, by demonstrating that the alien's reputation did not precede the specific request for a recommendation.

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 beneficiary has distinguished himself as a business consultant 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 beneficiary shows talent as a business consultant, but is not persuasive that the

beneficiary's achievements set him significantly above almost all others in his field. 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.