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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

*ADMINISTRATIVE APPEALS OFFICE*
*425 Eye Street, N.W.*
*BCIS, AAO, 20 Mass, 3/F*
*Washington, DC 20536*

[redacted]

APR 17 2003

File: EAC-02-056-50111 Office: Vermont Service Center Date:

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)

ON BEHALF OF PETITIONER:

[redacted]

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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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward
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 Administrative Appeals Office 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 Bureau 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 senior systems developer. 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.

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

Counsel asserts that the petitioner's ability in information technology (IT) is extraordinary because few experts have mastered Java. Counsel asserts that the mastery of Java is rare because those IT professionals knowledgeable in C++ have a difficult time transferring that knowledge to Java. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While the record does indicate a shortage of IT professionals certified in Java, the record does not support counsel's argument regarding Java's complexity. While the petitioner submitted an interview with [redacted] the developer of Java, who discusses "complexities," a reading of the article reveals that the "complexities" referenced in the headline result from the millions of lines of programming required for current programs. Mr. [redacted] discusses how Java was designed to simplify these complexities.

Moreover, the petitioner submitted an article from informationweek.com, "As Java Makes Gains, More Developers Learn the Language." In this article, [redacted] Senior Manager of Systems Integration and Interface Development at Spirent Communications, states that he doesn't require a Java background when hiring and that "employees who can program in C++ usually have no problem learning Java." Similarly [redacted], in his Internet posting of frequently asked questions (FAQ) on Java, asserts that even a knowledge of C++ is not necessary to learn Java because "Java is in fact a much easier language to learn than C++."

In addition, counsel asserts that the petitioner "is widely recognized as a leading professional in his field because of his unique systems designs for web-based architecture including the state-of-the-art systems that provide real time data in a four tier architecture in the power and energy industry." Counsel goes on to allege that the petitioner coined the term "four tier architecture." In support of this assertion, counsel references an article from *Intelligent Enterprise*, "Introducing SAP's Internet Business Framework" by [redacted] This article provides:

> SAP's Internet Business Framework provides collaboration technologies at all architecture levels: presentation, application, and database server. In fact, it moves the Business Framework from a three-tier to a four-tier architecture: Web UI layer, front-end applications, backend applications, and a database server.

The article later states that three-tier architectures are giving way to four-tier models and provides a detailed discussion of four-tier architectures, which essentially splits the applications tier into front-end and backend layers. Finally, the article states that this message-oriented interface has resulted in new technology that enables messaging between or across systems. The article identifies SAP business documents (BDOCs) as an example of such technology. The article does not credit the petitioner with coining the term "four-tier" or contributing to the development of BDOCs. Moreover, there is no indication that the petitioner ever worked for SAP or otherwise contributed to their business framework.

The petitioner submits two articles and a tip published on www.dhtml-zone.com, affiliated with DevX, an on-line provider of technical information, tools and services for IT professionals. The petitioner also submitted e-mail correspondence addressed to him requesting additional assistance on the topics discussed in the articles. The record contains e-mail inquiries from 18 individuals dated prior to the date of filing. The articles appear to be troubleshooting assistance and many of the responses appear to be from individuals with little Java experience. In order for these articles to represent a contribution of major significance, the petitioner would need to demonstrate that they have influenced the way experienced Java programmers approach their work. Such evidence is not in the record.

In addition, the petitioner submitted several letters from his colleagues. [redacted] a senior applications developer for Duke Energy Trading and Marketing, asserts that the petitioner was the lead architect for Duke Energy's "FOCUS web project," a complex project due to the large volume of data processed and displayed. Mr. [redacted] concludes that the petitioner's systems have become models in the field of web systems architecture. Dan Logue, a technical consultant for Energy Solutions (formerly Wright Logue and Associates (WLA) where the petitioner was employed); [redacted] a manager at Duke Energy; and [redacted] a senior developer for Sempra Energy Trading provide similar information. Letters from colleagues who assert, in general, near verbatim terms, that the alien has made contributions and is at the top of his field are insufficient. The petitioner did submit materials from Duke Energy's website indicating that its "revolutionary" real time service regarding gas flow in its pipelines is the first of its kind. Such self-promotion by the company, however, is less persuasive that an independent evaluation of the service's significance by the general media, a trade publication, or even a competitor. Moreover, the letter from a "manager" at Duke Energy that includes significant amounts of boilerplate language does not adequately establish the petitioner's role in creating Duke's real time service.

[redacted] a software architect at eBusinessDesign, discusses the petitioner's work when they were both at WLA. Mr. [redacted] asserts that the petitioner "served in a critical capacity with WLA developing JAM-JAR (Java Application Management – Java Application Reporting)." Mr. [redacted] asserts that JAM-JAR was the "core revenue generating software for WLA." Mr. [redacted] further asserts that the petitioner's work at Duke Energy "revolutionized the way large scale web systems are built and profoundly affected the future design of similar systems because [the petitioner] demonstrated the innovations that are possible in this type of designs [sic] using JAVA." [redacted] a lead developer at Energy Solutions (formerly WLA), provides similar information, asserting, however, only that he is "confident that [the petitioner's] approach to web systems design using JAVA will serve as a model for future web system architecture."

None of the references provide an example of a system modeled after the petitioner's system. Moreover, as noted by the director, the above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim.

In response to the director's request for more independent evaluations and again on appeal, counsel argues that the petitioner's colleagues are in the best position to evaluate the petitioner's work. While such letters, depending on the content, can be useful in establishing the petitioner's role on a particular project, they cannot establish that he is known beyond his immediate circle of colleagues. Despite counsel's argument the petitioner does submit an independent evaluation from Dr[redacted], a professor at the University of North Carolina at Charlotte, on appeal. Dr.[redacted] asserts that the petitioner's on-line articles are very useful, that the petitioner was able to become one of the top Java specialists so quickly because he began working with Java when Java first began to gain popularity, and that his salary reflects that he is in the top one percent of his field. Dr.[redacted] does not indicate that he had ever heard of the petitioner's work prior to being approached by the petitioner for a recommendation. Rather, his evaluation is based on a review of the petitioner's resume, reference letters, and publications. While Dr. [redacted] evaluation is more independent, it is not indicative of the petitioner's national acclaim. Letters from an alien's immediate circle of colleagues are insufficient not because we doubt their credibility, but because they cannot demonstrate the alien's notoriety outside of those who work with him. Similarly, while Dr[redacted] is an independent reference, his evaluation is not evidence of the petitioner's notoriety in the field because he does not indicate that he had heard of the petitioner prior to being approached for a reference.

Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The record does not establish that the petitioner's program designs have been emulated or at least acknowledged as significant by other expert Java programmers outside the petitioner's immediate circle of colleagues such that we can consider his designs to be contributions 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.*

As stated above, the petitioner submitted evidence that he has authored two articles and a tip published on a web site affiliated with DevX. The director questioned whether DevX was a major trade publication or other major media. While the petitioner submitted significant documentation on DevX, he submitted no information regarding how an IT professional can get published on its site. Our review of the site, however, reveals that DevX does have an editorial screening process whereby prospective authors propose a topic to the editors and the editors review the proposals.[1] Even if we accept DevX as a major trade publication, however, the evidence submitted to satisfy

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[1] The website further states, however, that payment "varies depending on topic and experience," suggesting that not all contributors are among the very few at the top of the field.

each criterion must be indicative of national acclaim. Thus, the petitioner must not only establish the significance of the publication site, he must also demonstrate the impact of his individual articles. As stated above, the record contains e-mail inquiries from 18 individuals relating to his articles, many of whom appear to have little Java experience.

We acknowledge that the petitioner's troubleshooting articles have resulted in international responses due to the international nature of the Internet. Nevertheless, we cannot conclude that every individual providing programming assistance through the Internet has demonstrated national or international acclaim simply because the Internet allows them to communicate with people across the world. We note that the webopedia.internet.com information provided by the petitioner lists several Java links. DevX alone boasts 100,000 pages of content. We cannot conclude that each contributor to every Java-related Internet site has national or international acclaim in the IT field. The fact that 18 people had read the petitioner's articles and responded is not evidence of the author's acclaim. The record contains no evidence that other systems developers at major companies, especially the energy trading companies whose sites are allegedly modeled after the petitioner's, have relied upon those articles resulting in a new approach to Java programming.

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

The petitioner claims to have played a leading or critical role for Sempra Energy and Duke Energy. As noted by the director in his request for additional documentation, the petitioner submitted voluminous documentation regarding the reputations of both companies. As also stated by the director, however, we cannot presume the petitioner's acclaim from his association with a distinguished company or the significance of his area of IT.

Mr[redacted] a senior applications developer at Duke Energy Trading and Marketing, asserts that the petitioner played a "critical role in the development of creative, state-of-the-art web systems that have had a significant impact in the management of energy operations" and that he has "occupied key positions with his past employers designing unique and important web systems." Other references provide near verbatim information. Mr. [redacted] and M[redacted] both assert that the petitioner played a critical role in developing JAM-JAR for WLA. The letters are all from engineers and low-level managers. Their assertions cannot be considered the official position of these large companies themselves. Without letters from the highest level officials (officers or directors) at WLA (now Energy Solutions), Duke Energy Trading, or Sempra, we cannot conclude that the petitioner played a leading or critical role for any of those companies 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.*

Initially, counsel asserted that the petitioner receives wages of $125,000 and a bonus of between $8,750 and $18,750. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA

1980). The record contains no evidence to support the assertion that the petitioner receives such wages.

Even if we accepted that the petitioner does earn compensation of up to $143,750, the petitioner has not established that such compensation is significantly high remuneration in relation to others in the field. Initially, the petitioner submitted a letter from [redacted], Manager of Client Services at Advantage Human Resourcing. She asserts that the petitioner's wages and bonus represent "a high annual compensation package in comparison to other computer professionals in this highly competitive field." She does not, however, indicate what compensation high level members of the field receive. In response to the director's request for additional evidence, the petitioner submitted data from the Department of Labor reflecting that Level 2 computer systems analysts have a prevailing wage of $72,613 in zone 3, that Level 2 network systems and data communications analysts have a prevailing wage of $73,944 in zone 4, and that other Level 2 computer specialists have a prevailing wage of $70,949. Additional materials reflect that Level 2 workers are "fully competent." Finally, on appeal, Dr. [redacted] asserts that the petitioner's compensation package "puts him well over twice the annual income of new MS graduates in Computer Science and well over the average for all Information Technology workers with his education and experience."

As stated above, the evidence submitted for each criterion must be indicative of national acclaim. Thus, the petitioner must not merely demonstrate that he earns more than entry level programmers or even the average members of his field. Rather, he must demonstrate that he receives significantly high remuneration in comparison with all members of the field, including the most experienced experts in the field. The record does not contain such evidence. We note that information provided by the petitioner downloaded from www.cnn.com/CAREER/trends reflects that senior Java certification guarantees a six-figure salary. It remains, the record suggests that the petitioner is earning a fairly typical salary for IT professionals with senior Java Certification.

Finally, while the record reflects that IT professionals with senior Java certification are in demand, the record does not reflect that such certification automatically propels every professional with such certification to the very top of the field. In fact, in materials downloaded from www.cnn.com and submitted by the petitioner, Tom Ferrara, president and CEO of New York's CareerEngine.com, states that "I've seen so many paper (certifications) that couldn't hold a candle to somebody who didn't have a certification doing it for three years."

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 senior systems developer 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 senior systems developer, 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.