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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: [Redacted] Office: VERMONT SERVICE CENTER

Date: DEC 18 2003

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 Citizenship and Immigration Services (CIS) 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.


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 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.¹

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

¹ On the I-140 petition form, the petitioner indicated that it seeks to classify the beneficiary as an alien of extraordinary ability. In a cover letter accompanying the petition, the beneficiary states that he seeks "entry . . . as 'an Alien with exceptional ability in the sciences, arts or business.'" "Alien of exceptional ability" and "alien of extraordinary ability" are two separate immigrant visa classifications. The petitioner's reference to both classifications appears to result from some degree of confusion about the distinction between them. The director considered the petitioner to have sought the extraordinary ability classification. We note that a petition relating to exceptional ability must normally include an approved certification from the Department of Labor, which is not in the record. A petitioner may seek an exemption from this requirement in the national interest, but the petitioner must still submit Form ETA-750B, Statement of Qualifications of Alien. This form is also absent from the record. Thus, the petitioner has not properly filed a petition to classify the beneficiary as an alien of exceptional ability, although this decision is without prejudice to any future filing seeking that classification, provided the appropriate documents accompany the petition.

expertise are set forth in the pertinent regulations 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.

The beneficiary is the founder, chairman and CEO of the petitioning corporation. The beneficiary states "I am an internationally Inventor" (sic); clearly an adjective is missing before the word "Inventor" but we cannot discern what word the petitioner intended to use there. The beneficiary states "I have formed [the petitioning] Corporation to set in motion the creation of a personal security service for every individual citizen of the United States and, later, the rest of the world." The beneficiary expresses his belief that he "will drive the creation of many hundreds of thousands of new jobs," and establish "a complete new class of electronic equipment." In 1998, the beneficiary received a patent for "[a] security system compris[ing] a locatable portable electronic camera image transmission unit which both identifies its own location . . . while at the same time electronically photographing and otherwise recording the immediate scene."

The petitioner's business plan discusses a franchise operation involving the petitioner's technology. The business plan specifies that the company is "not involved in any equipment manufacture," but promises "to give young people the means to ensure their personal safety at all times":

Now, if you find yourself in an insecure situation, for the first time ever, by simply pressing a button, for example, you can contemplate that you will be able to take a picture of the problem and transmit that image elsewhere, the person receiving the image knows who you face, where you are and can communicate with you and also at the same time seek help.

The petitioner foresees Internet-based home monitoring to "permit a parent to monitor their child at play via a suitable integral designed handset." The petitioner indicates that the necessary software could be installed on a cellular telephone. The petitioner discusses corporate and military applications of this technology as well. The petitioner claims "[w]e had intended to launch GPNS from our Washington DC offices to the world at noon Tuesday, September 11th," 2001, but that morning's terrorist attacks "ceased our promotional efforts."

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's initial submission consisted primarily of its business plan and related commentary relating to its proprietary software. The director instructed the petitioner to submit further evidence to satisfy the regulatory criteria listed at 8 C.F.R. § 204.5(h)(3).

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

In 1987, the beneficiary participated in the "Eiffel Tower in Space" competition. Competitors proposed designs for a symbolic object to be placed in orbit around the earth, but which would be visible to observers on the ground. The beneficiary's proposal for such an object was a large orbiting clock. The petitioner states that he received "exceptional mention" for his design, but the record contains no documentation from the sponsoring entity. It is not clear that "exceptional mention" amounts to a prize or award, and the petitioner has not clearly explained how his plans for an orbiting clock, well over a decade ago, are directly relevant to his current enterprise.

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 beneficiary had co-written an article in the journal *Leonardo*, discussing his proposed orbiting clock. As published material about the alien, the petitioner submits a press release from the publisher of *Leonardo*, announcing the beneficiary's upcoming article. A press release, by itself, is not published material. The petitioner has not shown that any major national or international media carried the press release or otherwise publicized the beneficiary's plans for the orbiting clock.

The petitioner asserts that the *Leonardo* article itself qualifies under this criterion, but the beneficiary is a co-author of that article. The beneficiary's own writings are covered under a separate criterion. An alien's writings about his or her own work cannot qualify as published materials about the alien. For the same reason, the petitioner's letter to the editor of *The Times*, published in 1992, does not fulfill this criterion.

The petitioner submits a copy of the front page of a Dutch newspaper, *Wetenschap & Onderwijs NRC Handelsblad*, discussing the beneficiary's plans for the orbiting clock. The article does not include an English translation, as the regulations require, and the petitioner has not established that the newspaper constitutes major media rather than a purely local publication.

The petitioner also submits older articles discussing some of the beneficiary's past entrepreneurial ventures. A 1972 article in *Hampshire Industrial & Marine Journal* discusses the opening of expanded facilities in which the beneficiary's company would "undertake any type of container and trailer repair." A 1978 article from *Investor's Chronicle* uses the beneficiary as an example of an inventor who has had to abandon several projects due to a lack of starting capital. A 1981 cover story in *Infomatics* discusses the beneficiary and his company Irex, which he founded as a "matchmaker" to locate capital for aspiring entrepreneurs. The petitioner does not establish which of these publications are national or international rather than local business publications. None of these publications contain any discussion of the beneficiary's current work with the petitioning company.

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

The beneficiary holds four patents: one each in the United Kingdom and Japan, and two in the United States. The U.K. patent, from 1979, is entitled "Improvements in and relating to Blasting Apparatus." The other patents relate more directly to the beneficiary's current work. The granting of a patent establishes the originality of an invention or innovation, but not its major significance in the field. The petitioner, therefore, cannot satisfy this criterion simply by demonstrating that the beneficiary holds patents.

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

The beneficiary is the co-author of "The Space Chronometer: An Orbiting Clock for Humanity," published in *Leonardo* in 1989. The petitioner has not explained how this article about the beneficiary's unsuccessful efforts to construct the orbital clock establish the beneficiary's extraordinary ability or sustained acclaim in his present field of endeavor.

The beneficiary also presented a talk at a Telecom Trends International conference in Washington, D.C., on February 21, 2002. This event took place several months after the petition's December 2001 filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), requiring that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The director again instructed the petitioner to submit additional evidence, relating to the industry in which the beneficiary now works. In response, the petitioner states that he has submitted two letters addressed to him (as opposed to witness letters prepared for submission with the petition).

The petitioner states that one letter is from [REDACTED] whom later documents identify as the petitioner's executive vice president and chief operating officer. This letter is not in the record at present, although the record contains a subsequent letter from Mr. [REDACTED]. The other letter is from retired Air Force Colonel [REDACTED] Col. [REDACTED] thanks the beneficiary for attending an annual meeting of the U.S. Institute of Navigation, congratulates the beneficiary on his "many cogent and forward-thinking technical contributions and comments," and states "[m]y advice to you has always be[en] to emigrate to the United States. . . . I look forward to a time in the not too distant future when you receive well deserved recognition by your industry peers."

The director denied the petition, stating:

You are petitioning for yourself as one of the top CEO's in the world. You are in the personal security and industrial solutions fields. You are the CEO and founder of [the petitioning corporation]. This company was established on October 23, 2001. There are no current employees in your company. . . . You have not made major achievements in the CEO field yet.

On appeal, the beneficiary states "I did not set out to petition myself as one of the top CEO's in the world." The beneficiary states "[v]ery few know of my existence at this time because, having lost everything recently, I decided that it would be better not to make a big thing of the patents I own as to do so would bring in the idea that I would be suing everybody for my rights." The petitioner must, however, establish sustained national or international acclaim, as required by the plain wording of the statute and regulations. The beneficiary's admitted obscurity is not consistent with such acclaim. The beneficiary's own subjective opinion that he is "a person of outstanding ability" cannot override the statutory demand for "extensive evidence" of acclaim, or the regulations which require a broad variety of verifiable documentation.

The beneficiary asserts that his company "will, during the next year raise perhaps as much as several hundred million dollars and complete strategic alliances with the largest corporations on the planet. . . . [The petitioning company] is as big a project as you can imagine that will eventually involve every agency of government and every citizen of the United States of America." The beneficiary asserts that it will take "a decade or more" to establish himself as "a CEO of merit." As noted above, *Matter of Katigbak, supra*, requires that a beneficiary must be eligible as of the petition's filing date, in this case December 4, 2001. It cannot suffice for the petitioner to outline an ambitious business plan and speculate that, in ten years, the company will involve the entire government and population of the United States. The immigrant visa classification is for aliens who are at the top of their respective fields, not aliens who plan eventually to reach that level.

The petitioner submits a manuscript for the beneficiary's book, *The Universe is a Cloud*, to be published by the Léonard R. Sugerma Press (which was established specifically to publish that book). The book does not appear to relate directly to any of the beneficiary's past business ventures; instead, it explores the beneficiary's contention that "the Big Bang theory in Astrophysics is fatally flawed and will not stand up to the scrutiny of a logical mind." The beneficiary claims no formal education in astronomy or astrophysics.

Col. [REDACTED] in a new letter, praises the beneficiary's "ability to 'think out of the box.'" Col. Sugerma, whose association with the beneficiary spans over a decade, does not indicate that the beneficiary is acclaimed as a businessman or inventor. Instead, he indicates that the beneficiary "can, given sufficient time for him to promote his assets, bring great economic advantage to my State and the entire nation." [REDACTED] states that the beneficiary's "United States Patents are absolutely key in the areas of Homeland Security and National Defense," and that the beneficiary "has established erstwhile contacts with the United States Army and with various firms in the Defense, Telematics, Communications and Security industries." The record contains nothing from these industries and agencies to establish that the armed forces or defense industry share Mr. [REDACTED] opinions regarding the significance of the beneficiary's work.

The petitioner submits various documents concerning the beneficiary's difficulties with the British patent authorities, none of which establish sustained acclaim. The petitioner also submits a videocassette of a short segment shown on a BBC news broadcast, describing what appears to

be a prototype version of the petitioner's GPNS, including comments by the beneficiary, who states that the product will be on the market within two years. The broadcast is undated. The petitioner identifies the BBC program as *South Today*, which from its name appears to be a regional rather than national program.

The record indicates that the beneficiary has repeatedly gained some degree of attention at various stages in his long career, but the evidence as a whole does not indicate that the beneficiary currently enjoys sustained national or international acclaim in any particular field of endeavor, as the beneficiary seems to admit by stating that "[v]ery few know of [his] existence." The regulations do not permit the beneficiary's own expectations of future success to stand in place of documented evidence of existing acclaim. Given the evidence of record, we cannot find that the beneficiary qualifies for the highly restrictive visa classification which he seeks.

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 businessman or inventor 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 is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. 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.