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Citizenship and Immigration Services

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

File: [REDACTED] Office: NEBRASKA 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.

for 
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 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 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.

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 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 he has sustained national or international acclaim at the very top level.

The petitioner identifies himself as a "World Wide Web educator."

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). Regarding this criterion, the petitioner states "I hope to develop the technology of making fire-resistant building materials from the forest-waste as part of [the] requirements of a Ph.D. in Civil & Environmental Engineering from the Northeastern University." The petitioner's statement of what he hopes to accomplish, at some future time, as part of his doctoral requirements is not a major, internationally recognized award. The petitioner has since stated that his "expected

contributions to society may bring in such an award in [the] future,” but 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*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). As of the petition’s filing date, the petitioner was not even a doctoral student at Northeastern University; his application was still pending. The petitioner’s speculative assertion that he will eventually earn a doctorate from Northeastern University and ultimately win a major prize for his work with forest waste has no value as evidence. Subsequent to discussing the above plans regarding studying at Northeastern University, the petitioner moved from Massachusetts to Oregon. He does not indicate whether or not Northeastern University had accepted his application.

Furthermore, the statute and regulations require that the alien seeks to enter the United States to continue working in the area of claimed extraordinary ability. The record shows that the petitioner’s past experience has been in the field of computer science. The petitioner does not explain how research into “fire-resistant building materials” represents a continuation of his past work. Accordingly, the director requested evidence to show how the petitioner intends to continue his work in the United States. In response, the petitioner lists several research areas he seeks to explore, including avoidance of identity theft, a new gasoline/diesel additive to improve engine performance, and developing a new method of treating wooden picnic tables, which now “seem to be leaching arsenic,” in addition to his previously described plan to develop a non-flammable building material from forestry waste. The petitioner does not explain what any of these pursuits have to do with his proposed career as a “World Wide Web educator.” The petitioner has since stated “[e]ven though many experts stick to one field . . . I have successfully handled many fields of inquiry.” The petitioner must still establish sustained acclaim in some field; it cannot suffice to demonstrate lesser accomplishments in a series of loosely related fields.

Barring the alien’s receipt of a major international award under the one-time achievement clause, 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.

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

The petitioner states:

The Government of India deposes just one expert from an area of specialization to the Asian Institute of Technology, Bangkok. This deputation is not a routine deputation. Only in some years, depending on the merit of the experts desirous of visiting AIT, the President of India sanctions the deputations.

I was deputed during the summer of 1984 (possibly the first such expert on deputation) to the Division of Computer Applications.

The petitioner submits a copy of a June 2, 1984 letter from a deputy educational advisor of India’s Ministry of Education and Culture, formalizing the deputation of the petitioner and three other individuals “to the faculty of the Asian Institute of Technology, Bangkok” for “up

to three months each.” The petitioner submits no evidence to show that this deputation amounts to a national award. The letter makes no mention of the President of India, nor does it indicate that the deputation is any more significant than a routine educational exchange program.

In response to a request for further evidence, the petitioner states that his deputation “is more valuable than a nationally recognized award offered each year. In the total period of more than two decades, only nine experts were honored, myself being second in that sequence.” A letter from Professor R. Sadananda confirms that the petitioner was the second of nine individuals who have taught Computer Science under the plan, and that these individuals “are chosen following a vigorous selection process,” but there is no indication that the petitioner’s seven-week assignment is considered to be an award.

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 states:

I had been a member of the selection committees for senior level positions in the field of Computer Science & Engineering as listed below:

1. Selection of Software Maintenance Specialist for “The Power Engineers Training Society” (A Government of India Organization).
2. Selection of engineers for the “Defence Projects Cell” of the Department of Electronics, Government of India.

Letters pertaining to the above indicate that the petitioner participated in selecting new hires from pools of job candidates. The record is silent as to how the petitioner came to be selected, and the record does not show that only nationally or internationally acclaimed experts are called upon to review job applications in this way. It is also debatable whether reviewing a job applicant’s credentials and qualifications amounts to judging that applicant’s work.

Counsel has since argued that he was named to the above committees by very high-ranking officials of India’s government, but he submits no further evidence to establish that he was selected because of his reputation or acclaim in the field, rather than because he was a faculty member at a prestigious university.

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

The petitioner lists a scholarly article he co-authored in 1978, a project proposal from April 2002, and a conference presentation from November 2002. The petitioner submits no evidence to show that anyone else shares his opinion that these are contributions of major significance in the field. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting

the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). For the petitioner's contributions to have contributed to national or international acclaim, those contributions must have won recognition at a national or international level.

The director observed that the petitioner had not established how others in the field have reacted to the petitioner's work. The petitioner has responded by asserting "I have not sought the opinion of other members of the profession. I do my work and move on." However, national or international acclaim are, by definition, contingent on the opinions of other members of the profession. The petitioner's own confidence in the importance of his work cannot suffice in this regard.

As additional contributions, the petitioner cites two new (apparently unsolicited) communications that he has prepared in response to recent catastrophic events. The petitioner submits a copy of a report that he submitted to the Columbia Accident Investigation Board in March 2003. The Columbia disintegrated on February 1, 2003, more than a month after the petition's December 30, 2002 filing date. Hence, this contribution had not been made as of the filing date. The petitioner has not shown that NASA shares his opinions regarding the principal causes of the disaster, or has implemented his suggested remedies to prevent future incidents. NASA clearly has not implemented the petitioner's recommendation that shuttle flights can resume immediately. The record contains no evidence that this report is a contribution of major significance. The petitioner has never claimed that aerospace engineering is his field of endeavor.

The petitioner states that he has also sent an e-mail message to architect [REDACTED] on August 3, 2002, urging the use of "Green Architecture" in designing a new structure on the former site of the World Trade Center in New York City. The petitioner cites a *New York Times* article from February 13, 2003, reporting on the inclusion of "sky gardens" in suggested designs for the new structure. The petitioner submits no evidence to show that his suggestion was the driving force behind this design element, or that these gardens would never have occurred to the design teams without the involvement of the petitioner. Furthermore, the petitioner is not an architect and therefore any contribution he makes in this area would not be a contribution in his field of endeavor.

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

The petitioner's initial submission includes a list of articles. The petitioner has since submitted copies of many of the actual articles. The petitioner documents a handful of citations but submits no objective documentation to show how his publication record has earned him acclaim, or otherwise placed him at the top of the field.

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

The petitioner states that he "served as a member of the Senate Subcommittee on 'Department of Computer Science and Engineering' of the Indian Institute of Technology" (IIT), "started three new

technology departments in the Crescent Engineering College, affiliated [with] the University of Madras,” and “joined the Department of Computer Science, Framingham State College . . . as a Consultant on ‘CSAB Accreditation,’ before joining the department . . . as Associate Professor.”

The petitioner states that he “did not retain the papers” relating to his work on the committee at IIT. This claim is, therefore, wholly unsubstantiated. A letter from the principal of Crescent Engineering College states that the petitioner was a professor there from 1991 to 2000, serving at various times as head of the departments of Computer Science and Engineering, Electronics and Communication Engineering, and Information Technology. The chair of the Computer Science Department at Framingham State College states that the petitioner “has participated [in] many academic/program-related activities” and served as “an invaluable source of counsel for our students and faculty members” in his five semesters there. The petitioner submits nothing to establish the distinguished reputations of the other colleges where he has worked. Serving as a consultant and associate professor is not inherently a leading or critical role.

The petitioner states he “had been a member of expert committees for a number of prestigious establishments” such as Working Group V on Information Science and Technology, including eleven representatives of India’s government and academia and two representatives from the United States government. The record contains little information about these committees except to establish that the petitioner participated as claimed. A letter inviting the petitioner to serve on one of these committees is a “form” letter, with the petitioner’s name handwritten into a blank space in the otherwise typewritten document.

The petitioner states “[p]ossibly I am the first Indian to be authorized to use the encryption software by the US Patents and Trademarks Office” (USPTO). This software is part of the USPTO’s Electronic Filing System. USPTO documentation indicates that “[t]he Software includes cryptographic software subject to export controls,” and that users of the software warrant that they “are not located in, under the control of, or a national or resident of” certain prohibited countries, including the petitioner’s native India. Even if we assume that the petitioner is the first Indian national to receive this software, that this issuance was not due to error on the part of the USPTO, and that the petitioner’s use of the software does not violate the user agreement, the petitioner does not explain how his receipt of the software is indicative of sustained acclaim or extraordinary ability. The software merely allows electronic filing of patent documents. If the petitioner is the first Indian national to receive the software, this could simply be a result of the petitioner’s timing rather than any special recognition by the USPTO.

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 to have satisfied this criterion, but he has subsequently claimed that his salary exceeded, by 894 rupees per month, that of “every other engineering college professor in Tamilnadu state.” The petitioner has not shown that he was the only professor to receive this additional monthly sum. A letter from the principal of Crescent Engineering College indicates that the petitioner “was given the highest salary among the Professors in our College.” The same letter indicates that the petitioner was also a department head, in which case it would not

be unexpected that his pay would exceed that of non-department heads. Even if the petitioner was the highest paid engineering professor in Tamilnadu state, a claim he has not proven, the petitioner's compensation must be compared to a national rather than local or regional standard.

The director denied the petition, noting several of the deficiencies in the petitioner's evidence. The director acknowledged that the petitioner's interests cover a broad range of fields, but the director found "[t]here is no evidence that any of his ideas [in these fields] have been accepted by anyone." The director also found that the petitioner has "offered no detailed plan on how he would accomplish his vision of offering computer education courses over the web."

On appeal, the petitioner states that he is "appealing because the decision is injurious to the company Mohi-Al-Deen Technologies, Inc.," which is a company he established in order to conduct web-based education. The petitioner states "[t]he company is critically dependent on the [petitioner's] services." This claim, whether true or not, is irrelevant to the issue of eligibility. The statute and regulations indicate that the classification the petitioner seeks is available only to aliens of extraordinary ability who have earned sustained national or international acclaim in their respective fields. CIS cannot waive the very high standards of this extremely restrictive immigrant classification simply because the petitioner's business relies on his presence. The petitioner freely chose to establish his company when he was a nonimmigrant, with no guarantee that he would be able to remain in the United States to run the company. This action by the petitioner creates no obligation on the part of CIS to ensure that the petitioner remains in the United States.

The petitioner discusses his company's business plan. The petitioner states that this company will substantially benefit prospectively the United States "[t]he income from one patent is expected to be \$1,200,000 per year. We expect to get one patent every 3 months. The expected income . . . from 2004 to 2006 inclusive is \$23,400,000. All of this expected patent income is for charity." This argument is not persuasive because it is conjectural and highly speculative, relying on factors beyond the petitioner's control. We cannot approve this petition based on income the petitioner has not yet received, deriving from patents the petitioner has not yet received for innovations and inventions that may or may not exist yet.

The director found that the petitioner had not set forth coherent or plausible plans regarding his future activities. The petitioner, on appeal, misinterprets the statutory language, stating that if he had left the country and filed the petition from overseas, this issue would not have arisen. The issue raised by the director, however, was not that the petitioner had already entered the United States (adjustment of status within the United States is, legally, equivalent to "entry" as an immigrant). Rather, the director took issue with the apparent absence of a clear and feasible plan to bring the petitioner's goals to fruition. Simply establishing a company and declaring that it will become a major online university cannot suffice.

The director stated that the immigrant classification is "intended for those who are in that small percentage who have risen to the very top of a specific field." The petitioner claims that the regulations do not "indicate that the alien must be an expert in a single field only." The petitioner, referring to himself in the third person, asserts that his "attempts to patent in diverse areas should give him additional merit." The director did not state that the petitioner must be limited to a single

field; rather, the petitioner must be at the top of at least one field, instead of establishing lesser recognition in a variety of fields. The problem is not that the petitioner has worked in several fields, but rather that the petitioner has not persuasively shown that he is at the top of any of those fields. The fact that the petitioner seeks to conduct research in a broad range of disciplines does not entitle him to special consideration if there is no evidence of acclaim in any of those disciplines.

The petitioner provides updates on some of his pursuits. This information shows that a company in India has retained the petitioner's company as an "E-Consultant" to assist the company in selling products via the Internet. Internet sales are becoming increasingly common, and there is no evidence that this business arrangement (which did not exist until after the petition was denied and the appeal had been filed) indicates acclaim or extraordinary ability. The petitioner also submits a letter from the Columbia Accident Investigation Board, which states "I appreciate the analysis you provided. Your letter has been provided to our independent technical group, and they will be in touch with you if further information is needed." This appears to be nothing more than a polite "form" letter, acknowledging receipt of the petitioner's materials. The same can be said of a letter from Representative [REDACTED] chairman of the House of Representatives' Committee on Science. There is no evidence that the Board accepted the petitioner's conclusions or ever implemented any suggestions that were unique to the petitioner.

The petitioner also repeats the assertion his suggestion to incorporate plants in preliminary designs for the new construction on the site of the World Trade Center "seems to have worked, in that the designs did include gardens." This does not establish that the gardens were included because of the petitioner's suggestion. The petitioner submits no correspondence from the architects, crediting the petitioner with the idea, nor does the petitioner submit any evidence that gardens were never under consideration until he suggested them.

With regard to his plan to create fire-resistant building materials, the petitioner states "[j]ust give him three years of conditional residency if the Services could not offer him permanent residency, so that he could deliver on his promise." The circumstances under which an alien can receive conditional residency are specified in the statute. The director has no discretion to arbitrarily grant conditional residency to the petitioner in order to see whether or not he is able to realize his plans.

The director noted that the petitioner's web education company appeared to have no capitalization. On appeal, the petitioner indicates that the company opened a bank account on April 30, 2003, eight days after the denial date, which does not in any way show that the director's conclusion was incorrect when it was rendered on April 22, 2003. As of June 16, 2003, this account contained less than \$14,000. The petitioner's projections regarding future income carry no weight. A business plan submitted with a supplementary submission is undated, but it refers to the company's assets as of June 2003, indicating that this business plan did not exist (at least in this form) until several weeks after the May 2003 filing of the appeal. All in all, the petitioner's diverse plans are at best embryonic, and no amount of description of what the petitioner hopes to accomplish in the future can qualify him for an immigrant classification that requires sustained acclaim at the time of filing.

With regard to the absence of expert evaluations of the petitioner's work, the petitioner states that he did not approach any experts "because every expert I approach becomes an acquaintance. Thus, each and every statement I might produce becomes a statement of an acquaintance. I expected the Service to get my contributions evaluated by one or more experts of its choosing." A letter or statement is not automatically without value because it is from an acquaintance of the petitioner; the level of acquaintance bears consideration. An individual whom the petitioner contacts for the first time in order to obtain an evaluation is clearly not the same as a colleague whom the petitioner has known for many years. At any rate, the director had never indicated that CIS would "get [the petitioner's] contributions evaluated by one or more experts of its choosing." The burden is on the petitioner to provide evidence to support his claims, not on CIS to verify or refute those claims. While the director or AAO may choose, on occasion, to contact experts or seek to verify information through public sources such as the World Wide Web, they are under no obligation to do so, and the director's failure to consult independent experts in this matter is in no way a dereliction on the director's part. Furthermore, the regulations are clearly geared toward objective, verifiable evidence of acclaim; such evidence generally carries greater weight than individual opinions that would be found in witness letters and statements.

Regarding the evidentiary criteria at 8 C.F.R. § 204.5(h)(3), the petitioner submits a message from P.S. Satsangi, chairman of the Advisory Committee on Education, Dayalbagh, Educational Institute, Agra, India, who states "the secondments to the Asian Institute of Technology, Bangkok from Indian Universities, have been given to scholars of outstanding merit." The record shows that these "secondments" are short-term paid assignments, during which professors receive their standard salary plus a per diem to cover their expenses. The petitioner has not shown that these "secondments" are considered prizes or awards, rather than coveted assignments.

The petitioner submits a letter from [REDACTED] of Anna University, thanking the petitioner for agreeing to review a doctoral thesis. The letter is dated March 17, 2003, several months after the petition's filing date. This carries some weight but does not establish sustained acclaim as of the filing date. Clearly, the petitioner earned some degree of recognition through holding a faculty position at a prominent Indian university, and much of the evidence relates to functions that he performed apparently as a result of that faculty position.

The petitioner asserts that the director has relied on "hidden criteri[a]" and "shifting stands" relating to what evidence is required. The director has duly notified the petitioner of the regulatory requirements, i.e., that the petitioner must establish that he has earned sustained national or international acclaim in the small percentage at the very top of his field.

The petitioner makes other claims on appeal, which lack corroboration and support. The director had likewise found some of the petitioner's claims to be uncorroborated. On appeal, the petitioner states "[h]ow nice life would be if every action of an individual could be corroborated by independent evidence." The petitioner adds that he has no incentive to make false claims because his religious beliefs forbid false statements. The petitioner states that the director "should give credit for this criterion on the strength of the fact that a Muslim is not permitted to lie." We acknowledge and respect the petitioner's religious convictions. Nevertheless, it remains that, by law, the burden of proof is on the petitioner to support his claims. The regulation at 8 C.F.R.

§ 103.2(b)(2)(i) states that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. To waive these requirements on the basis of the petitioner's religious faith would be contrary to regulation, statute, and arguably the Constitution (although we readily acknowledge that jurisdiction on Constitutional questions rests with the federal judiciary and not with the AAO). It would clearly be an unconscionable violation to impose additional requirements or burdens on the petitioner on the basis of his faith. Fairness dictates, therefore, that his beliefs do not entitle him to special consideration.

We note that the petitioner entered the United States in July 2000, nearly two and a half years before he filed the petition in December 2002. If the petitioner has ever earned national or international acclaim, such acclaim is not sustained unless it has persisted during his time in the United States. The record, however, does not indicate that the petitioner has enjoyed the same level of prominence in the United States that he had formerly reached as a faculty member at a major university in India.

The petitioner has had a long and successful career in his field, and has set forth ambitious plans in a variety of fields. The petitioner has not shown, however, that he has achieved sustained national or international acclaim either in his principal field or in any of his other areas of interest. The petitioner's sincerity is not in question; the issue is the sufficiency of his evidence. It is important to observe that sheer quantity of evidence is not a determining factor in this regard.

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 web educator or otherwise, 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 petitioner's achievements set him significantly above almost all others in any particular 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.