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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, DC 20536



File: EAC-02-056-50111

Office: Vermont Service Center

Date: **DEC 24 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, Vermont Service Center. The Administrative Appeals Office (AAO), dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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. In a decision dated April 17, 2003, the AAO concurred with the director. On motion, the petitioner asserts that new facts overcome the AAO's concerns.

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 CIS 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 authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence that he had authored two articles and a tip published on an Internet web site affiliated with DevX, an on-line provider of technical information, tools and services for IT professionals. 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. The AAO reviewed the site, noting that the review revealed that DevX does have an editorial screening process whereby prospective authors propose a topic to the editors and the editors review the proposals. In a footnote, the AAO noted that the website further states that payment "varies depending on topic and experience," suggesting that not all contributors are among the very few at the top of the field. The AAO concluded that the petitioner must not only establish the significance of the publication site, he must also demonstrate the impact of his individual articles on a site boasting 100,000 pages of articles. The AAO acknowledged that the record contains e-mail inquiries from 18 individuals relating to his articles, which the AAO characterized as "troubleshooting," but concluded that communicating via the Internet was not necessarily evidence of national or international acclaim. The AAO noted that the record contains no evidence that other systems developers at major companies, especially the energy trading companies whose sites, according to the petitioner's references, are modeled after the petitioner's, have relied upon those articles resulting in a new approach to Java programming.

On motion, the petitioner challenges the AAO's conclusion that not every contributor to a site boasting 100,000 pages of content can be at the top of their field. The petitioner notes that *The Washington Post* and the *New York Times* Sunday editions are over 50 pages long. The petitioner is not persuasive. While the issue is not before us, it does not seem plausible that every reporter for a large newspaper is at the very top of the field of journalism. We consistently hold that an alien does not establish national or international acclaim simply by working for a distinguished organization. Regardless, the AAO did not "reject the merit" of the petitioner's articles because DevX contains too much content. Rather, the AAO noted the reality that DevX posts articles from authors of various experience levels and, thus, merely having an article posted on that site is insufficient in and of itself. As acknowledged by the petitioner himself, the significance of his articles is demonstrated by how useful they are to the field and how participating practitioners are able to benefit from the articles.

The petitioner asserts that the AAO unfairly noted the low experience levels of the 18 e-mail respondents after acknowledging the scarcity of experienced Java professionals. The petitioner asserts that the 18 individuals, while new to Java, were not new to the field of IT. The petitioner requests that the AAO review the articles, asserting that they are not merely "troubleshooting" articles, but discussions of "new innovative architectures."

While the AAO acknowledged a shortage of Java programmers, the AAO did not state, and the record does not demonstrate, that there are no other programmers working for the top IT companies who are experienced in Java. Nevertheless, we will consider the new evidence submitted. The petitioner's DevX articles are entitled, "Preventing Multiple Form Submissions" and "Updating Web Content Dynamically with Java." The petitioner also authored a "tip" entitled "Maintaining the Order of Inserting and Retrieving Java Objects Using Hashtable." On motion, the petitioner submits the full text for the two articles. The article regarding updating content with Java through push technology may reflect new programming proposals in Java. In addition, we acknowledge that most of the e-mail responses concern this latter article and claim to be relying on the petitioner's suggestions in their own programs. Moreover, the petitioner received an invitation to write articles for Inside Web Development from the editor of that site based on his perusal of the petitioner's article on preventing multiple form submissions. The request, however, is dated ten months after the petition was filed, and, thus, is not evidence of the petitioner's alleged acclaim as of that date. At best, it is consistent with the notion that the article itself, which was posted at the time of filing, may have had broad readership. Even if we conclude that the two articles were sufficient to minimally meet this criterion, it is only one criterion. The petitioner must establish that he meets three. For the reasons discussed below, the petitioner falls far short of meeting any other criteria.

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

While the AAO acknowledged that the record suggested a shortage of IT professionals certified in Java, the AAO concluded that the record did not support prior counsel's assertions regarding the scarcity of professionals who have mastered Java due to its complexity. The AAO noted that while the petitioner submitted an interview with James Gosling, 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. Gosling discusses how Java was designed to simplify these complexities.

The AAO also noted the following information contained in the record. Specifically, the petitioner submitted an article from informationweek.com, "As Java Makes Gains, More Developers Learn the Language." In this article, Mike Burk, 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, Elliotte Rusty Harold, 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++."

On motion, the petitioner characterizes the above discussion as "side tracked," and asserts that the evidence discussed above was submitted to show Java's growth and popularity. We find that the above discussion was warranted as the evidence referenced above directly contradicts prior counsel's assertions.

In addition, prior counsel asserted 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.” Prior counsel went on to allege that the petitioner coined the term “four tier architecture.” In support of this assertion, prior counsel referenced an article from *Intelligent Enterprise*, “Introducing SAP’s Internet Business Framework” by Rajeev Kasturi.

The AAO summarized some information in the article, which stated that three-tier architectures are giving way to four-tier models and provides a detailed discussion of four-tier architectures. As noted by the AAO, the article identifies SAP business documents (BDOCs) as such technology, but does not credit the petitioner with coining the term “four-tier” or contributing to the development of BDOCs. The AAO also noted that the record contains no indication that the petitioner ever worked for SAP or otherwise contributed to their business framework. The petitioner does not challenge these observations on motion.

The AAO also discussed the reference letters submitted by the petitioner and concluded that it is insufficient to simply submit letters from colleagues who assert, in general, near verbatim terms, that the alien has made contributions and is at the top of his field without providing specific examples of how the petitioner’s work has contributed to the field as a whole. The AAO concluded that self-promotional materials published by the petitioner’s employer are less persuasive than an independent evaluation of the petitioner’s innovations while working for that employer by the general media, a trade publication, or even a competitor.

The AAO acknowledged receipt of an independent evaluation from Dr. Michael Allen, a professor at the University of North Carolina at Charlotte, but noted that his evaluation is based on a review of the petitioner’s resume, reference letters, and publications. The AAO concluded that while Dr. Allen’s evaluation is more independent, his letter is not indicative of the petitioner’s national acclaim because he does not indicate that he had heard of the petitioner prior to being approached for a reference letter.

The AAO concluded that 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.

Finally, in addressing the petitioner’s articles on DevX, the AAO raised the concerns discussed in relation to the previous criterion, and stated that 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. The AAO concluded that such evidence was not in the record.

On motion, the petitioner asserts, “the discussion here is how my ‘scholarly articles are contributions of major significance to the field.’” The petitioner specifically references his

article on updating web content with "PUSH" technology and asserts that the e-mail responses constitute "unsolicited materials." The petitioner also asserts that it is "unjust" that the AAO noted the lack of evidence that other energy companies relied on his designs since the competitive nature of the business precludes such evidence.

We cannot ignore that the IT field is constantly moving forward at a fast pace with new innovations and that the Internet allows easy access to these innovations internationally. Not every innovation can be considered a "contribution of major significance." We cannot conclude that 18 e-mails from IT professionals with moderate Java experience reflects that the petitioner's technique using push technology is a groundbreaking advance in Java programming such that the field of Java programming has been significantly altered. Finally, we note that the petitioner's own references assert that his work has been the model for other companies. If the petitioner is going to rely on such assertions, he must provide objective evidence to support them.

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 acknowledged by the director and the AAO, the petitioner submitted voluminous documentation regarding the reputations of both companies. Both the director and the AAO, however, stated that CIS cannot presume the petitioner's acclaim from his association with a distinguished company or the significance of his area of IT.

The AAO discussed the letters from Sempra Energy and Duke Energy, concluding that they were all from engineers and low-level managers and that their assertions cannot be considered the official position of these large companies themselves. The AAO determined that without letters from the highest level officials (officers or directors) at WLA (now Energy Solutions), Duke Energy Trading, or Sempra, it could not conclude that the petitioner played a leading or critical role for the company as a whole.

On motion, the petitioner asserts that he provided a letter from Dan Logue, Vice President of WLA, and that programmers "do not get the exposures like a POP singer or a performing artist." The petitioner also notes that Duke Energy is seeking to patent his innovations.

A review of the record reveals that it does include a letter from Dan Logue, discussed by the AAO in relation to the contributions criterion. Mr. Logue provides his title as "technical consultant" for Energy Solutions. Only at the bottom of the letter, below his signature, does he claim to have founded WLA. Mr. Logue uses the same language as that used in another reference letter quoted by the AAO. Mr. Logue does not specifically explain how the petitioner played a leading or critical role for WLA. Moreover, the record does not establish that WLA enjoyed a distinguished reputation nationally while the petitioner worked there.

Regarding the petitioner's claim on motion that Duke Energy is seeking a patent for his innovation, we cannot ignore that it is inherent to the petitioner's job to design new technology. A patent is

simply an intellectual property right for innovations, regardless of significance. We cannot conclude that every IT professional whose work warrants a patent application plays a leading or critical role for the company seeking the patent, especially for a large distinguished company that holds numerous patents. The record contains no evidence regarding how many patents Duke Energy holds or how the petitioner's innovations compare with the other patents held by Duke Energy.

Finally, the level of stardom among the public attained by some performing artists is unrelated to the reasonable expectation that an individual who plays a leading or critical role for a company should be able to establish that he has recognition for that role among the highest officials of that company.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Initially, prior counsel asserted that the petitioner received wages of \$125,000 and a bonus of between \$8,750 and \$18,750. The AAO concluded that the record contained no evidence to support the assertion that the petitioner receives such wages. The AAO further noted that even if the petitioner had established a compensation of up to \$143,750, the petitioner had not established that such compensation is significantly high remuneration in relation to others in the field. The AAO further stated that the petitioner must not merely demonstrate that he earns more than the average members of his field, but 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 AAO noted that information provided by the petitioner downloaded from www.cnn.com/CAREER/trends reflects that senior Java certification guarantees a six-figure salary. Thus, the AAO concluded that that the petitioner was earning a fairly typical salary for IT professionals with senior Java Certification.

On motion, the petitioner asserts that the AAO used the incorrect standard in evaluating his salary. He submits a copy of a nonprecedent decision issued by this office concluding that evidence that the alien earned "well above" the median in the field was sufficient.

The record still remains absent any evidence of the petitioner's wages and bonus, such as Forms W-2 issued prior to the date of filing. Moreover, the petitioner fails to address the Internet information in the record cited above indicating that a six-figure salary is typical for those with senior Java Certification.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of April 17, 2003 is affirmed. The petition is denied.