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**U.S. Department of Justice**

Immigration and Naturalization Service

PUBLIC COPY

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

File: WAC 02 100 55963 Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2003

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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Elizabeth Gaynard
Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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 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.

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 Service regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a manufacturer of post-operative knee braces. It seeks to employ the beneficiary as manufacturing program manager in the petitioner's research and development ("R&D") department. The beneficiary received a doctorate from Northeastern University in June 2000, and at the same time began working for Paraform, Inc. While the beneficiary's resume lists Paraform as his present employer, it is clear from the record that the beneficiary left Paraform for the petitioning company at some point between May and December 2001. Counsel states:

> [The beneficiary] after extensive research into many areas of design and manufacturing finally selected agile production systems as his topic of research. [The beneficiary] has shown extraordinary and outstanding commitment to his fields of specialization and has been recognized by his peers and his research experience is marked by distinct accomplishments. **No one in the past** has studied these problems in a scientific way or formulated logical solutions that could be applicable in a practical sense. [The beneficiary] solved the complex problem by deriving an equation that is applicable to industrial problems in the design of agile production systems. . . .
>
> [The beneficiary's] contribution to the area of mass customization and agile production systems is extraordinary. This is a fast growing and upcoming area with significant importance to the US industry to stay competitive in the global manufacturing space.
>
> [The beneficiary's] unique expertise lies in the area of Mass Customization. The concept of mass customization focuses in satisfying a customer's unique needs with the help of new technologies such as Internet, digital product realization, and reconfiguration and optimization of production facilities.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

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

A certificate, dated August 23, 1979, from the Institution of Engineers (India), indicates that the beneficiary won "Best Paper (Electrical Engineering)" in the "Annual Paper Writing Competition for Engineering College Students' Chapters, 1978." The petitioner reached the age of 20 in 1978. University study is not a field of endeavor, but rather a period of training for future entry into a field of endeavor. Therefore, a prize in a competition open only to students does not place the winner at the top of any field. Furthermore, it is not clear that the beneficiary's current field of endeavor could be classified as "electrical engineering."

The beneficiary won an Award for Outstanding Scholarly Work in June 2000, at the time he completed his doctorate. This award is neither national nor international. Rather, consideration is limited to members of the Laboratory for Responsible Manufacturing at Northeastern University's Department of Mechanical, Industrial and Manufacturing Engineering.

Counsel states that the beneficiary received a "Best Team Performer" certificate from Paraform Inc. The actual certificate states, in its entirety:

> This Certificate is awarded to:
> **[The beneficiary]**
> For their election to "TEAM PARAFORMERS" for
> outstanding Team Work.
>
> Paraform appreciates and acknowledges your efforts in
> promoting a successful team environment.
>
> *CONGRATULATIONS!!!*

This is plainly a certificate that is available only to Paraform employees, and employer recognition for "promoting a successful team environment" is not by any reasonable standard a nationally or internationally recognized prize or award for excellence in the field of endeavor.

A December 21, 2000 letter from [redacted] president of the Academy of Motion Picture Arts and Sciences, addressed to Venkat Krishnamurthy of Paraform, Inc., states in part:

> It gives me great pleasure to inform you that the Academy Board of Governors has voted to award a Technical Achievement Award (Academy Certificate) to **you** for the creation of the Paraform Software for 3D Digital Form Development. . . .
>
> [Y]ou and a guest will be invited to attend the Scientific and Technical Awards Dinner and Ceremony.

Counsel notes that the beneficiary was a Paraform employee at the time of the above award. It is clear from the letter that the recipient of the award was Venkat Krishnamurthy rather than the beneficiary; the letter is therefore not evidence of the alien's receipt of any prize. A May 11, 2001 letter from [redacted] vice president of Worldwide Sales at Paraform, discusses the beneficiary's duties and praises the beneficiary's accomplishments but does not even mention the Academy Certificate, let alone indicate that the beneficiary played any significant role in the technical achievement that earned the award. Indeed, [redacted] states that the beneficiary was Paraform's "customer advocacy manager." There is no evidence that the beneficiary was involved in any meaningful way with the creation of Paraform's Software for 3D Digital Form Development. Therefore, counsel's inclusion of this award in a list of the beneficiary's awards and honors borders on misleading.

Counsel also lists three "honors" which are not prizes or awards and thus do not fall under this regulatory criterion. Specifically, these include an invitation to speak at a conference in Boston, and two training sponsorships at the Massachusetts Institute of Technology while the beneficiary was a doctoral candidate at nearby Northeastern University. None of these "honors" demonstrate any degree of recognition outside of the Boston area.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The beneficiary is a member of Sigma Xi, Alpha Pi Mu, and the Institute of Industrial Engineers. Counsel asserts that all of these associations require outstanding achievements of their members, but the record documents the membership requirements of only one of the three associations (Alpha Pi Mu). These membership requirements state:

> The National Constitution sets minimum scholarship requirements for membership eligibility. Individual chapters may establish requirements above this minimum level. The Constitution states that only those ranked in the upper one-fifth of the junior class or the upper one-third of the senior class can be considered for membership. Graduate students who have demonstrated exceptional scholarly achievement may, upon nomination by the department head, be considered for membership.

The above requirements indicate that membership decisions are made at the chapter level. The regulation requires that the achievements of prospective members must be judged by recognized national or international experts in their disciplines or fields. The petitioner has not shown that his local chapter is composed of recognized national or international experts. Clearly, the membership decision was made at the local chapter level rather than nationally. Also, anyone belonging to "the upper one-third of the senior class" or "the upper one-fifth of the junior class," or roughly one-eighth of the undergraduate student body and more than one-fourth of upperclassmen, can be considered for membership. It is not an outstanding achievement to be in the top third of one's senior class; by definition, one third of all past and present college seniors meet this requirement. Furthermore, college juniors and seniors are not yet working in any field; they are still paying for training and education, rather than being paid to put their existing skills to work.

The beneficiary's Sigma Xi membership certificate indicates that he "was duly elected a Member by the Northeastern University Chapter of the Society." Thus, as with Alpha Pi Mu, membership in Sigma Xi is decided locally rather than at the national or international level. An organization large enough to have local, university-based chapters is unlikely to be so exclusive as to admit only the top, nationally acclaimed experts in the field.

Sigma Xi and Alpha Pi Mu are student honor societies. While there is prestige in admission to such societies, we cannot find that such membership bestows or reflects national or international acclaim. That is, one need not have national or international acclaim to become a member, and the act of becoming a member does not cause one to have national or international acclaim. Membership in such societies cannot carry the same weight as membership in small, highly exclusive associations such as the U.S. National Academy of Sciences.

In response to a request for further evidence, counsel states that "Sigma Xi has over 75,000 members" while "Alpha Pi Mu currently has 37,705 members." These numbers confirm the large size that was already implied by the existence of campus chapters.

The petitioner's supplementary submission includes Alpha Pi Mu's constitution, which indicates that the society's active membership consists entirely of undergraduate and graduate students, thus automatically excluding from active membership established professionals who have completed their training and begun careers in their own right. Again, university study is not a field of endeavor. This same constitution refers to another membership class, honorary membership, which "may be granted to a person who has made an outstanding contribution to the field of Industrial Engineering and who has been proved worthy of the honor, upon review and approval of the Executive Council." There is no evidence that the beneficiary is an honorary member of Alpha Pi Mu. Sigma Xi's constitution, meanwhile, states that "[f]ull membership is conferred upon those who have demonstrated noteworthy achievements in research," but then goes on to define "noteworthy achievements" as publications or dissertations. Sigma Xi's admission of "nearly 5,000 new members" every year does not readily suggest a restrictive definition of "noteworthy achievements."

Despite a specific request by the director, the petitioner has not submitted any evidence to specify the membership requirements of the Institute of Industrial Engineers. Because counsel has explicitly stated that this membership falls under 8 C.F.R. § 204.5(h)(3)(ii), significant credibility problems arise if the petitioner is unable to substantiate that claim. The assertion that the beneficiary is a member "in good standing" conveys no information about the institute's membership requirements.

> *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.*

Counsel states [redacted] Northeastern University selected [the beneficiary] as a Technical Expert, to review and critique several (around 15) grant proposals submitted to the National Science Foundation. . . . His critical reviews were extremely useful in developing and strengthening grant proposals." This "judging" work is extremely limited and in no way indicative of sustained acclaim at a national or international level. The beneficiary was, at the time, a doctoral candidate at Northeastern University, and a request from a Northeastern professor does not reflect or convey any recognition outside of that university. Rather, the beneficiary's task appears to represent routine administrative work often delegated to graduate students. Providing editorial comments on not-yet-submitted grant proposals does not rank on the level of awards juries or, for that matter, deciding the actual outcome of grant proposals on behalf of the National Science Foundation.

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

The petitioner must show that the beneficiary is responsible for original contributions which, on their own merits, have earned the beneficiary national or international recognition entirely independent of any efforts to obtain an immigrant visa. The statute requires extensive documentation of acclaim. Any evidence arising as a natural consequence of the beneficiary's reputation (national awards, significant media coverage, etc.) carries substantially greater weight than evidence that did not exist until it was created specifically to support an immigrant visa petition.

Counsel states, with regard to this criterion, that the beneficiary's "expertise has guided US industries on their sales capability by Mass Customization, and agile production. [The beneficiary's] research and publication has guided students and scientist[s] in a new direction." Counsel cites the beneficiary's Award for Outstanding Scholarly Work certificate from Northeastern University, already cited above. Counsel adds that the beneficiary's doctoral thesis "is the first of its kind in the field of Agile Manufacturing and Mass Customization" and that the beneficiary has, accordingly, "reached a high level of achievement and recognition."

A number of letters from the beneficiary's employers and professors, while surely sincere in their assessment of the beneficiary's work, do not offer first-hand evidence that the beneficiary has earned recognition beyond his employers and professors. The petitioner submits an advisory opinion from [redacted] professor at the Rochester Institute of Technology [redacted] states that the beneficiary's "developments are certainly of great value for US industries and their competitiveness," and that the beneficiary's "various publications over a decade show solid theoretical knowledge in several aspects of industrial engineering and manufacturing." [redacted] states "[m]y opinion expressed in this letter is based on the documentation provided," through an intermediary, by "[t]he attorney representing" the beneficiary. [redacted] adds "I am in no position to authenticate these documents." Judging from these statements, it does not appear [redacted] he had even heard of the beneficiary before being asked for this letter. Otherwise, [redacted] would have been able to rely on the beneficiary's general reputation in the field, rather than on materials provided to him by counsel.

The only witness who claims prior knowledge of the beneficiary's work, but who does not claim to be the beneficiary's former employer, professor, or co-worker, is [redacted] project manager of the Wireless Network Group at Lucent Technologies, Inc., who states:

> [The beneficiary] is a professional colleague of international stature in the area of mass customization and agile manufacturing. I have known [the beneficiary] for the past three years and I am familiar with his research work and publications. . . .
>
> [The beneficiary's] contribution to the area of mass customization and agile manufacturing is extraordinary. . . . While this emerging area was still ill defined and amorphous, [the beneficiary] did commendable work in defining concepts, classifying different cases, and developing methodologies to address various issues. His work laid a solid foundation for later researchers to further advance this area.

> In fact, he deserves the credit for producing the first dissertation in this area. Today, [the beneficiary] is among the top two or three experts who are in the forefront of this area. His research has been outstanding.
>
> The omni-domain methodology to evaluating the agility of products, processes, production systems, and organizations is one of the important contributions of [the beneficiary] to the industry. This methodology is theoretically sound and at the same time it is scalable to real-world applications. [The beneficiary] has made significant contributions to US industry.

[redacted] does not state to what extent, if any, Lucent Technologies has implemented the beneficiary's methodologies. The record, indeed, is devoid of evidence that the beneficiary's methodologies – which are said to be his greatest contribution – are in use anywhere outside of companies where he has worked.

In response to the director's request for further evidence (as opposed to further claims) of the significance of the beneficiary's work, counsel asserts that the beneficiary "has helped several US industries to improve various manufacturing processes." Counsel does not actually identify these industries. We note that a single company is not equivalent to an "industry," and the burden is on the petitioner to establish that the beneficiary's methods have in fact been adopted throughout "several US industries." If the beneficiary's methods have in fact been so widely implemented, then ample evidence ought to exist from a variety of sources independent of the beneficiary's own employers and mentors.

Counsel asserts that the beneficiary "has been an active participant in the R&D project 'Hinge System Design'" at the petitioning company, and that a patent application is pending. An approved patent is not self-evident proof of major significance, much less a still-pending patent application. There is no indication in the record that this hinge design was even known outside of the petitioning company and the U.S. Patent Office, and it would appear premature to declare this design to be a major contribution before it is even introduced to the market.

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

The record contains copies of presentations, articles and book chapters co-authored by the beneficiary. The materials submitted do not include citation indices or other objective documentation to show that the beneficiary's published work has had greater impact or distribution than the scholarly writings of most others in the field. The very existence of such published articles is not *prima facie* evidence of sustained acclaim. Rather, scholarly articles are an avenue through which a scholar or researcher can achieve sustained acclaim, contingent on the field's reception and reaction to those articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time

academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

Subsequent to the director's request for further evidence about the beneficiary's published materials, counsel asserts that one of the journals to carry the beneficiary's articles "is widely read by . . . millions of companies all over the world." Counsel also states that the journal circulates 20,000 copies, without clearly explaining how 20,000 copies can be divided among "millions of companies." The journal has an Internet presence as well, but the petitioner does not demonstrate that the web site has millions of "hits" for each issue. Without such evidence, there is simply no factual basis for counsel's claim. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

Counsel states that the beneficiary "has played a critical role in industrial engineering particularly in [the] field of Mass Customization and Agile Manufacturing to help corporation[s] to grow and expand greater avenues for competition in today's market, and contribute [to] the economy. Due to his lead[ing] and critical role he has helped troubled businesses to revive and expand." Counsel does not identify any particular organization or establishment for which the beneficiary has played a defined leading or critical role. Industrial engineering, as an abstract, is neither an organization nor an establishment.

[redacted] R&D director for the petitioning company, describes the company and the beneficiary's role there:

> [The petitioner] manufactures both 'custom' and 'off-the-shelf' knee braces for orthopedic related problems. [The beneficiary's] doctoral research in the area of Mass Customization is a perfect fit at [the petitioning company].
>
> The first task [the beneficiary] undertook [at this company] was to thoroughly study the current processes in the areas of manufacturing operations. Upon concluding the study, [the beneficiary] created a detailed design of how we could improve our manufacturing productivity using the latest technologies he developed and researched as a doctoral student at Northeastern University, Boston, MA. We refer to this extensive project as "Reinventing the Factory." Based on this design and under [the beneficiary's] guidance, [the petitioner] has started aggressively redesigning all the manufacturing operations, starting with the assembly operations. All this is intended to streamline our shopfloor operations from beginning to end.

> . . . While this project is expected to run into several years, [the beneficiary] has demonstrated how we can realize higher productivity at each stage.
>
> The second project [the beneficiary] is spearheading is the optimization of supply chain operations. . . . To limit vendor costs and minimize inventories, we have started implementing the Epicor ERP (Enterprise Resource Planning) system. . . . This is a daunting task by itself. . . . [The beneficiary] has already suggested implementing Just-In-Time (JIT) purchase of materials so as to limit our inventories. . . . [The beneficiary] is seriously looking into ways of eliminating inventories all together. . . .
>
> Working closely with our designers, [the beneficiary] has brought in concurrent engineering to our process wherein designers will work with production people in the early phases of a project. . . . While designing assembly products, [the beneficiary] is guiding our engineers to design components based on the Poka-Yoke system wherein components will be assembled in 'mistake proof' manner thus eliminating assembly errors on the shopfloor.

Murali Sreeramagiri states that the petitioner "is a highly reputed company" but the petitioner submits no independent evidence of its distinguished reputation.

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

Counsel states that the beneficiary "is being offered an annual salary of $90,000 plus other incentives . . . due to his extraordinary ability." Leaving aside the lack of actual evidence that the beneficiary has ever earned this amount, the plain wording of the regulation requires that the petitioner show that the beneficiary's salary is "significantly high . . . in relation to others in the field." Simply stating the beneficiary's salary, and declaring it to be high, cannot suffice.

The director denied the petition, specifying certain flaws and shortcomings in the petitioner's evidence and explaining that the evidence, as a whole, does not demonstrate that the beneficiary is nationally or internationally acclaimed as a figure at the very top of his field. On appeal, counsel deems the director's finding erroneous, and states that "[a]ll the letters submitted . . . attest to the fact that [the beneficiary] is one of the few who has risen to the top in his field of endeavor." The petitioner can hardly be expected to submit letters that disagree with that assertion. It remains that witness letters can fulfill, at best, a supporting function. Primary weight must be accorded to objective documentary evidence that exists because of the beneficiary's acclaim, independently of the beneficiary's efforts to secure an immigrant visa.

Counsel discusses the evidence already submitted, expanding on or simply repeating previous arguments rather than rebutting the director's findings. Counsel asserts that the National Science Foundation and other bodies "have strongly advocated the importance of mass customization and agile manufacturing," but it remains that the beneficiary did not invent mass customization or

agile manufacturing; general assertions about these concepts cannot reflect acclaim upon the beneficiary as an individual.

The petitioner submits new letters on appeal. [redacted] founder and CEO of the petitioning company, states that the beneficiary has significantly helped his company, reducing inventory, increasing profitability, and generally improving the petitioner's manufacturing processes. The beneficiary's competence is not in question; the relevant issue is whether the beneficiary is a nationally or internationally acclaimed figure in his field. The petitioner's assertion that the beneficiary would be difficult to replace is not evidence of widespread acclaim.

The other new letters are, like the original letters, from present and former co-workers, long-term acquaintances, and individuals who know the beneficiary from his time in Boston. These letters do not, and cannot, establish that the opinions and impressions of these witnesses represent a consensus throughout the field, even among that vast majority of individuals who have not met or worked with the beneficiary. When the objective documentation in the record fails to show sustained acclaim, the petitioner cannot overcome this deficiency by selecting witnesses and submitting letters from them. The new letters, like the old, are filled with general praise of the beneficiary's talents but offer no specific, concrete examples of areas where the beneficiary's work has had a significant national or international impact. Assertions about the promise of future achievements, or speculation about improvements that may one day arise from the beneficiary's efforts, amount to conjecture and have no weight as evidence.

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 in the field of agile manufacturing 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.