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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: MAY 16 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)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

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

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

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

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

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, 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 Bureau regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a metallurgical engineer and researcher. 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.

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 petitioner submitted evidence that he is or has been a member of the American Society of Mechanical Engineers (ASME); a member of ASM International, The Materials Information Society; a member of the Institute of Metals and Materials Australasia, Ltd.; a senior member of the College of Mechanical Engineers of the Institution of Engineers, Australia; a fellow of the Institute of Forging Technology; and a member of the *Journal of Materials Engineering and Performance* Committee within ASM International.

The only information submitted initially about the requirements for membership in these organizations is a letter from ASME. The letter advises that members must have 12 years of experience in the engineering profession or teaching, five years of which have been in "responsible charge."

The director concluded that the petitioner had not established that the above organizations require outstanding achievements of their members. On appeal, the petitioner submits membership information regarding ASME fellows, the *Journal of Materials Engineering and Performance* Committee, the Advisory Technical Awareness Council of ASM International, and ASM International.

We cannot conclude that ASME's general membership requirement, a number of years of experience, even as a supervisor or manager, is an outstanding achievement. According to the materials submitted on appeal, ASM International membership is open to anyone. Counsel did not initially claim that the petitioner is a member of ASM International's Advisory Technical Awareness Council or that he is an ASM International fellow. Moreover, the record contains no evidence to support these claims made on appeal. Thus, the membership requirements for the council and fellowship are irrelevant. Further, we are not convinced that a journal committee is an association in the field as contemplated by the regulation. Finally, the record still does not contain the membership requirements for the remaining associations for which the petitioner has demonstrated his membership: senior member of the Institution of Engineers, Australia; fellow, Institute of Forging Technology; member, Institute of Metals and Materials, Australasia, Ltd.

In light of the above, the petitioner has not overcome the director's concerns regarding this criterion.

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 has refereed papers for the Institution of Engineers, Australia and serves on the 25-member editorial committee of the *Journal of Materials Engineering and Performance*. The director concluded that the petitioner had not documented the selection requirements for these positions. In response, the petitioner submitted evidence that members of the editorial committee are selected from nominations and volunteer interest forms in order to achieve a balance of topical interest areas and skills while maintaining an optimal size. We find that the petitioner meets this criterion.

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

Counsel asserts that the petitioner's 1988 Ph.D. dissertation and a presentation at a 1989 EUROMAT conference meet this criterion. The director noted that a Ph.D. dissertation is required to obtain a degree and the lack of evidence regarding the significance of the 1989 presentation at EUROMAT. On appeal, counsel asserts that a Ph.D. dissertation must be original and make "substantial contributions to the general field" in order to be accepted in the United Kingdom. Counsel concludes: "The paper presented at Aachen demonstrated only one of the techniques and methodologies."

Counsel's arguments do not overcome the director's valid concerns. The evidence submitted to meet each criterion must be evaluated as to whether it demonstrates that the petitioner is one of the very few at the top of his field and is indicative of national or international acclaim. Counsel concedes that original research is required of every Ph.D. recipient. We cannot conclude that every engineer with a Ph.D. is one of the very few at the top of his field. The record does not demonstrate, through citations or other evidence of his dissertation's influence, that his dissertation is any more significant in the field than other dissertations. Similarly, the petitioner has not demonstrated the impact of his conference presentation. Without evidence that his presentation was particularly influential above and beyond most conference presentations, we cannot conclude that presenting his work at a conference is indicative of national or international acclaim.

We also note that the record contains several reference letters. None of these letters identify any groundbreaking contribution to the field of engineering as a whole. Rather, they assert that the petitioner's skills and experience are rare in the United States and would benefit the national interest. Such claims are not relevant to the classification sought by the petitioner. While the response to the director's request for additional documentation includes employer letters referencing three contributions, we cannot conclude that employer letters can establish that the petitioner's contributions are recognized throughout the field in general. The record does not include letters from independent experts in the field evaluating the significance of these "contributions."

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

The petitioner claimed to have authored seven articles. As noted by the director, the petitioner submitted only two of those articles and failed to provide any evidence that his articles have been cited. On appeal, counsel asserts that the petitioner is submitting additional published articles. Those articles, however, are not in the record.

Regardless, we concur with the director's concern that the record lacks evidence that the petitioner's work has been cited. 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 Bureau'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.

As the record is absent any evidence that the petitioner's articles have been widely cited, we cannot conclude that he meets this criterion.

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

Initially, the petitioner submitted a 1998 job offer letter from Wyman-Gordon Company and a 1997 letter from [redacted] Director of Technology at Wyman-Gordon, asserting that the petitioner's skills are rare and discussing the importance of the aerospace industry. Mr. [redacted] does not assert or explain how the petitioner performed a leading or critical role for Wyman-Gordon. In response to the director's request for additional documentation, the petitioner claimed to have performed a leading or critical role for PTI Management Group, Inc. and American Axle and Manufacturing. [redacted] Human Resource Director for PTI Management Group, indicates that the petitioner joined that company in March 2000 and that they contract his services to American Axle and Manufacturing. She lists three contributions. These contributions also appear in a letter from [redacted] Director of Advanced Technology Development at American Axle and Manufacturing. Those contributions are:

A. Developed a method of design for the die progression used to forge pinions that eliminate the need to anneal the forging prior to machining.

B. Analyzed and modified the net shape differential pinion forming process to eliminate lapping on a critical surface. This was pivotal to American Axle gaining a significant amount of new Ford business.

C. Instrumental in the introduction of new alloy tool steels to prolong the usable life of our forging dies.

Both Ms. [redacted] and Mr. [redacted] conclude that the petitioner is "an asset" to their companies. The director concluded that the record did not establish that either PTI Management Group or American Axle and Manufacturing were distinguished. The materials on appeal overcome these concerns about American Axle and Manufacturing, which is a Fortune 500 company.

The above letters, however, are insufficient to establish that the petitioner plays a leading or critical role for either company (American Axle and Manufacturing had 11,725 direct employees in 2001) as a whole. The letters are not from top-level officials at the company, such as officers or directors. It can be expected that an employee or contractor who plays a leading or critical role for a company such that the role is indicative of national or international acclaim would be known to the officers or directors of

that company. Moreover, it is inherent in the field of engineering to design new, original mechanisms. We cannot conclude that competence in his field is evidence of national or international acclaim. We note that the letters do not even provide the petitioner's job title.

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

While not claimed by the petitioner or counsel, Ms [redacted] asserts that the petitioner's salary of $87,360 is high for his services. The record contains no evidence regarding the salaries of others in the petitioner's field, including the most experienced experts. As such, we cannot conclude that his salary is significantly high in relation to others in the field.

Finally, we note that on his Form I-140, the petitioner indicated that no immigrant visa petition had been filed by or on behalf of himself. A review of Bureau records, however, reveals that at the time of filing, the petitioner had filed two previous Form I-140 immigrant visa petitions on his own behalf, receipt numbers EAC-97-375-52449 and LIN-97-059-50238, and was the beneficiary of a third Form I-140, receipt number LIN-01-146-53219. The petitioner's failure to disclose these previous petitions reduces his overall credibility.

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 an engineer 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 an engineer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.