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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC 02 201 50409 Office: CALIFORNIA SERVICE CENTER Date: MAY 29 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: 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 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.

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 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 achieved sustained national or international acclaim are set forth in pertinent regulations at 8 C.F.R. § 204.5(h)(3):

> Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:
>
> > (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;

(iv) 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;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

8 C.F.R. § 204.5(h)(4) states "[i]f the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility."

The petitioner lists his occupation as "software engineer and consultant." The petitioner is the founder and chief executive officer of Openevents.com, which he describes as "a cutting edge, state of [the] art Internet portal for local and community events." The petitioner is also the treasurer and trustee of Bioinformatics.org.

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.

In his initial submission, the petitioner did not specify which of these ten criteria he claims to have satisfied. The initial submission consists of five exhibits:

1) A copy of a diploma from Tennessee Technological University, showing that the petitioner earned a master's degree in Biology in 1993;
2) A copy of an article from *The* [Nashville, Tennessee] *Commercial Appeal*, September 5, 1993;
3) A letter from Robert R. Bell, president of Tennessee Technological University;
4) A printout from http://bioinformatics.org/about, describing that organization; and
5) A 2001 pay stub from USInternetworking, Inc, indicating that the petitioner earned approximately $27.70 per hour there.

The petitioner asserts that he earned a "creditable" salary from USInternetworking, but the petitioner submits nothing to show that this salary places him at the top of the field or reflects sustained acclaim.

The newspaper article discusses [redacted] efforts to breed Washboard mussels in captivity. The article includes a photograph showing two individuals in a small boat. The caption reads "American Pearl Co. employees [redacted] (left) and [redacted] check a mussel net in Kentucky Lake near Camden, Tenn." The petitioner states that the newspaper erroneously listed his name as [redacted] This article, like the petitioner's biology degree, has nothing at all to do with the petitioner's subsequent career in the software/web industry.

In his letter, [redacted] states:

> The work [the petitioner] is doing uses cutting edge technology. He has created and continues to maintain a web site that provides users with access to a rich collection of resources regarding events on a selected topic. The web page enables one to search all events by subject categories and/or distance from one's home, and also results in increased attendance at these events. The service is simple to use and is an asset to persons searching for a particular type of event at a location close to their home.

Mr [redacted] does not discuss his own background or otherwise explain what expertise, if any, he possesses in the area of web design. A favorable letter from the president of the university that the petitioner attended is not persuasive evidence of sustained national or international acclaim.

The printout in the record describes Bioinformatics.org as "an international organization which promotes freedom and openness in the field of bioinformatics . . . by providing free and open resources for research, development and education. . . . The organization currently has 3063 registered members from around the world." The printout states that the "Board of Trustees is under development" and identifies the petitioner as its treasurer. The petitioner does not establish how he came to be named as

treasurer, nor does he establish that his duties as treasurer have any relation to the occupation in which he claims extraordinary ability.

The director informed the petitioner that the initial submission was insufficient to establish eligibility. The director instructed the petitioner, therefore, to submit further documentation. In response, the petitioner has submitted an additional four exhibits:

1) The organization plan for Bioinformatics.org;
2) A copy of the previously submitted letter from [redacted]
3) A letter from [redacted] IEEE Bioinformatics Conference chair; and
4) A program guide from the International LISP Conference, October 27-31, 2002.

The program guide shows that the petitioner delivered a 40-minute presentation on Bioinformatics.org as one of 44 invited speakers at the LISP Conference. Even if the petitioner had established the significance of this event (which he has not done), the conference had not taken place as of the petition's March 2002 filing date; indeed, it did not occur until a month after the director issued the request for further evidence on October 1, 2002. An otherwise ineligible petitioner cannot establish eligibility through developments that took place after the filing date. Aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

The organization plan for Bioinformatics.org is dated September 20, 2002, eleven days before the issuance of the director's notice. The plan explains the group's philosophy and identifies the petitioner as one of its founders. [redacted] of the Institute of Electrical and Electronics Engineers (IEEE) states:

> The Computer Society Bioinformatics section, of which I am the Technical Chair person, has recently appointed [the petitioner] as the technical manager to create the IEEE Computer Society's Bioinformatics Portal website. . . .
>
> [The petitioner] is also one of the founders of bioinformatics.org, which is one of the best portal website[s], if not the best, [in the] bioinformatics field. This feat itself is [an] outstanding achievement [on] its own, and is internationally recognized.

Ms. [redacted] letter is dated October 9, 2002. She does not specify how "recently" the petitioner received his appointment from IEEE.

The statute requires "extensive documentation" of sustained national or international acclaim, and the regulations at 8 C.F.R. § 204.5(h)(3) call for a variety of documentary evidence of such acclaim. A letter from one of the petitioner's clients, calling the petitioner "internationally recognized," cannot serve in lieu of such documentary evidence.

Apart from a copy of [redacted] previously submitted letter, the petitioner's response to the director's notice contains nothing about Openevents.com.

The director denied the petition, stating that the petitioner has failed to submit "any clear evidence of sustained national or international acclaim." The director listed the submitted exhibits, but stated that the petitioner has not explained how any of these exhibits serve to establish that the petitioner is nationally or internationally acclaimed at the very top of his field. The director noted that some of the exhibits have no apparent bearing at all on computer science, which is the petitioner's claimed area of extraordinary ability.

On appeal, the petitioner asserts that his status "as a founder [and] trustee of the website/international organization bioinformatics.org . . . is comparable evidence" as contemplated at 8 C.F.R. § 204.5(h)(4). The petitioner does not explain why the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to his occupation, a condition which is necessary to trigger the "comparable evidence" clause. The petitioner cannot rely primarily on "comparable evidence" if the criteria do, in fact, readily apply to his occupation but he, individually, is unable to meet them.

The petitioner asserts that Bioinformatics.org "actually is the best, if not the only [web site] in this subject, in the world." At best, the petitioner's role with Bioinformatics.org satisfies one of the ten regulatory criteria, specifically 8 C.F.R. § 204.5(h)(3)(viii), evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner's claim of extraordinary ability cannot rest entirely on his role in founding Bioinformatics.org, regardless of the amount of material he submits pertaining to that organization. The several exhibits that the petitioner submits on appeal pertain to Bioinformatics.org, and to the field of bioinformatics in general, but these materials do not mention the petitioner, let alone establish his acclaim in the field. The petitioner has not demonstrated that bioinformatics is such a unique field that he should be exempt from the standard evidentiary criteria, and allowed to base his claim almost entirely on the role he plays with Bioinformatics.org.

The petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. The petitioner must show that a case involves facts or issues of law which cannot be adequately addressed in writing. In this case, the petitioner has shown no cause for oral argument; the petitioner simply states that oral argument would allow him to "better present [his] case." Consequently, the petitioner's request for oral argument is denied.

Other assertions that the petitioner makes on appeal are of peripheral importance, such as the petitioner's assertion that his Biology degree is relevant to his present work, because "bioinformatics is a discipline that merges computer science and biology." It remains that holding a degree in a given field does not establish sustained acclaim or extraordinary ability in that field or any related field.

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 in bioinformatics or the computer sciences 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 his field at a national or international level. The petitioner has submitted no evidence to satisfy any of the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3). 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.