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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass., 3/F

425 I Street, N.W.

Washington, D.C. 20536



File: WAC 01 276 50948

Office: California Service Center

Date: **NOV 19 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)

IN BEHALF OF PETITIONER:



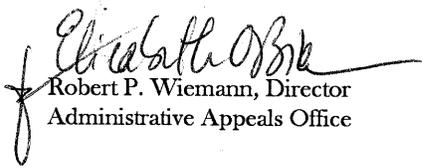
INSTRUCTIONS:

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.

  
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, a software products development company, seeks to classify the beneficiary 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 that the petitioner had not established that the beneficiary qualifies 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 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.

This petition, filed on July 20, 2001, seeks to classify the beneficiary as an alien with extraordinary ability as a research and development engineer. At the time of filing, the beneficiary was working for the petitioning entity as a Senior Software Engineer. The statute and regulations require the beneficiary's acclaim to be sustained. Documentation in the record reflects that the beneficiary has been working in the United States since 1998. Given the length of time between the beneficiary's arrival in the United States and the petition's filing date, it is reasonable to expect the beneficiary to have earned national acclaim in the United States during that time. The beneficiary has had ample time to establish a reputation in this country.

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 qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, it 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.*

On appeal, counsel states that the beneficiary's postdoctoral fellowships at the Indian Institute of Science (1991 to 1994) and the University of Waterloo (1994) would satisfy this criterion. Postdoctoral fellowships represent advanced scientific training programs for recent Ph.D. graduates rather than nationally or internally recognized prizes or awards for excellence. We note here that more experienced scientists (such as associate professors and full professors) who have already completed their postdoctoral training are excluded from consideration to receive such fellowships. Further, it is a routine practice for a postdoctoral fellow to be overseen by a more experienced professor. For example, in the beneficiary's case, Professor [REDACTED] states: "[I] invited [the beneficiary] to engage in further research under my supervision as a Postdoctoral Fellow in the Department of Combinatorics and Optimization, University of Waterloo..." The disbursement of financial support for such fellowships is a standard practice in the scientific community and the receipt of fellowship awards does not elevate the beneficiary to a level above almost all others in his field.

*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 submitted three letters from the managing editor of the *Journal of Graph Theory* dated March 24, 1991, May 4, 1992 and June 30, 1992. The March 24, 1991 and June 30, 1992 letters "acknowledge receipt of [the beneficiary's] report on the manuscript[s]" he was requested to review. These two letters confirm the beneficiary's participation as journal referee. Peer review of manuscripts, however, is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of this kind does not demonstrate that the beneficiary has earned sustained national or international acclaim at the very top of his field. This issue will be further discussed below.

The remaining journal letters initially submitted attempt to solicit the beneficiary to perform manuscript evaluations. The May 4, 1992 letter from the *Journal of Graph Theory* states: "We would greatly appreciate your refereeing this paper... Please acknowledge that you have received this paper and plan to referee it... Otherwise, please return the enclosed material as soon as possible, preferably with a suggestion for alternate referees."

Also submitted were two virtually identical letters (dated April 3, 1992 and December 6, 1994) from the editor of *Journal of Combinatorial Theory*. These letters state:

The above-mentioned paper has been submitted to the *Journal of Combinatorial Theory* (Series B) for publication. We would be grateful if you would referee it for us.

In order to keep the journal running smoothly, we would appreciate some indication from you as to when we might expect your report. The form below may be used for this purpose.

Should you decide not to referee the paper, would you please return it directly to us, so we may consult someone else.

We note here that both of the letters still have the lower notification form attached, suggesting that the beneficiary did not respond to the editor's requests. Regardless, the record contains no documentary evidence confirming that he actually completed these two reviews.

A letter from the editor of *Discrete Mathematics* (dated December 18, 1995) states: "The above manuscript has been submitted to our journal for publication. May I ask you kindly to referee it, or to recommend a suitable person who could do so?"

On appeal, the petitioner submits a letter from *Discrete Mathematics* confirming that the beneficiary has refereed two manuscripts for that journal.

It is important to note that all three of the above journals were willing to accept an alternate manuscript referee. Further, it is common knowledge that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is a routine practice in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the beneficiary apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

Finally, the statute and regulations require the beneficiary's acclaim to be sustained. We cannot ignore the absence of evidence of the beneficiary's involvement in the peer review process since early 1996.

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

The petitioner submitted several witness letters in support of the petition.

Dr. [REDACTED] Vice President of Silicon Technology, Sequence Design, Inc., states:

As an academician, [the beneficiary] worked in discrete mathematics and foundations of computer science. For the past four years, he has been actively engaged in solving practical problems in engineering, in particular, computer engineering and operations research. At

Sequence Design, [the beneficiary] has been working on two electronic design automation (EDA) tool projects, i.e. high-efficiency design tool and high-yield design tool.

\* \* \*

[The beneficiary] has been in charge of the design, implementation, and maintenance of the capability that receives high-level chip concept from integrated circuit designers to come up automatically with a high-efficiency chip floor plan. The output generated by [the beneficiary] paves the road to a detailed chip design that can be manufactured with lower cost.... The work is based on the graph partitioning and simulated annealing algorithms that were developed by [the beneficiary] at Sapphire Design Automation and then at Sequence Design.

Dr. [REDACTED] Vice President of Research and Development, Sequence Design, Inc., credits the beneficiary with developing several critical components of his company products. The beneficiary may have benefited various projects undertaken by his employer, but a major contribution beyond the scope of his company's projects has not been demonstrated. The petitioner must show not only that the beneficiary's innovations are important to his own company, but that they have generated widespread attention throughout the semiconductor industry.

Dr. [REDACTED] Associate Professor of Mathematics, Vanderbilt University, claims that he has never worked with the beneficiary. Dr. [REDACTED] states:

[The beneficiary's] academic research work is in the area of graph theory. Graphs are abstract models of networks, and many questions in transportation or computer networks can be addressed using techniques from graph theory. [The beneficiary's] research output was concerned with the problem of graph reconstruction. This is an old and still unsolved problem, first formulated back in the 1940's by the famous U.S. mathematician [REDACTED] and his student [REDACTED]. Some important algebraic techniques for handling a variant of the original problem known as the Edge Reconstruction Problem were developed in the 1970's, beginning with a seminal paper by [REDACTED]. Much of [the beneficiary's] work involves some nice extensions and applications of these algebraic techniques.

\* \* \*

[The beneficiary] also asked me to address the quality of the places where he has worked. First, let me comment on the Department of Combinatorics and Optimization at the University of Waterloo in Ontario, Canada. I should say that my own Ph.D. is from this department.... The [department's] reputation was built on the fact that it was able to hire Professor [REDACTED] one of the founders of modern graph theory, who also was one of the famed British codebreakers of World War II.

[The beneficiary] has also worked at the Ohio State University in Columbus, Ohio. This is also a well-known center for combinatorics and it is known in graph theory circles

particularly because of the presence of Professor [REDACTED]. The [REDACTED] Graph Minors Theorem, of which Professor [REDACTED] is one of the discoverers, is the most important result in graph theory in the past thirty years, and has important applications in computer science.

Dr. [REDACTED] letter bolsters the director's conclusion that the beneficiary's mathematical research findings, while "notable," would not rise to the level of contributions of major significance. Much of the letter from Dr. [REDACTED] is devoted to individuals who have demonstrated contributions that far exceed those of the beneficiary. The overall tone of Dr. [REDACTED] letter indicates that the beneficiary's achievements in the field fall well short of those of Dr. [REDACTED].

Dr. [REDACTED] now a Professor of Mathematics at Claude Bernard University in France, supervised the beneficiary's postdoctoral research for several months at the University of Waterloo. Dr. [REDACTED] states: "In a survey article on the reconstruction problem that I wrote for the 1992 Proceedings of the British Combinatorial Conference, I included several of the results obtained by [the beneficiary]. I was impressed by the quality of [the beneficiary's] work..."

Dr. [REDACTED] Professor of Mathematics, Villanova University, describes Dr. [REDACTED] as "one of the world's leading experts." Dr. [REDACTED] refers to Dr. [REDACTED] survey article, "Graph Reconstructor's Manual," as "standard reference material for all researchers working in graph reconstruction." Counsel argues that this is "perhaps the most compelling piece of evidence" pertaining to the beneficiary's "impact on the academic field." While Dr. [REDACTED] statement might demonstrate Dr. [REDACTED] contribution and international stature, it certainly does not place the beneficiary at the same level. We acknowledge that the beneficiary's published findings have gained a certain degree of attention in his field; however, it has not been shown that the beneficiary's results cited in Dr. [REDACTED] survey article, rather than Dr. [REDACTED] own observations, were widely viewed as unusually influential. Reputation by association cannot suffice to demonstrate that the petitioner himself has earned national or international acclaim.

The letter from Dr. [REDACTED] Professor of Computer Science, Tel Aviv University, lends further support for the director's conclusion. Dr. [REDACTED] states: "One can find from his papers that he is gifted with a strong intuition which enables him to pose some challenging conjectures, which may play a very important role towards the solution of the reconstruction conjectures." Dr. [REDACTED] describes the beneficiary as a "promising mathematician." The petitioner, however, must demonstrate that the beneficiary has already earned national or international acclaim for his research contributions. With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the beneficiary's work, rather than how his past efforts have already had a major impact far beyond the original contributions normally expected of a well-qualified research and development engineer or a doctoral student at a respected university.

Dr. [REDACTED] Professor of Computer Science at the University of Manitoba, states:

[The beneficiary] first contacted me when he was a graduate student in India, regarding

possible Ph.D. topics in the area of graph reconstruction (an area of mathematics which is one of my specialties). He did his Ph.D. in this area.... He brought new insight into the problem of graph construction, and was able to prove some new and important theorems. He sent copies of some his papers to me. I found them excellent. I was managing editor of *Ars Combinatoria* at the time. One of his papers was published there. Others were published in the *Journal of Combinatorial Theory*, *Discrete Mathematics*, and the *Journal of Graph Theory*.... [The beneficiary] has done truly outstanding work in these papers, of an international caliber.... Anyone working in these areas will learn of [the beneficiary's] work.

Many of the individuals offering letters of support, including Dr [REDACTED] mention the beneficiary's authorship of articles published in respected journals. The beneficiary's authorship of published articles may demonstrate that his research efforts yielded some useful and valid results; however, it is apparent that any article, in order to be accepted in a scientific journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a major contribution to his field. The petitioner's published work falls under a separate criterion.

For the above stated reasons, we find that the beneficiary has not demonstrated any specific scientific contributions that have been unusually influential and acclaimed within the mathematics or computer engineering fields.

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

The director found that the petitioner's evidence was sufficient to satisfy this criterion.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a department of a distinguished organization or establishment, the petitioner must establish the reputation of that department independent of the organization as a whole.

The director found that the capacity in which the beneficiary has served at various universities and institutions did not amount to a leading or critical role. The director stated: "These are essentially supporting roles." We concur with the director's finding and note that counsel does not challenge the director's statements on appeal. A review of the roles and responsibilities of several of the witnesses from institutions where the beneficiary has served shows that their roles and responsibilities far exceeded those of the beneficiary.

On appeal, counsel argues that the beneficiary's presentation of findings at scientific conferences constitutes other comparable evidence of the beneficiary's eligibility under this visa classification. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the beneficiary's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien's field. Of the ten criteria, at least eight readily apply to the beneficiary's occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence. Even if we were to consider the beneficiary's conference presentations, the record contains no evidence showing that the presentation of one's work is a rarity in the beneficiary's field, or that participation in his conferences was a privilege extended only to top mathematicians/computer scientists.

An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. If the beneficiary's contributions to mathematics and computer engineering are not widely praised outside of a small group of graph theorists and his professional associates, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of the field. We cannot ignore that many of the petitioner's witnesses, such as Drs. [REDACTED] appear to have earned considerably more prestige and authority in the scientific community. A simple comparison of their achievements with those of the beneficiary shows that he has not yet amassed a record of accomplishment placing him at or near the top of his field. For example, their publication records far exceed that of the beneficiary's and they have held positions of much greater responsibility.

In sum, the evidence offered by the petitioner does not establish that the beneficiary has earned international acclaim, or national acclaim in the United States, Canada, or India. The fundamental nature of this highly restrictive visa classification demands comparison between the beneficiary and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientist whose research has been published, or who has earned the respect of his colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from well-known figures in the field, without reaching the top of that 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, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that the beneficiary meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself as a research and development 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 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 the beneficiary's 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.