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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 112 50043 Office: CALIFORNIA SERVICE CENTER Date: FEB 10 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

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 sustained national or international acclaim and recognition in his or her field of expertise are set forth in the pertinent regulations 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.

Counsel states "[t]hrough his almost twenty years of successful career of engineering, [the petitioner] has occupied very high positions in the Korean military as well as in some civil institutions of Korea. . . . most of the time, he has been employed as a Commissioner at Taejon District Office of Military Affairs of [the] Republic of Korea." Counsel indicates that the petitioner is currently "a supervisor of the Installation Department" at Fujitsu Network Services.

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 relevant criteria will be discussed further below.

The petitioner's initial submission contained no attempt to discuss the ten criteria. Instead, counsel has provided a list of the petitioner's claimed achievements:

1. [The petitioner] established the Computer System for the entire resources of the United States and Korean military forces.

2. He set up the Computer System, so-called "Tandem Non Stop System," which could potentially mobilize the entire reserved military forces.

   For developing, directing and supervising of the above system (first time in the history of the Korean military) the alien had available annual budget of $40 million.

   Later on, [the petitioner] improved the above system into "On Line System" which was able to connect the U.S. and Korean military forces.

3. In order to analyze the best use of the Korean territory for the military purposes, [the petitioner] computerized all the land occupied by the Korean government, the civilians, and the United States military forces.

4. The alien developed the (computer) system for Chungnam National University of Korea, which has been able to control the students' activities, grades, and attendance.

The above list is taken, essentially verbatim, from an employment certificate in the record. The record contains nothing at all from any source within the United States Department of Defense to verify that the petitioner has performed any work on its behalf, in Korea or elsewhere.

Counsel adds that another sign of the petitioner's extraordinary ability is that, after working for Fujitsu Network Services "only for six months, [the petitioner] has been promoted into a Supervisor of the Installation Department." [redacted] district installation manager at Fujitsu Network Services, describes the petitioner as a "punctual" employee who has "excellent problem solving skills," and who is "willing to take on any task or duty assigned."

The petitioner submits academic documents and certificates confirming that he was employed by the Korean military. The petitioner's initial submission also includes a copy of a notice, indicating that he had been scheduled for a removal hearing at the Immigration Court in San Francisco on November 14, 2001. The record contains no further documentation to reveal the outcome of this hearing.

Nothing in the petitioner's initial submission demonstrates that he has earned sustained national or international acclaim in his field. Consequently, on September 16, 2001, the director instructed the petitioner to submit further evidence. The director listed the ten criteria found at 8 C.F.R. § 204.5(h)(3) and observed that the petitioner must meet at least three of them. The director also instructed the petitioner to specify his "exact field of endeavor," which was not entirely clear from the petitioner's initial submission.

In response, counsel states that the petitioner "is known for his extraordinary accomplishment in the field of computer science and in network telecommunication." Counsel repeats the list of criteria from 8 C.F.R. § 204.5(h)(3), but counsel does not state which of these criteria the petitioner supposedly meets. Counsel states:

> Most of his achievements were with working with Republic of Korea Military's special engineering team. At this special assignment, [the petitioner] developed efficient ways for the Korean Military to communicate with United States armed forces without outside personals [sic] interference or detection of the communication lines.

> To the military, this development is one of the most brilliant discoveries. This material can not go into details and into the hands of the public since it is operated and owned by and only between the Republic of Korean Military and the United States armed forces.
>
> Nevertheless, [the petitioner] also invented and wrote about the non-classified material of his inventions. In the book called Thinning Algorithm, [the petitioner] wrote about the basic concepts to one of his many invention/discovery. Although the book does not reveal all parts of his inventions but it is useful to the companies that market in the field of telecommunications.
>
> Moreover, we are submitting the following to prove [the petitioner's] extraordinary ability:
>
> 1) Registration of University
> 2) Certificates of [the petitioner's] educational background
> 3) Certificate of Master's Degree
> 4) Certificate of Assignment
> 5) Publication of book, Thinning Algorithm

The petitioner's "book" is, in fact, his master's thesis. This and other documentation regarding the petitioner's university education does not show extraordinary ability, because one does not earn sustained acclaim simply by virtue of attending a university and receiving a degree. The remaining documentation confirms his employment with Korea's military, but it does not establish or imply acclaim. Counsel's assertion that the petitioner's most important work is classified merely reinforces the conclusion that the petitioner has not earned sustained acclaim for his work. It is generally difficult to become widely known for work that cannot be disclosed or described in any significant detail.

On March 5, 2002, the director allowed the petitioner yet another opportunity to submit evidence to meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). In response, for the first time, counsel addresses the criteria.

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

Counsel states:

> There is no documentation of [the petitioner's] receipt of nationally or internationally recognized prizes . . . because he was a government officer handling military secrets. Article 1 is a kind of award granted by the president of Republic of Korea in recognition of [the petitioner's] contribution to improve the computer software and hardware, which enabled an efficient and proprietary method to activate the reserve military forces and servicemen. The title of the permanent computer commissioner of the government of Korea, itself, is the supplementary prize.

The attachment that counsel identifies as "Article 1" is a translated certificate, attributed to the President of Korea, which indicates that the petitioner was "awarded to be a permanent computer commissioner of the government of Korea for the excellent tasks of developing computerized operation." The assertion that the petitioner was "awarded" a particular job or job title is not tantamount to his receipt of an actual prize or award.

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.

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.

As evidence under both of these criteria, counsel cites a certificate indicating that the petitioner was assigned "as a director of Management-Information Department of San-Hark Cooperative Association." The record contains no further information about the assignment, the association, or the membership requirements for that association.

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.

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

Counsel states that evidence under these criteria cannot be submitted owing to the classified nature of the petitioner's work. Counsel fails to explain how the petitioner was purportedly able to achieve sustained acclaim if his work consists of closely guarded military secrets.

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

Counsel cites letters from four U.S. employers. These employers describe the petitioner's work. While the employers offer praise for the petitioner's abilities and work ethic, they do not indicate that the petitioner is responsible for original contributions of major significance in the field. Completing one's assigned tasks is not inherently a major contribution.

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

Counsel cites "Attachment 8" under this criterion, which is a "Certificate of Foreign Tour of Duty," indicating that the petitioner visited a computer company in the United States for two weeks in 1992 "for managing and study, inspection about TANDEM'S NONSTOP computer system." Other materials in the record indicate that the petitioner undertook this short trip in order to evaluate equipment that the Korean military was considering for purchase. The record contains nothing to establish that this amounted to a leading or critical role for an establishment or organization with a 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 petitioner satisfies this criterion because he "attained the job title of the Director of Computer Management Office in Military Manpower Administration of Korean government at [the] age of 32. He attained that title 20 years younger than other government officers by order of the President of the Republic of Korea." This assertion is entirely irrelevant to the issue of salary and remuneration, and counsel offers no evidence to establish either that the petitioner was significantly younger than others who held that post, or that the

petitioner's assignment to the position at a young age was in any way a recognition of extraordinary ability. 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).

The only document that relates to the petitioner's compensation are copies of his Form W-2 Wage and Tax Statements, indicating that the petitioner earned $26,975.32 in 2000 and $42,927.22 in 2001. The petitioner submits no evidence to show that these amounts are significantly high remuneration for professionals in computer science.

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

Counsel states "[w]e are not able to submit such evidence. However, they exist in Secret Document Houses in Korea." The alien is not employed in the performing arts. Even if the petitioner was a performing artist in addition to being a computer scientist, we are unable to conceive of evidence of commercial success in the performing arts that would be treated as classified information.[1]

The burden of proof is on the petitioner to produce evidence to support his claims. The petitioner cannot avoid this burden simply by asserting that the evidence exists, but cannot be obtained or submitted because it is classified. If knowledge of the petitioner's work is deliberately restricted, then by definition national or international acclaim is virtually impossible. The petitioner has not even produced documentation to confirm the existence of classified materials that support his claims, but even if he had done so, the issue of acclaim would remain.

The director denied the petition, stating that the petitioner's employers were clearly satisfied with his performance, but that the record does not in any way establish that the petitioner has earned sustained national or international acclaim for his work. On appeal, the petitioner submits various statements and documents, and counsel indicates that a brief will be forthcoming within 60 days. To date, over 17 months after the filing of the appeal, the record contains no further submissions and we consider the record to be complete as it now stands.

On appeal, the petitioner states "I have already submitted published material about the alien" and "[e]vidence of the display of the alien's work in the artistic exhibitions or showcase[s]." The petitioner had not already submitted such evidence. Indeed, counsel had earlier asserted that neither of these two regulatory criteria applied to the petitioner's work. As published material about him, the petitioner states that his work on automatic pattern recognition was "reported on December 5, 2001." The petitioner does not elaborate; he appears to refer to the submission of his master's thesis, which was unpublished, and which was written *by* him rather than *about* him. Regarding artistic exhibitions, the petitioner states that he won a prize at a National Artistic Festival in 1990. A certificate in the record shows that the petitioner won this prize for calligraphy. This award is irrelevant, because the rest of the petitioner's documentation revolves around his work in computer science. The petitioner does not seek employment in the United States as a calligrapher.

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[1] We note that the petitioner's response to the notice inadvertently included a draft of counsel's response. With regard to commercial success in the performing arts, the computer-printed draft response merely states "[w]e are not able to submit such evidence." The sentence "[h]owever, they exist in Secret Documents Houses in Korea" was added by hand in red ink, and was subsequently incorporated into the final response. We cannot discern any reason for counsel to have taken special care to add this passage, which raises several questions and answers none.

At best, the petitioner's work with calligraphy appears to be a hobby he enjoys outside of his employment in the computer field.

The petitioner describes his various positions within the Korean government. The director did not dispute that the petitioner worked with computers for the Korean government. The issue is whether such work has earned the petitioner sustained acclaim. The petitioner's assertions do not address this key point.

To establish contributions of major significance, the petitioner again lists various projects that he has undertaken, this time for United States employers. The petitioner provides documentation from these projects. Simply listing and documenting these projects does not establish their major significance. Nothing in the record establishes that the petitioner stands out from other trained professionals in his field, much less that he has earned sustained acclaim as an individual of extraordinary ability at 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 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 computer scientist 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. 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.