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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: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

MAR 17 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.

Marin Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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invasion of personal privacy
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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 has 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 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 in business and science in the field of optical networking and telecommunications. 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's Form I-140, Immigrant Petition for Alien Worker, indicates that he is seeking visa preference classification as a vice president of marketing. Counsel indicates that the petitioner's extraordinary ability as a scientific researcher in the fields of business and telecommunications qualify him as an alien of extraordinary ability as a marketer of telecommunications technology. Nevertheless, to be eligible for visa preference

classification as an optical networking and telecommunications marketer of extraordinary ability, the petitioner must establish that he has sustained national or international acclaim in this cross disciplinary field, and not simply as a research scientist. 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.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In her cover letter accompanying the petition, counsel stated that the petitioner is a member of the Institute of Electrical and Electronics Engineers (IEEE) and the Order of Engineers of Quebec. As evidence, she submitted copies of membership cards for both organizations. No evidence of the membership requirements of the organizations was submitted.

In response to the director's request for evidence (RFE) dated February 28, 2003, counsel stated that the petitioner had been elevated to a senior member in the IEEE and submitted a letter dated May 5, 2003 from the 2003 President of IEEE, [redacted] advising the petitioner on his elevation. In his letter, M[redacted] states that selection to senior member requires "experience reflecting professional maturity and significant professional achievements." A review of the IEEE website reflects that membership in IEEE is open to both professionals and students, and that the IEEE has a six tiered membership structure. The senior member grade is the "highest [grade] for which application may be made." Selection is based on at least ten years practice and one or more of six performance criteria, which include substantial engineering responsibility or achievement; publication of engineering or scientific papers, books or inventions; technical direction or management of important scientific or engineering work; recognized contributions to the welfare of the scientific or engineering profession; development or furtherance of important scientific or engineering courses; or equivalent contributions in the nature of technical editing, patent prosecutions or patent law provided they serve to substantially advance progress in IEEE-designated fields.

The evidence does not establish that the petitioner's membership in the IEEE meets the requirements of this criterion, as it fails to establish that selection as senior member is based on outstanding achievement. The criteria appear to require technical expertise, longevity in the profession and a substantial degree of competence, but do not require the outstanding accomplishment required of this criterion. This is more evident as the IEEE recognizes those of "outstanding and extraordinary qualifications and experience" by inviting them to become a Fellow in the organization. Additionally, the petitioner's selection as a senior member postdates his visa preference petition. A petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner submits no evidence regarding membership in any marketing 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.

In general, in order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media.

Counsel asserts that the petitioner's published articles have been cited 18 times and that these citations establish that he meets this criterion. Counsel finds contradictions in the director's decision between his statements that citations to the petitioner's work by others are not published work "about" the petitioner and his statement that citation of another's work is routine and expected in the scientific community. We fail to see how these statements contradict each other. The AAO has consistently held that this criterion is not satisfied by citations to a petitioner's work by others in the field. The plain language of the regulation requires that the published material be about the alien, relating to his or her work. Citations of the petitioner's work are the subject of a separate criterion.

As noted by the director, it is the nature of research to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In others, prior work is superseded by the findings of current research. In either case, the current researcher normally cites the work of prior researchers. Clearly this is not the same thing as published material written *about* an individual's work in the field. Citations to one's work do not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field.

The petitioner has not submitted evidence to satisfy this criterion.

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

The petitioner bases his claim of meeting this criterion on his technical presentations, citations to his work, and his participation in standardization forums and international conferences.

Counsel states that because of his "expertise in the field of optical networks," the petitioner has "often been invited to provide technical presentations regarding his original research." Counsel asserts that the petitioner's "original innovations were integral to the redesign of the Saudi Telecom network." As evidence the petitioner submitted three documents that counsel refers to as presentations and appear to be technical plans and specifications for Saudi Telecom and the Saudi Arabian Network Chief Executive Officer of International Telecommunication Systems Operation in Saudi Arabia, stated he worked with the petitioner at Saudi Telecom. In his letter of support for the petitioner, Mr describes the benefits gained by Saudi Telecom as a result of the petitioner's work, but does not show how this work benefited or was a contribution of major significance to either the field of telecommunications or marketing.

Counsel also asserts that the petitioner's significant contributions to the field are evidenced by the number of citations to his work by others in the field. The record reflects that the petitioner wrote one article that appeared in the November 1974 edition of the IEEE journal *Transactions on Communications*. The petitioner's co-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 or her field. The record reflects that the petitioner's article has been cited 18 times by other published researchers. Counsel is correct in that the number of times a researcher's work is cited by others may be an indication of its significance to the field. The evidence submitted by the petitioner shows that the first citation to his article was in 1976 and the latest in 1997. These few citations over a 25 year period are not sufficient evidence that the petitioner's work constituted a major finding that contributed significantly to the field of telecommunications, and provides no evidence of his contributions to the field of marketing.

As further evidence that the petitioner meets this criterion, counsel states the petitioner plays a "critical role in standardization practices for the industry and in industry organizations." As evidence, he submits a copy of a document labeled ANSI/IEEE Standard 820-1984. The petitioner is listed as a member of the working group, but no evidence submitted establishes that he made a major or significant contribution to the standard or the field of telecommunications. Other evidence submitted includes copies of presentations made by the petitioner to various American National Standards Institute (ANSI) working groups. Again, nothing in the record reflects the significance of these presentations to the field of telecommunication marketing.

The evidence reflects that the petitioner has made presentations at five international conferences and had papers presented at three of them (one paper and presentation were presented at two different conferences). While presentations at scientific conferences may indicate the petitioner's work is noteworthy, it does not, without more, establish that the work presented at the conferences constitutes an original major contribution to the field. Further, the evidence of the presentation at the China Broadband Service Demand Conference is the only evidence that appears to combine the disciplines of telecommunications and marketing. The petitioner must demonstrate his contributions to his filed, which combines both business and telecommunications.

Senior Director of Marketing and Product Line Management at Norcom/CDT, states he was the senior product manager for telecommunications cables during the petitioner's tenure at Northern Telecom Cable Group. In his letter of support for the petitioner, he states that the petitioner served as a senior manager with several other product managers reporting to him, and under his leadership:

> Northern Telecom introduced several breakthrough products, including category-5 copper cables and connectors capable of supporting high-speed data transport without the need for optical cables. Today, Category 5 connectivity products constitute the industry standard globally. However, it was the [Northern] Telecom Cable Group that pioneered this technology, as a direct result of the critical role played by [the petitioner]. Consequently, [the petitioner] can truly be considered as the father of high end communications connectivity products and systems.

Mr. lso writes that through a development partnership with Crescendo Communications and Northern Telecom Cable, the companies introduced the "world's first LAN hub operating at 100 Mbs on unshielded twisted pair copper – an accomplishment that was thought to be impossible at the time. Through his input into the project, [the petitioner] played a critical role in accomplishing this seemingly impossible task."

Although Mr. letter is highly complimentary of the petitioner and states that the petitioner has played a major role in telecommunications development, the letter does not specify exactly what that role was. No evidence establishes that any of the "breakthrough" products was the result of the petitioner's own work. Mr. also does not state how the petitioner's role was critical in the development of the project with Crescendo Communications.

Product Line Management leader in the Optical Networks division of Nortel Networks, worked with the petitioner in this division for approximately six years. He states that under the petitioner's management:

> a number of innovative products were commercially and technically defined and introduced including video encoders, ATM multiservice access multiplexers, network management and switching software packages, etc. [The petitioner] played a critical role in the product definition as well as the development of the strategic and commercial value of a very successful Nortel technology and product called OpTera Packet Edge.

Like Mr. Mr. does not state how the petitioner's work contributed to defining the innovative products released by Nortel or how those products constituted a significant contribution to telecommunications marketing. Although the development of the strategic and commercial value of the OpTera Packet Edge product appears to be a marketing related activity, Mr does not detail the petitioner's "critical role" in the development of the strategy. Furthermore, no evidence establishes that the successful marketing of the product constituted a contribution of major significance to the field of telecommunication marketing.

Counsel alleges that the petitioner has made other contributions that are detailed in proprietary documents that he is not at liberty to release. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972) The AAO cannot consider evidence that is not part of the record, and no evidence submitted by the petitioner establishes that he meets this criterion either as having contributed significantly to the field of telecommunications or to the field of marketing.

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

As noted above, the petitioner submitted evidence of having co-authored one paper that appeared in the IEEE journal *Transactions on Communications*. That article has been cited by others in the field approximately 18 times since its publication in 1974. Although the petitioner submits a list of publications in which his article has been cited, the list only states the name of the citing author and the journal in which the article was published. The record contains no evidence of the nature of the citations to the petitioner's work or whether or not others in the field favorably cited his work. The evidence reflects that two papers co-authored by the petitioner have been presented at three different conferences and the petitioner has made presentations at five separate conferences. Not every presenter at conferences is a person of extraordinary ability. As with his written scholarly work, the petitioner must demonstrate the significance of his presentations to the field. The petitioner does not provide evidence that his presentations were favorably received by others in the field. While the record reflects that the petitioner has authored scholarly work that has appeared in a professional or major trade publication, the evidence is insufficient to meet the extensive documentation requirements of the

statute and to establish sustained acclaim. The presentation at the China Broadband Service Demand Conference is the only piece of documentary evidence submitted by the petitioner applicable to this criterion relating to his request for visa preference classification as a telecommunications marketer of extraordinary ability.

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

The petitioner currently serves as vice president of marketing at Sorrento Networks Corporation. A review of his curriculum vitae reveals that he is in charge of marketing for the company, reporting directly to the Chief Executive Officer. Dr. Vice President of Systems Architecture for Sorrento Networks, states that the petitioner "plays a critical role in ensuring the success of Sorrento Networks at a time when the telecommunications industry is facing tremendous challenges and is responsible for the entire corporate marketing function at Sorrento Networks." The evidence establishes that the petitioner plays a leading role for Sorrento Networks.

The evidence of record does not establish that Sorrento Networks Corporation enjoys a distinguished reputation. According to its fiscal year (FY) 2002 annual Securities and Exchange Commission report, the Sorrento Networks Corporation, which changed its name from Osicom Technologies, Inc. in 2001, had revenues of approximately $41 million. It is a multinational corporation and indicated that its sales were to 17 customers worldwide, including AT&T Broadband, Cox Communications and Deutsch Telekom. Although the company has entered into long-term agreements with some of its customers, the petitioner submits no evidence of the company's standing or reputation in the telecommunications or business communities, nor any evidence that Sorrento Networks is considered by others to be a technological leader in telecommunications.

The petitioner worked in various senior management positions at Northern Telecom Cable Group (now Nortel Networks) and had responsibility for specific product lines within the company. As noted above, Mr. and Mr state that under the petitioner's leadership, the company pioneered several technological products of significance to Nortel Networks. The petitioner's duties in these positions also entailed marketing of the product lines for which he had responsibility. The evidence establishes that the petitioner had a leading role at Nortel Networks. Nortel Networks is a venerable company that is a recognized leader in the field of telecommunications.

According to the petitioner's résumé, his work with Saudi Telecom was under a contract with Bell Canada International (BCI). No evidence in the record establishes the petitioner's role at BCI. According to Mr. the petitioner developed a revised transmission plan that improved transmission performance over the Saudi network. He also assessed technology for their applicability to the Saudi Telecom Network and assisted Saudi engineers with standardization proposals, and did some training. While the evidence establishes that the petitioner aided the Saudi Telecom Network in updating his transmission systems, it does not establish that he played a leading or critical role for the organization, or that his work for BCI or the Saudi Telecom Network was related to telecommunications marketing. We find, however, that the petitioner meets this criterion based on his work with Nortel Networks.

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

In her cover letters and brief, counsel asserts that the petitioner is compensated at a rate of $200,000 per year. To establish that he meets this criterion, the petitioner submitted a copy of an earnings statement for the period September 2 through September 15, 2002, showing earnings for that pay period of $7,692.80 and year to date of $146,163.20. In response to the RFE, the petitioner submitted a copy of an Economic Research Institute survey that shows the mean salary for a telecommunications engineer with 20 years experience is $91,927, with the top 10% earning $113,997. A physicist at the top salary level earns approximately $114,947. The director determined that the petitioner did not submit comparative evidence of the salary of a vice president of marketing and therefore did not provide sufficient evidence that he meets this criterion. On appeal, counsel asserts that the petitioner holds both a business position and a scientist position, and that the evidence establishes he is compensated highly as a scientist. Nonetheless, the petitioner indicated on the Form I-140 that he is seeking visa classification as a marketer, and the evidence indicates that he intends to work in telecommunication marketing if granted a visa preference classification as a worker of extraordinary ability. The petitioner did not submit evidence of the salary earned by others in the marketing field or of those who have dual responsibilities as a scientist and marketer. The petitioner has not submitted sufficient evidence to establish that he meets this criterion.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. [Emphasis added]" The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the 10 criteria specified by the regulation. However, we will briefly address the evidence the petitioner submitted under this provision.

Counsel states that the petitioner is "highly sought for quotes and comments on industry events and the work conducted by others in his field due to his renown in the field." The evidence submitted, however, does not support counsel's statement. The petitioner submitted copies of e-mail correspondence detailing his interviews for various media, which indicate that generally the interviewer was seeking to interview "someone" from Sorrento Networks. The evidence indicates that one of the requests was for the interviewer to obtain an overview of the company; one was the result of the interviewer reading a white paper on the company's website and requesting a follow-up interview; and one of the requests for interview was in follow-up to a news release by Sorrento. The record does not reflect that the petitioner was individually sought based on his expertise in the 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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a marketer or research 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 indicates that the petitioner is a talented scientist who is able to successfully market his company's technology, 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.