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FILE: [REDACTED]
SRC 03 033 51704

Office: TEXAS SERVICE CENTER

Date: APR 28 2005

IN RE: Petitioner: [REDACTED]
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 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on November 13, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a software engineer. At the time of filing, the petitioner was working as a Senior Software Engineer with Supra Telecom of Miami, Florida. We note here that the statute and regulations require the petitioner's acclaim to be *sustained*. The record reflects that the petitioner has been residing in the United States since 2000. Given the length of time between the petitioner's arrival in the United States and this petition's filing date, it is reasonable to expect the petitioner to have earned national acclaim in the United States during that time. The petitioner 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 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted multiple award certificates and honorable diplomas (accompanied by English translations) that were presented to him during the 1980's in Kiev, Ukraine. Many of these certificates were pre-printed "form" documents with the petitioner's name entered into blank spaces. The record does not indicate how many engineers received these awards, but the existence of "form" certificates suggests multiple winners. Several awards refer to the petitioner as "The best young specialist of the branch" or indicate that he earned recognition at a "conference of young scientists and specialists." In regard to such awards, we note that the petitioner faced competition only from his approximate age group within his field, rather than from throughout his field. Such awards offer no meaningful comparison between the petitioner and the most experienced and practiced engineers in the field. It is further noted that many of the petitioner's awards were presented by the "Mayak" Kiev Scientific and Industrial Association" or the "Scientific Research Institute of Electro Mechanical Instruments." Such awards are reflective of institutional or regional recognition, rather than national or international recognition.

In response to the director's request for evidence, the petitioner submitted documentation showing that he received an "Inventor of the U.S.S.R." medal in 1988. The petitioner submitted no evidence showing the significance of this medal.

The petitioner's response also included a letter indicating that he commenced employment with Lexar Media, Inc. in August 2003. In the January/February 2004 issue of *Photoelectric Imaging Magazine* (circulation data not provided), Lexar Media was announced as winning that magazine's 2003 Cool2 Award for its "Data Recovery" application, Image Rescue 2.0. This evidence, however, came into existence subsequent to the petitioner's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Aside from the issue of the date that this evidence came into existence, we note that the petitioner's name does not appear in the *Photoelectric Imaging Magazine* article. A letter from Neal Galbo, Senior Director, Advanced Product Group, Lexar Media, Inc., notes that the petitioner was "responsible for coding the Microsoft Windows version of . . . Image Rescue," but there is no indication that the petitioner was the leading force behind the data recovery aspect of the product (for which Lexar Media earned the award).

The significance and importance of the award certificates, honorary diplomas, and "Inventor of the U.S.S.R." medal are not self-evident. The petitioner offers no supporting evidence showing that these certificates constitute top honors in the engineering field at the national level. It should be emphasized that the petitioner must submit documentary evidence showing the degree of recognition accorded to his awards. The evidence provided does not indicate the total number of awards presented at each event, how many other individuals were similarly recognized, the criteria used in determining recipients, or the level of media coverage associated with the award presentations. We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that the certificates presented under this criterion enjoy

significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In this case, the petitioner has not shown that his awards were significant beyond the context of the event where they were presented.

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 for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted four articles appearing in the newspaper *Peredovik* during the 1980's. The petitioner states that this newspaper "had about 4,000 subscribers." Absent evidence of its significant national distribution, we cannot conclude that *Peredovik* qualifies as major media. It is further noted that the statute and regulations require the petitioner's acclaim to be *sustained*. The record contains no evidence showing that the petitioner has been the primary subject of major media articles published subsequent to the 1980's.

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

The petitioner submitted evidence showing that he authored several patents in the U.S.S.R. during the 1980's. Of far greater relevance than the existence of an approved patent is the importance to the greater field of the petitioner's innovation. The granting of a patent documents that an innovation is original, but not every patented invention or innovation constitutes a significant contribution to one's field. The petitioner must show not only that his innovation is important to the institution that funded his work, but throughout the greater electrical engineering field. The record contains no evidence showing that that the innovations described in the petitioner's patents are being widely utilized on a national or international scale, or that his patented innovations were hailed by engineers throughout the industry as a major contribution.

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

Adnan Zejnilovic, Vice President of Information Technology and Chief Information Officer, Supra Telecom, states:

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

[The petitioner's] contributions to my department have been many and significant. Following are just a few examples of how his accomplishments are enabling Supra Telecom gain [sic] competitive edge in the telecom market:

- Designed both system and software architecture for Supra Telecom's next generation systems. . . .
- Lead the development of complex software programs using Visual C++, SQL Server, DCOM, and Java where he demonstrated remarkable technical knowledge.

Evenor Ponce, Software Engineer, Supra Telecom, states: "[The petitioner's] algorithms and developed software increased system performance in Supra Telecommunications by at least ten times."

Neal Galbo states: "I hired [the petitioner] during August 2001 as a software engineer, in response to our needs for an engineer with a strong software background and the experience and ability to write commercial grade application programs for Microsoft Windows based platforms and to assist other engineers in the group."

Vitaliy Timkiv, Software Engineer, SaM Solution, Kiev, Ukraine, states that he has known the petitioner since 1996. He further states: "Some sample projects we worked on together were the Scheduling System for Delta Airlines, Media Face 2 for Neato LLC. . . . During these projects [the petitioner] showed strong knowledge of technologies and programming languages"

Anatoliy Ksyunz, now a Senior Systems Engineer at Video King Gaming Systems, states:

I know [sic] the petitioner since 1989 when he joined Information Signaling System department of Electronpribor Design Bureau (an avionics design company) as a System Architect and Team Leader. I held a position at Electronpribor Design Bureau at that time.

* * *

In my opinion one of the most significant [of the petitioner's] achievements was ELS-218 project. This project was on the "cutting edge" (technologically and conceptually) in avionics design. . . . For the first time information technology was introduced to onboard systems. [The petitioner] was one of the five best engineers in the company

The petitioner may have benefited various projects undertaken by his employers, but his ability to significantly impact the field beyond his employers' immediate projects has not been adequately demonstrated.

Unlike the prior witnesses, two witnesses do not appear to have worked directly with the petitioner.

Tom Archer, Archer Consulting Group, Inc., states:

I can state with conviction that [the petitioner's] technical skills are extremely strong. [The petitioner] authored a very popular online article that illustrated how to perform a technical task that most people would have thought impossible.

* * *

Based on his article and my many technical discussions with [the petitioner], I'd like to express my support

Edward Gadziemski, Managing Partner, SoftGee LLC, also comments on an online article posted by the petitioner. He states: "I'd like to give my support to [the petitioner] for the incalculable amount of time his article saved my firm on a software development project. In fact, [the petitioner's] article proved an inspiration for the series of articles I personally wrote about how to use OLE DB with WTL."

Articles authored by the petitioner fall under the "authorship of scholarly articles" criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, then the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's authorship of articles under the next criterion.

Only two of the above individuals have not worked with the petitioner. The absence of substantial independent testimony raises doubt as to the extent of the petitioner's reputation. In order to qualify for the classification sought, the petitioner must demonstrate that he is acclaimed and respected not only by those close to him, but throughout the national or international software engineering community as a whole. With regard to the personal recommendation of individuals from institutions where the petitioner has worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner's reputation is limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or acclaimed at the national or international level, we cannot conclude that it constitutes a contribution of major significance.

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

The petitioner submitted evidence of his authorship of six journal articles from 1984 to 1990 and several internet articles posted online via the internet. We do not find, however, that the publication or internet posting of a scholarly article is presumptive evidence of sustained national or international acclaim; we must also consider the greater field's reaction to that article. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon

the petitioner's findings. Frequent citation by independent engineering researchers, however, would demonstrate widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed. In the present case, there is no evidence showing that the petitioner's articles are widely cited in software engineering literature.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In response to the director's request for evidence, the petitioner notes that his work has been presented at technical conferences and trade shows. We have consistently found, however, that this particular criterion applies to the visual arts rather than scientific or engineering research. In the fields of science and engineering, acclaim is generally not established by the mere act of presenting one's work at a conference or trade show. The record contains no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences and trade shows where the petitioner spoke was a privilege extended to only a few top software engineers. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field. The record contains no evidence showing that the petitioner's conference and trade show presentations commanded an unusual level of attention in comparison to other participants or that the petitioner has served as a keynote speaker at a national or international software engineering conference.

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 he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a software engineer/software architect 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 the 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.