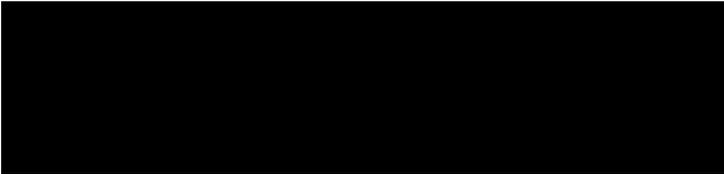




U.S. Citizenship
and Immigration
Services

...to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



FILE: EAC 03 147 50922 Office: VERMONT SERVICE CENTER Date: AUG 12 2005

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)

ON BEHALF OF PETITIONER:



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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification of 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. The director determined that the petitioner had not established that the beneficiary had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability as a computer network and security specialist. The record shows that the beneficiary is the president of the petitioner, Opo Computer Technologies (OpoTech), a computer training school. The petitioner, unrepresented below, submitted supporting documents including a copy of a labor condition application for the H-1B nonimmigrant visa program filed electronically by OpoTech, three articles in English about the beneficiary, four articles in Spanish purportedly about the petitioner and the beneficiary, 12 certifications or membership certificates for the beneficiary and his non-profit organization from various information technology (IT) related associations or businesses, a copy of the beneficiary's diploma in Spanish, and the 2001 Annual Report of the United Neighborhood Houses of New York which contains two photographs and a quotation of the beneficiary.

The director found the evidence did not demonstrate the sustained acclaim requisite to classification as an alien with extraordinary ability.

On appeal, counsel submits a brief and new evidence including three additional certifications awarded to the beneficiary, a copy of a handbook entitled "The A+ Certification *Guía de Examen*" written by the beneficiary, a copy of an unsigned letter describing Latin Technologies Incorporated, three additional articles about the beneficiary's work, a videotape of his weekly television segments broadcast by *Univision*, and six recommendation letters. Counsel's claims and the new evidence do not overcome the deficiencies of the petition and the appeal will be dismissed. The evidence submitted and counsel's claims are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

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

The record contains several documents evidencing the beneficiary's successful training and certification in IT systems. These certificates evidence the beneficiary's professional credentials, but are not nationally or internationally recognized prizes or awards for excellence in the IT field. The petitioner also submitted a "Certificate of Appreciation" presented to the beneficiary by the "Union Settlement Association Adult Education Program" on June 13, 2002 "for his generous contribution to the program." The record does not explain the significance of this certificate or otherwise demonstrate that it constitutes a nationally or internationally recognized prize or award in the beneficiary's field. Accordingly, the beneficiary does not meet this criterion.

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

On appeal, counsel claims that ten of the certificates issued to the beneficiary evidence his eligibility under this criterion and his "recognition by national and/or international experts such as Microsoft." The record does not support this claim. The petitioner submitted documents demonstrating the beneficiary's certification as a Network+ Certified Professional by the Computing Technology Industry Association (CompTIA), a Microsoft Certified professional, a Server+ Certified Professional by CompTIA, his completion of the "CISCO CCNA" course requirements by the Career Center Incorporated in New York City, the Intel Converged Communications Platform Installation and Configuration Course, and his "Distinguished Achievement" in the Per Scholas 360 hour computer technician training program. On appeal, the petitioner submitted two additional, undated documents demonstrating the beneficiary's certification as a Microsoft Certified Systems Administrator on Microsoft Windows 2000 and as a Microsoft Certified Desktop Support Technician on Microsoft Windows XP. These documents demonstrate the beneficiary's technical training and professional credentials. They do not evidence his membership in any of the issuing companies or organizations.

We note that the petitioner also submitted a third document on appeal showing that the beneficiary became a "Pearson VUE Certified Administrator" on July 16, 2003. We cannot consider this document because it was issued after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The record contains two documents pertaining to actual membership in professional associations. The petitioner submitted a certificate evidencing the beneficiary's membership "in good standing of the Computing Technology Industry Association [CompTIA], an organization dedicated to the highest standards of professionalism in the information technology industry." The certificate states that the beneficiary has been a CompTIA member since November 4, 2001. The petitioner also submitted a CompTIA membership certificate for the beneficiary's non-profit organization, Latin Technologies, stating that the organization has been a member since November 8, 2002. The record contains no documentation of the CompTIA membership criteria or other evidence that outstanding achievements are prerequisite to CompTIA membership. Accordingly, the beneficiary does not meet this criterion.

(iii) Published material 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.

The petitioner initially submitted three articles in English and four articles in Spanish as evidence of the beneficiary's eligibility under this criterion. The Spanish articles were submitted without certified English translations as required by 8 C.F.R. § 103.2(b)(3). Without certified translations of the articles, we cannot determine whether they support the beneficiary's claimed eligibility under this criterion. *Id.*

The first English article is entitled "NYer of the Week [redacted] - Helping Latinos Learn Computers One Keystroke at a Time" and is printed from the website of "NY1 News, NYC's 24-Hour Newschannel on the Web." The article is dated April 4, 2003, includes a picture of the beneficiary and discusses his establishment of OpoTech and a non-profit organization offering free computer classes in New York City. The second article was published in the August 8, 2002 edition of the *Queens Chronicle* newspaper and is entitled "Non-Profit Organization Helps Immigrants Start Businesses." This article discusses the small loans and business training offered by Accion New York. The beneficiary is featured as an example of one of Accion's successful loan recipients who used the assistance to start OpoTech. The third article is an undated profile of the beneficiary entitled "Newsday Queens Profile [redacted]" While these articles feature the beneficiary and discuss his work, they do not satisfy this criterion because they were published in local media. The record contains no evidence that NY1 News, the *Queens Chronicle*, or *Queens Newsday* constitute major media, publication in which would reflect national acclaim.

On appeal, the petitioner submitted additional evidence under this category. First, we cannot consider two additional newspaper articles because they were published after the date of filing. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Second, an article apparently printed from the website of Channel 47 *Telemundo* does not indicate the date it was published as required by this regulatory criterion. Finally, the petitioner submitted a videotape of the beneficiary's appearance as a computer expert on weekly television segments broadcast on *Univision* Channel 41. These segments were broadcast in Spanish and the videotape was submitted without a certified English translation of the broadcast transcripts as required by 8 C.F.R. § 103.2(b)(3). Without certified translations of the segments, we cannot determine whether they support the beneficiary's eligibility. *Id.*

The record contains evidence of media coverage of the beneficiary and his work in local or regional newspapers and television. The petitioner submitted no evidence of published material about the beneficiary in professional,

major trade publications or other major media that demonstrate the requisite sustained acclaim. Accordingly, he does not meet this criterion.

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The record indicates that the beneficiary has evaluated the computer skills of students at OpoTech. However, duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. The record contains no evidence that the beneficiary has judged of the work of other individuals in his field in a manner significantly outside the general duties of his position and reflective of national or international acclaim. Accordingly, he does not meet this criterion.

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

The record indicates that the beneficiary has made valuable and commendable contributions to his field by providing computer skills training and IT certification programs to Spanish-speaking and other individuals in the New York City metropolitan area. For example, Congressman Joseph Crowley (in his recommendation letter submitted on appeal) explains that the beneficiary "has lent his talents and expertise to achieve the interrelated goals of bridging the technological divide for minority communities and in helping to build a diverse and competent US IT workforce." However, the record does not demonstrate that the beneficiary's work has been recognized as a major contribution to his field in a manner reflective of the requisite sustained national or international acclaim. The record contains media articles and segments about the beneficiary that have only been published or broadcast regionally and the petitioner submitted no evidence that IT experts across the country or abroad have been influenced by the beneficiary's work. Accordingly, the beneficiary does not meet this criterion.

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

On appeal, the petitioner submitted a spiral bound handbook entitled "The A+ Certification *Guía de Examen*." The handbook is written by the beneficiary but is dated 2004, the year after the petition was filed, and consequently cannot be considered. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

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

On appeal, counsel claims the beneficiary meets this criterion through his role at OpoTech and Latin Technologies Incorporated (Latin Tech), as evidenced by the support letters and the letter describing Latin Tech submitted on appeal. The petitioner submitted six letters of recommendation from individuals for whom the beneficiary has provided IT services or who are familiar with his work. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's role has been

recognized in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence that one would expect of an alien who has sustained national or international acclaim.

Congressman Crowley states that the beneficiary “is employed by Opo Technologies Corporation which has been instrumental in training new recruits for the technological industry. In particular Opo Technologies has a record of targeting and empowering international students and immigrants by providing them with the tools and training needed to be successful in supporting our nation’s efforts to remain on the technological forefront.” Diego Pinzon, Vice President and Small Business Relationship Manager of HSBC Bank USA in Jamaica, New York, affirms that OpoTech “has a focus of relieving and helping the Spanish-speaking people who have been left behind in the digital divide. This school is one of a handful of New York City computer schools, targeted at immigrants and international students that go beyond teaching basic skills.” Mr. [REDACTED] adds that the beneficiary also “provides consulting and management for the IT Department [sic] of important companies that are located in different states throughout the Country [sic].” This sentence is repeated verbatim in two other letters, but the record contains no evidence of the beneficiary’s work outside of the New York City metropolitan region.

Diego De La Vina, of Rio Tinto Export Incorporated in Port Newark, New Jersey, states that the beneficiary’s “role in Rio Tinto Export as an IT consultant is a crucial one. . . . [He] not only provides us with the basic technology services for our daily operations, but also emphasizes in [sic] the importance of computer security, networks, and the development of a complex interface system. [His] consultant service enables Rio Tinto to maintain its competitiveness within the fresh produce industry allowing the continuous growth of our company.” Even if Mr. De La Vina’s letter were sufficient to establish the beneficiary’s critical role for his company, it would not satisfy this criterion because the record contains no evidence that Rio Tinto has a distinguished reputation.

Similarly, Milton Villalona, President of the International Dominican Festival, explains the importance of the beneficiary’s IT services to his organization, but the record contains no evidence that the Festival has a distinguished reputation. Mr. Villalona states that the “festival depends on the innovative aspects of [the beneficiary] to continue to overcome many of our logistical obstacles. Through the advice and hard work of [the beneficiary], we have been able to become an international event and have grown to be recognized by many government officials for our dedication and representation of the Dominican Culture.” The record contains no corroborative evidence of this recognition.

María Alvarez, Director of the Institute for the Puerto Rican/Hispanic Elderly Brooklyn Caregivers Program, and [REDACTED] National President and Chief Executive Officer of Latinos in the Information Sciences and Technology Association, affirm their support for the beneficiary in letters that repeat verbatim several paragraphs that are contained in the letters of Mr. De La Vina and Congressman Crowley. This repetition suggests that the language is not the authors’ own and detracts from the letters’ probative value.

Finally, the petitioner submitted a letter written (but not signed) by the beneficiary as Chairman of Latin Tech. The letter describes Latin Tech as a non-profit organization that provides needed services “to assist Latinos and other minorities to improve their quality of life through high excellence education and careers in technology.”

These letters and the media articles discussed above under the third criterion indicate that the beneficiary plays a leading and critical role for OpoTech and Latin Tech. However, the record does not persuasively show that the beneficiary's role at these organizations has been recognized in his field in a manner consistent with sustained national or international acclaim. Accordingly, the beneficiary does not meet this criterion.

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

The Form I-140 lists the beneficiary's proposed weekly wage as \$1,250 and the labor condition application states his annual salary as \$65,000. Yet the record contains no evidence of the beneficiary's actual income or comparative documentation that his remuneration is significantly higher than other individuals engaged in IT educational services and consulting or that his income is comparable to such individuals at the very top of this field. Accordingly, the beneficiary does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the beneficiary established a computer and IT training school and non-profit organization in New York City and has made commendable contributions to his field in that metropolitan area. However, the record does not establish that the beneficiary has achieved sustained national or international acclaim as an IT educator or consultant placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), 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.