

identity data deleted to
prevent disclosure of information
invasion of personal privacy

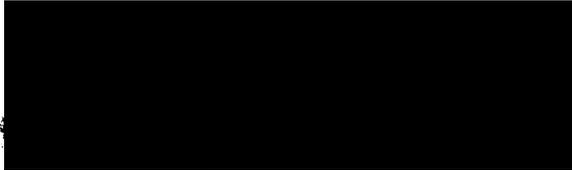
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PHOTOCOPY

JUN 13 2005

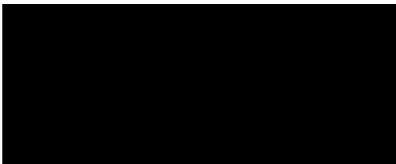


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 03 200 52040

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:



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 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 the petitioner had not established that the beneficiary has earned 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 the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on June 18, 2003, seeks to classify the beneficiary as an alien with extraordinary ability as a security systems developer. At the time of filing, the beneficiary was working for General Sensing Systems, L.L.C.

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 pertaining to 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.

In response to the director's request for evidence, the petitioner submitted a diploma and accompanying translation indicating that the beneficiary received a "Diploma With Honors" in 1983 from the "Naval Academy named after Marshall of the Soviet Union A.A. Grechko." The diploma's translation states: "For excellent graduation from the Academy the bearer was awarded Golden Medal."

The petitioner's response also included a letter from [REDACTED] Head of the Radio Electronics Faculty of the Naval Academy, St. Petersburg. Below the Naval Academy insignia, the letter states: "Naval Academy Named after the Admiral of the Navy of the Soviet Union [REDACTED] states: "[The beneficiary] was awarded the 'Lenin scholarship' for the excellent studies in the Academy (only excellent grades in all courses). In 1983 he was awarded the Gold Medal for graduating from the Academy with excellence."

The petitioner also submitted a letter from [REDACTED] who identifies himself as "Head of the Chair of Geophysics and Vice President for Research of Saint Petersburg State University." [REDACTED] states: "[The beneficiary] graduated from the special physics high school of Leningrad State University in 1966. Being a valedictorian, [the beneficiary] was deservedly awarded the Gold Medal For Outstanding Academic Achievement (the highest nationally award [sic] for high school graduates in the former U.S.S.R.)."

Relying upon [REDACTED] observation, the director's decision stated: "The [beneficiary] is the recipient of the Gold Medal for Outstanding Academic Achievement. It has been stated that this is the highest national award for high school graduates."

On appeal, [REDACTED] Managing Member, General Sensing Systems, states:

[The beneficiary] received nationally recognized prizes and awards for excellence in his field of endeavor. Specifically, the Gold Medal [the beneficiary] received from the Admiral Kuznetsov Naval Academy, Department of Radio Electronics, St. Petersburg, was for being the top of his class (Valedictorian) in 1983. This is not a high school. This is a post-Ph.D. program in the Naval Academy of Russia.

Dr. Goldburt asserts that the beneficiary received a Gold Medal in 1983 "from the Admiral Kuznetsov Naval Academy." The letter from [REDACTED] of the "Naval Academy Named after the Admiral of the Navy of the Soviet Union [REDACTED] lends support to [REDACTED] assertion. However, the translation accompanying the "Diploma With Honors" indicates that the beneficiary was awarded a Golden Medal in 1983 from the "Naval Academy named after Marshall of the Soviet Union A.A. Grechko." Therefore, there is an inconsistency in the record regarding the name of the awarding entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

continues: “Furthermore, [the beneficiary] was also honored as a Lenin Scholarship Holder for his extraordinary work. This is the highest and most prestigious award given by the former Soviet Union government for outstanding success in a field of endeavor.” The record, however, contains no first-hand evidence to support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regardless of the lack of first-hand evidence related to the Lenin Scholarship, or the discrepancy that exists regarding the name of the naval academy that issued the beneficiary a gold medal in 1983, Citizenship and Immigration Services (CIS) views academic awards as local or institutional honors rather than nationally or internationally recognized awards for the reason that they are limited to the individual school or institution presenting the awards. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. According to the information provided by the petitioner, the preceding awards were presented not to established scientists with active professional careers, but rather to students in pursuit of an educational degree. We cannot artificially restrict the beneficiary’s field to exclude all those professionals who had long since completed their educational training and therefore did not compete for such student awards. There is no indication that the beneficiary has received any significant national award for which he would have faced competition from throughout his field, rather than his approximate age group within that field. In this case, we find no evidence to establish that the beneficiary has received a nationally or internationally recognized prize or award for excellence in his field of endeavor.

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.

In order 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 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted evidence of the beneficiary’s “corresponding” membership in Academy of Sciences and Arts. The record, however, contains no evidence of this academy’s bylaws or its official membership requirements to show that it requires outstanding achievements of its members. Nor has the petitioner shown that the beneficiary was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that this academy requires outstanding achievement of its members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

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

The petitioner submitted letters of support on appeal.

Director of Military Operations, Applied Research Associates (ARA), Inc., states:

As you know [the beneficiary] is a Principal Scientist with General Sensing Systems (GSS), LLC; a New York company. GSS develops novel perimeter protection systems based on proprietary footstep signal detection and processing software which is [the beneficiary's] area of expertise.

Recently, [the beneficiary] subcontracted GSS to install such a system on the U.S. Marine Corps Camp [redacted] which was part of a national test bed for protection against unconventional nuclear weapons. I am the ARA program manager for this Defense Threat Reduction Agency (DTRA) program critical to the security of the United States.

[The beneficiary] actively participated in installation and field testing of the GSS seismic perimeter protection system. The system operated exactly as [the beneficiary] predicted and filtered out all noise and motion except people walking or running. The system, successfully tested over the last year, is the only seismic system selected by ARA for installation.

[The beneficiary's] expertise was critical to success of this system at Camp Lejeune and may well be critical for other homeland security applications.

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

Program Manager, Advanced Technology Office, Defense Advanced Research Projects Agency, states:

Recently, [the beneficiary] led the technical development, installation and field testing of General Sensing Systems' seismic perimeter protection system at a Marine Corps base in North Carolina. This system was tested over the last year and was the only seismic system selected for installation.

Additionally, and more significantly, the Defense Advanced Research Projects Agency (DARPA), in the Office of the Secretary of Defense, has just announced the award of a contract to General Sensing Systems This new contract will develop and demonstrate a novel seismic sensor system that will dramatically improve the state of the art and will be capable of being utilized to protect U.S. facilities, equipment and personnel both here in the United States and abroad. [The beneficiary's] technical leadership and expertise is [sic] absolutely required for the successful conduct of this important work.

* * *

[The beneficiary's] participation in the homeland security conference, SPIE [The International Society for Optical Engineering] Defense and Security Symposium (DSS), over the last two years advanced his pioneering work in the area of perimeter protection using unattended ground sensors.

The preceding witnesses mention the beneficiary's "recent" work at Camp Lejeune in North Carolina. The appellate submission includes evidence of the beneficiary's participation in the 2004 SPIE DSS. It appears, however, that these events occurred subsequent to the petition's filing date. A petitioner, however, 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). Subsequent developments in the beneficiary's career cannot retroactively establish that he was eligible for the classification sought as of the filing date.

In regard to the beneficiary's participation in the 2003 SPIE DSS, we note that acclaim is generally not established by the mere act of presenting one's work at a conference. The record contains no documentation demonstrating that the presentation of one's work is unusual in the beneficiary's field or that the invitation to present at conferences where the beneficiary spoke was a privilege extended to only a few top scientists or 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 beneficiary above almost all others in his field at the national or international level. The record contains no evidence showing that the beneficiary's conference presentations commanded an unusual level of attention in comparison to other participants or that the beneficiary has served as a keynote speaker at a national science or engineering conference.

██████████ President, Del Global Technologies Corporation, repeats the assertions of ██████████ states: "In the last DSS symposium, I met ██████████ of the Defense Advanced Research Project [sic] Agency (DARPA) who spoke highly of [the beneficiary's] work and its significance for homeland defense and security applications." We note here that a significant portion of the letters from Drs. Pisano and Carpezza consist of the exact same observations. It is not clear who is the actual author of their common statements, but it is highly improbable that both of these individuals independently formulated the exact same wording. It is acknowledged that these individuals have lent their support to this petition, but it remains that at least one of them did not fully prepare his own observations.

On appeal, ██████████ cites the beneficiary's published articles as evidence of his original contributions. Articles authored by the beneficiary 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 beneficiary's authorship of articles under the next criterion.

Dr. Goldburt notes that the beneficiary holds two patents for intrusion detection systems and that he has eight more patents pending. Of far greater relevance than the existence of an approved or pending patent is the importance to the greater field of the beneficiary's invention. 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. According to statistics released by the U.S. Patent and Trademark Office (USPTO), which are available on its website at www.uspto.gov, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, the USPTO received 345,732 applications and granted 183,975 patents. Therefore, given the amount of patent applications that the USPTO approves on an annual basis, we find it implausible that holding a patent automatically qualifies as a contribution of major significance in the beneficiary's field. The record contains no evidence showing that the innovations described in the beneficiary's patents are being widely utilized on a national or international scale, or that his patented innovations were hailed by experts throughout the security industry as a major contribution. Without extensive documentation showing that the beneficiary's intrusion detection systems represent a major contribution to his field, we cannot conclude that he fulfills this criterion.

In regard to the letters of support offered with this petition, we note that the majority of the testimonials in this case were written by individuals from institutions affiliated with the beneficiary or his previous employers. This fact indicates that while the beneficiary's work is valued by those that utilize his services, others outside his immediate circle are largely unaware of his endeavors and do not attribute the same level of importance to his work. With regard to the personal recommendation of individuals who have collaborated on projects with the beneficiary, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the beneficiary has earned sustained acclaim for his contributions outside of his affiliated institutions. If the beneficiary's reputation is limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his witnesses.

In conclusion, we find that the documentation presented in regard to this criterion is not adequate to support a finding that the beneficiary's work is nationally or internationally recognized throughout his field as a major contribution.

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

The petitioner claims that the beneficiary has authored 160 publications. The petitioner provided the cover pages for some of the articles that the beneficiary published while in the United States. We do not find, however, that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to those articles. When judging the influence and impact that the beneficiary'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 others have relied upon the beneficiary's findings. Frequent citation by independent scientists, however, would demonstrate widespread interest in, and reliance on, the beneficiary'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 scientific community, 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 beneficiary's published papers are widely cited or that those papers are acclaimed outside of his circle of acquaintances.

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 he performed in 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.

On appeal, the [REDACTED] asserts that the beneficiary, as a Principal Scientist of General Sensing Systems, leads his company's technical, research and development efforts. However, there is no evidence showing that General Sensing Systems has earned a distinguished national reputation when compared to other companies in the security or defense industries. For example, the record lacks evidence showing that General Sensing Systems enjoys a distinguished reputation when compared to the hundreds of other defense contractors that provide services for the U.S. Armed Forces. Nor is there evidence establishing the relative importance of the beneficiary's duties when compared to others employed by his company. We accept that the beneficiary played a central role in the project at Camp Lejeune, but there is no evidence showing the extent to which the beneficiary has exercised substantial control over personnel or research decisions executed on behalf of General Sensing Systems as an organization.

In regard to the beneficiary's role at RIPAS Corporation in St. Petersburg [REDACTED] Director General, RIPAS Corporation, states that during beneficiary's tenure as Director of Science, the corporation "became one of the leading enterprises in St. Petersburg." The petitioner, however, must demonstrate that the beneficiary's role at this company earned him sustained acclaim at the national level. Aside from the assertions in [REDACTED] letter, the record contains no evidence showing this company's distinguished reputation at the national level. Nor is there evidence showing that the beneficiary's individual reputation extended beyond this employer. We note here that the statute requires "extensive documentation" of sustained national or international acclaim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

For the above reasons, we find that the petitioner's evidence falls short of establishing that the beneficiary has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

On appeal, [REDACTED] states: "While [the beneficiary's] base salary is average, he is eligible for substantial additional compensation as the contracts move forward." A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak* at 45. Subsequent developments in the beneficiary's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. The record contains no objective documentation (such as payroll records or income tax forms) showing that the beneficiary has earned significantly high remuneration in relation to others in his 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 national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the beneficiary has distinguished himself 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 the 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.