

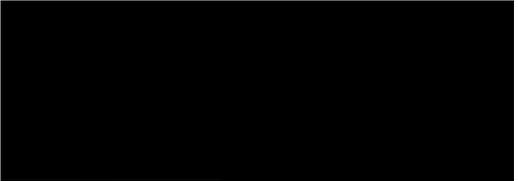


U.S. Citizenship
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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: NOV 28 2005
SRC 04 006 51698

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.

Maig Johnson

➤ 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 sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a reservoir simulation engineer. 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.¹

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

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. See *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995).

The petitioner obtained his first Master's degree in Mechanical Engineering at the University of Saskatchewan in 1977 and his second Master's degree in Chemical Engineering from the University of Calgary in 1980. The petitioner then worked in various engineering and consulting positions for Computer Modeling Group, Ltd. (CMG), D&S Consultants Ltd., Arabian Gulf Oil Company, Ltd. (AGOCO), Hycal Research Laboratories Ltd., Sand Consultants Incorporated and Core Laboratories LP. Initially, counsel asserted that the petitioner meets this criterion by having "invented" five computer codes: ABOS, WELLIFT, GMATB, LOGCAL and DECLINE. Counsel asserts that WELLIFT has been commercially marketed and was presented at a conference in 1995. The petitioner submits the codes themselves and four reference letters from current and former employers.

Citizenship and Immigration Services (CIS) does not make subjective evaluations of an alien's work; we do not have the expertise to evaluate technical codes or papers. Rather, it is the petitioner's burden to demonstrate not only that he has done the work claimed, but also the significance of that work through evidence of his recognition in the field.

Further, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *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)). Given the statutory requirement for "extensive documentation" and the ten regulatory criteria requiring specific evidence of accomplishments, we must conclude that evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Moreover, in evaluating any reference letters, we find that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

Henry Abuya Ohen, Vice President of Reservoir Characterization and Simulation at Core Laboratories, asserts:

The importance of [the petitioner's] research in the field of reservoir management and simulation as well as authorship of several computer codes cannot be overemphasized. Because the simulation models are utilized to optimize reservoir performance, these computer codes have had a significant impact on operational profits of large companies in the global petroleum industry.

Mr. Ohen then predicts future contributions from the petitioner.

Long Nghiem, Vice President of Research and Development at CMG asserts that the petitioner "made significant contributions to the development of CMG's black-oil simulator IMEX." Mr. Nghiem further asserts that the codes developed by the petitioner at CMG were "very practical for reservoir engineers." Frank L. Meyer, President and Chief Executive Officer (CEO) of CMG, lists five projects on which the petitioner worked and characterizes him as "a consistent and precise engineer" and a "team player with diversified experience in reservoir simulation."

Finally, Dr. F. Brent Thomas, Senior Vice President at Hycal, praises the petitioner's "capacity and integrity." Dr. Thomas further asserts that the petitioner "developed dispersion models for regressing laboratory data, simulation models for optimization of reservoirs and made possible the prosecution of many large projects through his many talents."

The director requested evidence of how the petitioner had "impacted the field as a whole" and questioned whether the petitioner's contributions had "been wide recognized by others in the field." In response, counsel asserts:

First, while employed with the Arabian Gulf Oil Company, Ltd. (AGOCO), the Petitioner made approximately fifteen presentations over a period of several years, pertaining to oil field performance and development plans to the National Oil Corporation, the leading oil company in North Africa for the following oil fields: SARIR, HARAM, KOTLA, BEDA, DOR-MASOUR [and] UMM-FARROUD.

Counsel references the "samples of publications, reports and simulation studies previously submitted" as evidence to support the above statement. Next counsel reiterates that the petitioner developed five codes. Counsel asserts that WELLIFT "utilizes a novel approach to solve the momentum equation to find liquid hold-up and friction in the vertical and horizontal flow regimes." Counsel references the "detailed evidence of these computer codes that was previously submitted." Finally, counsel asserts that the employer reference letters serve as evidence to meet this criterion. As stated by the director, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submits a new reference letter from Ted Pham. Mr. Pham lists his title as Principal Reservoir Engineer, but the letter is not on company letterhead. Counsel indicates that Mr. Pham works at the El-Paso Production Company. Mr. Pham affirms that the petitioner spent six months as a contractor for the El-Paso Production Company where he "was able to obtain an acceptable and reliable history match for the KINGSVILLE reservoir simulation." This work "was the basis for the consideration of drilling two new wells in the field which are currently placed on our drilling schedule." Mr. Pham asserts that the petitioner had reached "a highly advanced technical level." Finally, Mr. Pham asserts that the petitioner "studied the

PVT for BONNER1 well where he was able in a short time to get a good match supported by a compositional run and his work was documented in a report for others to use.”

The director concluded that while the record established the petitioner’s contributions to his employers, the petitioner had not established the nature of his role in the development of the codes named by counsel or that his contributions had impacted the field as a whole. On appeal, counsel asserts that the submission of the codes themselves, the manual authored by the petitioner and the employer letters establish that the petitioner did, in fact, author the codes and that they have impacted the field.

The only references by name to the five codes the petitioner allegedly developed are in counsel’s letters and the petitioner’s self-serving curriculum vitae. On appeal, counsel asserts that the “A” in the program name “ABOS” refers to the petitioner’s first name. As discussed above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The report and manual for this program do not support this assertion. Given that the program was developed in-house for use by AGOCO, according to the material, without proof otherwise, it is at least equally reasonable that the “A” stands for AGOCO. Moreover, simply writing a report on a code and the in-house manual is not necessarily evidence that the petitioner also authored the code. Even assuming the petitioner is the author of ABOS, the record reveals that it was developed as an in-house program. The record contains no evidence of its use beyond AGOCO or its influence on programs used by other companies.

As stated above, the letters are from the petitioner’s own employers. While such letters are important in providing details regarding the petitioner’s duties for his employers, they cannot, by themselves, establish the petitioner’s national or international acclaim. Such acclaim necessarily implies recognition beyond one’s own employers and clients.

It is inherent to the petitioner’s occupation to design codes for use by his employers and author reports evaluating potential future projects. A vague and unsupported assertion by the petitioner’s current employer that his work has impacted the field is insufficient. The record contains no coverage or reviews of the petitioner’s five codes in trade journals discussing their superiority to other in-house codes. The record contains no evaluations of the codes by independent experts or evidence of companies, for which the petitioner has not worked or consulted, applying the petitioner’s work.

In light of the above, we concur with the director that the record is absent any evidence of the petitioner’s impact in the field beyond his satisfactory performance for his employers.

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

Initially, counsel asserted that the petitioner had authored over 40 scientific articles, including a manual and course book for ABOS. As stated above, ABOS appears to be an in-house program and the manual to which counsel refers has no ISBN number or other evidence that it has actually been published. In fact, of the reports submitted, only one contains a journal name and pagination indicative of publication in professional or major trade publications or other major media. Two others bear the name of the Petroleum Society of CIM, but it is not clear that the articles were published in a journal by that society or presented at a conference sponsored by that society. The remaining materials appear to be internal reports.

In response to the director's request for evidence of the significance of these materials, the petitioner submits evidence that the petitioner has presented his work after the date of filing. Such evidence is not relevant to the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The evidence submitted to meet a given criterion must be evaluated as to whether it is indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. Evidence of publication or conference presentations with no evidence of the impact these articles or presentations have had, such as frequent citation by independent experts, is insufficient.

In light of the above, we concur with the director that the petitioner does not meet this criterion.

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 additional evidence, counsel asserts for the first time that the petitioner meets this criterion. The petitioner submits evidence of conference presentations that postdate the date of filing. As stated above, such evidence cannot be considered as evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Regardless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) reveals that this criterion relates to the visual arts. While the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" where the criterion does not readily apply, we find that conference presentations are more comparable to scholarly articles. Thus, we have considered the petitioner's conference presentations above.

In light of the above, the petitioner has not established that he meets this criterion.

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

Relying on the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), it is clear that the evidence required under this criterion must establish the leading or critical nature of the role the alien was hired to fill and the distinguished reputation of the employer.

The employer letters affirm that the petitioner was valued by his employers and performed his duties successfully, producing reports and, apparently, programs that were utilized by his employers. At issue, however, are the roles the petitioner was hired to fill, not merely his accomplishments in those roles. On his curriculum vitae, the petitioner lists his job titles variously as "reservoir simulation engineer," "senior reservoir engineer," "consultant" and "staff engineer." The petitioner also indicates that he was the owner of Sand Consultants Incorporation. 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)).

While owning a company is clearly a leading or critical role, the record lacks evidence that Sand Consultants enjoyed a distinguished reputation nationally or internationally. In fact, while Mr. Ohen asserts that Core Laboratories 70 offices in more than 50 counties, the record contains no annual reports or media coverage of any

of the petitioner's employers. Thus, the petitioner has not established that any of his employers enjoy a distinguished reputation nationally or internationally.

Moreover, the petitioner has not established the leading or critical nature of his remaining positions. Mr. Ohen confirms that the petitioner works for Core Laboratories as a reservoir simulation engineer. Dr. Thomas confirms that the petitioner was a project engineer and leader of the simulation group at Hycal from 1994 to 1997. Dr. Thomas does not indicate how many groups and, thus, group leaders, are employed at Hycal. We note that a January 30, 1996 report prepared by the petitioner for Hycal indicates that the petitioner prepared it "under the direction of Dr. B. Thomas." Mr. Pham confirms that the petitioner was a contractor for an unidentified six-month period at El Paso Production Company. We cannot conclude that every contractor, engineer or even team leader for a large company plays a leading or critical role for that company beyond the obvious fact that the company must employ competent engineers and team leaders.

In light of the above, we concur with the director that the petitioner does not meet this criterion.

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

In response to the director's request for additional evidence, counsel references the proposed wage on the Form I-140 petition as evidence that the petitioner "commands a six figure salary for his expertise in the field." On appeal, counsel reasserts that the proposed wage listed on the Form I-140 establishes that the petitioner earns "approximately \$111,000" per year. The petitioner submits evidence that the prevailing level two wage for petroleum engineers in Houston is \$100,818 per year.

The information on the Form I-140 petition relates to the "proposed" employment. The listing of wages on the Form I-140 does not necessarily indicate that the petitioner has already earned the proposed wage. Moreover, the petitioner, not his employer, signed the Form I-140. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 193). The record does not contain the petitioner's Forms W-2 reflecting that he earned this wage prior to the filing of the petition. While an employer is not required to have already paid the proffered wage in cases involving certification by the Department of Labor, where the petitioner is claiming his wages are indicative of his acclaim in the field, he must demonstrate that he has already earned those wages. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Finally, assuming the petitioner had already earned the wages claimed on the Form I-140, they are only minimally higher than the local prevailing wage. The petitioner has not established that his wages are comparable with the highest wages in his field nationally.

In light of the above, the petitioner has not established that he meets this criterion.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished him as an engineer 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 shows talent as an engineer, 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.