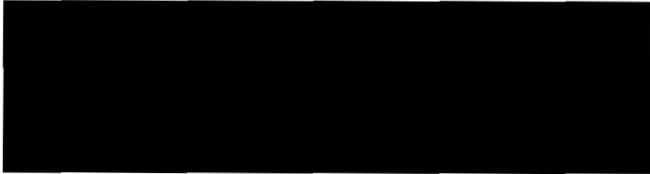


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FILE: LIN 05 800 13495 Office: NEBRASKA SERVICE CENTER Date: **APR 14 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, the petitioner submits additional evidence.

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 an aerospace 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

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 an Internet announcement of his receipt of the first ever Royal Aeronautical Society Cayley Award in 2003. The materials reveal that this award is a scholarship towards his education at Sheffield Hallam University. The petitioner also submitted a copy of the award itself, dated July 2003, indicating that the award is part of the Centennial Scholarship Fund. Finally, the petitioner submitted a list of 12 Centennial Scholarship Fund winners for 2003 and 2004. The petitioner's entry indicates that the scholarship funds "[c]ontributed to tuition fees for MSc (Hons) in Advanced Engineering."

The director concluded that the award appeared to be a scholarship with at least 12 winners and that the petitioner had not demonstrated the requirements for selection for the award. On appeal, the petitioner submits evidence regarding the selection process for a "medal or award." These materials do not appear relevant to the scholarship the petitioner won. The petitioner also submits the Centennial Scholarship Fund conditions of award. These materials indicate that the scholarships are designed to support academics. Finally, the petitioner submits his 2004 degree from Sheffield Hallam University.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Thus, they cannot establish that a petitioner is one of the very few at the top of his field. Finally, scholarships are designed to fund future education, not to recognized past excellence in the field.

In light of the above, the Cayley Scholarship cannot serve to meet this criterion.

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.

The petitioner submitted evidence that on September 24, 1996, he was elected as a "Graduate" member of the Aeronautical Society of India. A 1978 certificate indicates that associate membership in this society is equivalent to a bachelor's degree in Aeronautical Engineering. The petitioner submitted his 1996 passing scores for his associate membership examinations and an evaluation of his membership finding it equivalent to a bachelor's degree from a regionally accredited institution of higher education in the United States.

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

In response to the director's request for additional evidence, the petitioner submitted evidence that he is a senior member of the American Institute of Aeronautics and Astronautics (AIAA) and a member of the Royal Aeronautical Society.

The director concluded that the petitioner had not established that any of the above institutes require outstanding achievements of their members.

On appeal, the petitioner submitted evidence of his certification as a chartered engineer by the Engineering Council, United Kingdom. The certificate is dated June 3, 2005, after the date of filing. The petitioner must establish 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 petitioner also submitted evidence that his membership grade in the Aeronautical Society of India was upgraded to "member" in May 2001. The petitioner submitted materials from this society that provide the following:

Members shall have been either Associate Members or shall have fulfilled the conditions necessary for Associate Membership. They shall have achieved distinction in the profession of aeronautics and [/] or shall have held a position of responsibility for [a] minimum period of 5 years. In addition they shall have either[:]

- a) Made useful scientific or technical contribution in the field of aircraft design or production or aeronautical research or education or training or in any other branch of aviation technology.
- b) Acquired considerable experience of the practical aspects of aviation for at least a total period of 10 years as pilots, navigators, aircraft maintenance engineers, production engineers, aeronautical communication engineers, air traffic controllers or other scientific or technological personnel engaged in aviation activities or a field related to aviation activity such as aviation medicine, law, finance, marketing, management and holding a responsible position, in a manner acceptable to the Council.

Ten years of experience, even in a position of responsibility, is not an outstanding achievement in the field, but the inevitable outcome for any engineer competent enough to remain in his field long enough.

In addition, the petitioner submitted a letter from the AIAA dated March 24, 2004 upgrading the petitioner to "senior member." The letter indicates that senior members with 12 years of professional experience can upgrade to Associate Fellows. Thus, it appears that the various membership grades in the AIAA are based on experience alone. As discussed above, a number of years of professional experience is not an outstanding achievement.

Finally, even if the petitioner had established that he was a certified chartered engineer prior to the date of filing, he has not provided the requirements for this certification.

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

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

Initially, the petitioner submitted an e-mail message from [REDACTED], promising to send the petitioner a "list of books available on Aeronautical Engineering published by Piyush Publication, edited & contributed by you." Mr. [REDACTED] also indicates that he will provide a list of books "available with other publishers on the subject." A second e-mail from Mr. [REDACTED] references an attachment. Two additional pages contain a list of six Piyush Publications, 16 SPD Publications and six books on aerospace engineering by "Allied Publishers." Of all the publications, only three of the titles from Piyush Publications reference the petitioner as an author. The petitioner did not submit copies of the covers, title pages or other evidence of the books' existence and his authorship.

The director noted that the petitioner had not submitted the books, reviews of the book, photographs of the books or sales figures and concluded that the evidence submitted was insufficient to meet this criterion. The petitioner does not address this criterion on appeal.

Primary evidence of authorship of an article or a book is a copy of the first page of the article or the title page of the book. Without documentation that such evidence is unavailable, secondary evidence and affidavits are insufficient. 8 C.F.R. § 103.2(b)(2). We concur with the director that the petitioner has not established that he has authored any scholarly work. Moreover, the work must be published in a professional or major trade journal or other major media. The petitioner has not established that these books constitute major media. Specifically, the petitioner has not established that these books were widely purchased.

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.

The petitioner submitted a copy of a July 16, 2004 letter from CTS Technical Services, Inc. issued to support a nonimmigrant petition filed by CTS. The letter confirms CTS' worldwide reputation and its intent to employ the petitioner as a Stress Analysis Engineer. The letter further asserts that this position "is one of the more critical positions within the aerospace industry and is responsible for performing the essential task of developing and testing stress tolerances for aircraft structures and components."

The director determined that the petitioner's claim to meet this criterion was insufficient. On appeal, the petitioner resubmits the letter from CTS. Obviously, an engineering and technical support services company that supplies expertise and manpower to the aerospace industry must employ competent stress analysis engineers. An unsupported general claim that every such engineer plays a critical role for the employer is insufficient. Without an organizational chart demonstrating the number of stress analysis engineers and their place in the organizational hierarchy, we cannot evaluate the claim that every stress analysis engineers plays a leading or critical role for his employer beyond the obvious need to employ such engineers. As such, the petitioner has not established that he meets 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.

The letter from CTS indicates that the petitioner would be paid \$52 per hour, or \$108,160 annually. The petitioner would also be compensated \$78 per hour for any overtime. The petitioner also submitted a pay stub reflecting that he earns this amount. In response to the director's request for additional evidence, the petitioner submitted more pay stubs reflecting the same hourly rates.

The director concluded that the petitioner had not established that \$52 per hour was "high compared to others in the field. On appeal, the petitioner submitted evidence that, after the date of filing, his earnings rose to \$55 per hour regular time and \$82.5 overtime. The petitioner also submitted an Internet analysis ranking his entered annual wage of \$130,000 as "100%" and "A+." At the time of filing, however, the petitioner's wages were not \$130,000 annually. Moreover, the petitioner has not established the significance of this Internet site. The petitioner also submitted information posted at aerospaceweb.org asserting that the median income in the field in 2001 was \$70,400. The author estimates that the high end of the range is \$150,000. Once again, the petitioner did not submit evidence of the significance of this Internet site.

The petitioner must establish eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Thus, he must establish that his wages earned prior to that date were not just above the average or median wage, but compared with the wages earned by the most renowned experienced members of the field. The petitioner's wages as of the date of filing were \$52 per hour. The petitioner did not submit evidence from the Bureau of Labor Statistics documenting the 90th percentile of wages for stress analysis engineers or even engineers in general. Even if we accept the information from aerospaceweb.org, the petitioner's wages as of the date of filing were well below the top wages in the field, estimated at \$150,000. Thus, 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 himself as an aerospace 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 aerospace 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.