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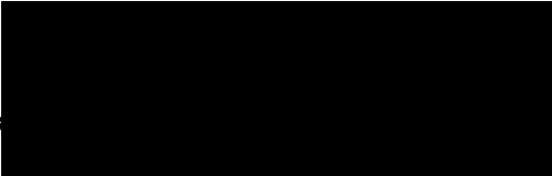


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUN 07 2006**
WAC 04 244 51547

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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. 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 September 2, 2004, seeks to classify the petitioner as an alien with extraordinary ability as the Senior Director of Software Applications for NetZero, a United Online, Inc. company.¹

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

¹ Information provided by the petitioner states that on September 25, 2001, NetZero, Inc. and Juno Online Services, Inc., two of the leading internet service providers in the United States, merged their operations and formed United Online, Inc. As a result of this merger, NetZero and Juno are now wholly owned subsidiaries of United Online.

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.

The petitioner submitted an August 14, 2004 letter from an individual named [REDACTED] “[The petitioner] was working with M/s Panso Electronics for his bachelor’s project and this firm developed software for a firm called Newtec System. The product for which we have developed software received a G.S. Parkhe Industrial Merit Award in 1991.”

In a letter responding to the director’s request for evidence, counsel states: “As noted in the initial submission [the petitioner] received the G.S. Parkhe Industrial Merit Award in 1991.” The petitioner’s response included a newspaper article from 2004 appearing in the *Sakal Herald* stating: “The Mahratta Chamber of Commerce, Industries and Agriculture (MCCIA) has been giving the Parkhe Industrial Merit Awards for last 58 years to small scale entrepreneurs from Maharashtra, to encourage innovative and new products.”

The petitioner also submitted an April 20, 2005 letter from the MCCIA stating: “G.S. Parkhe Industrial Merit Award was presented in the year 1991 by the Chamber to M/s. Newtec Systems, 49-2 B, Maharashtra . . . for their product ‘Electronic Logging Machine (Thread).’”

The evidence submitted by the petitioner demonstrates that the Parkhe Industrial Merit Award reflects local recognition rather than national or international recognition. Further, we note that this award was presented to “M/s. Newtec Systems” rather than the petitioner. The record includes no contemporaneous evidence showing that the petitioner was a named recipient of the Parkhe Industrial Merit Award. The plain wording of this criterion, however, requires evidence of the “alien’s receipt of . . . prizes or awards for excellence.” It cannot suffice that the petitioner was a member of a large group that earned collective recognition at the local level. If the petitioner himself is not named as a recipient, then it is not apparent how such an award would demonstrate his individual acclaim. Finally, we note Vikas Panse’s statement that the petitioner was not an actual employee of Newtec Systems, the award recipient, making the petitioner’s level of contribution to the award difficult to ascertain.

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 showing that he is a Senior Member of the Institute of Electrical and Electronics Engineers (IEEE). The petitioner also submitted information from the IEEE's website stating:

IEEE Bylaw I-105.3 sets forth the criteria for elevation to Senior Member Grade, as follows:

"... a candidate shall be an engineer, scientist, educator, technical executive or originator in IEEE-designated fields. The candidate shall have been in **professional practice for at least ten years** and shall have shown **significant performance** over a period of **at least five of those years.**"

* * *

Five years of significant performance

Many prospective applicants make the mistake of assuming that "significant performance" requires special awards, patents or other extremely sophisticated technical accomplishments; such is not the case. Substantial job responsibilities such as team leader, task supervisor, engineer in charge of a program or project, engineer or scientist performing research with some measure of success (papers), or faculty developing and teaching courses with research and publications, all are indications of significant performance

* * *

References

The applicant must also provide **three references from current IEEE members holding Senior Member, Fellow or Honorary Member grade**. Your professional colleagues are your best source of these references. If you have difficulty in locating Senior Members or Fellows to serve as references, please contact your local Section or Chapter for assistance.

We do not find that possessing ten years of professional experience, obtaining three references from one's local colleagues, holding "substantial job responsibilities," or "performing research with some measure of success" constitute outstanding achievement for purposes of this criterion.² Nor has the petitioner shown that he was evaluated by national or international experts in consideration of his admission to senior membership.

² Beyond the petitioner's Senior Membership grade, there exists a more prestigious level of membership of "Fellow." Information from the IEEE website, <http://www.ieee.org/portal/pages/membership/rep/membershipqualifications.html> (accessed June 2, 2006), states: "Recognition as a **Fellow** (member) of the IEEE recognizes unusual professional distinction. It is conferred only by invitation of the Board of Directors upon an individual with an extraordinary record of accomplishment in one or more of the IEEE designated fields."

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 regulation at 8 C.F.R. § 204.5(h)(3) provides that a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. For example, evaluating the work of accomplished professors as a member on a national panel of experts is of far greater probative value than evaluating the work of one's coworkers.

In response to the director's request for evidence, the petitioner submitted a letter of support [REDACTED] [REDACTED] Technical Officer, United Online, Inc., stating: "Because of his demonstrated abilities and his position as a Senior Director [the petitioner] is a member of the United Online Review Committee. This committee reviews the proposals and work of other departments and teams within United Online for soundness and technical feasibility." Aside from these two brief statements, [REDACTED] [REDACTED] letter provides no further information regarding the petitioner's participation on this committee.

We do not find that reviewing internal proposals and work projects as a part of one's duties for an immediate employer demonstrates sustained national or international acclaim. Further, the plain wording of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." The record, however, includes no evidence of the petitioner's activities as a member of the United Online Review Committee. For example, the record lacks information regarding the petitioner's dates of service on the committee, the specific nature of his duties as reviewer, the projects he evaluated, the names of individuals he evaluated, and their level of expertise. We cannot ignore that the statute and regulations require "extensive documentation" of sustained national or international acclaim. Without evidence showing that the petitioner participated in evaluating engineering professionals at the national or international level, we cannot conclude he meets this criterion.

The petitioner also submitted an April 18, 2005 letter of support [REDACTED] Buenaventura Section Chairman and Los Angeles Council Vice-Chair, IEEE, stating:

[The petitioner] is a Senior Member of the IEEE and has volunteered to serve as an evaluator of members of the IEEE who desire to be elevated to Senior Members. In this role, he reviews candidate members' credentials and qualifications. He decides whether or not to interview the candidates for Senior Member based on the review. After the interview, he then either recommends them for elevation by providing a reference for them, or withholds recommendation if he finds that a candidate is not eligible for elevation.

The petitioner's dates of service as an evaluator and the names of the individuals reviewed by him have not been provided. While the petitioner may have evaluated candidates at the local chapter level, there is no indication that such activities demonstrate his sustained national or international acclaim. Further, Douglas Askegard's statement that the petitioner "recommends" candidates for elevation indicates that the petitioner is not the final authority for Senior Membership determinations. We do not find that "providing a reference" for local IEEE Senior Membership candidates elevates the petitioner above almost all others in his field at the national or international level.

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

The petitioner submitted various letters of support.

Software Development, NetZero, Inc., states:

[The petitioner] began work with NetZero as a Senior Software Engineer. It was his indefatigable enthusiasm, knowledge, research orientation and hard work that won him the position of Manager, Software Development.

During this period, he was involved in the development of a homegrown J2EE compatible application server. These servers are very robust highly scalable and have very high through put. [The petitioner] researched and improved our servers so that they can take 45 million transactions over a 30-day period without restarting the servers. [The petitioner's] work has helped tremendously to reduce the downtime of all our application servers and has helped United Online Customers with the unique experience of improved connectivity to the Internet via Dialup Service. The stability of the system has helped the company to reduce the churn of the existing and new user base.

He also managed and worked with our accelerator team to move our new product, High Speed Internet Access, to the dial up user. This product is currently using caching and compression technology to improve the speed over dial up by up to 5 times. [The petitioner's] contribution helped to make this product a success in a very tough market. [The petitioner] is also working on a research project to take this Accelerator product to the next level to further improve surfing speeds. Many companies have tried to use dial up accelerator products but have not been successful. The success of United Online's accelerator product has forced the rest of the industry to offer accelerated dial up to remain competitive.

is a Senior Lecturer in the School of Software Engineering and Data Communications, Queensland University of Technology.³ "[The petitioner] has been able to implement his design for his employer, providing a significant commercial advantage. His unusual combination of theoretical innovation and practical skills has made the product a success, both for the company and for its customers."

a former Senior Quality Engineer with NetZero, Inc., now an Associate Quality Engineer for Earthlink, Inc., states:

During my time at United Online/NetZero, I had a great deal of interaction with [the petitioner] as he headed the server team and later the operations team.

* * *

³ The petitioner earned his Master of Engineering Science degree from Queensland University of Technology in 1996.

[The petitioner's] involvement in United Online's Accelerator product was especially meaningful, as all the major ISPs were investing in their own versions of that software and the underlying systems, and it was the first product of its kind to reach the market. His team provided the critical code that tied the proprietary technology with the new and existing transaction servers as well as with the front-end client. United Online's release of that product was months ahead of other companies, which allowed it to firmly establish a solid user base in an important market segment that continues to grow.

states:

As the Senior Director of Applications Operations, [the petitioner] is a leader of the team that has developed our Accelerator product and continues to improve it. I have observed/reviewed his work both as a Senior Software Engineer and as a Senior Director. As the leader of the team that has developed our Accelerator product [the petitioner] has made major contributions to the technical and commercial success of this product.

His contribution to the Accelerator Product has helped the company to develop and deliver this product quickly and efficiently. His ability to lead the team and making accurate decisions during the design, development and deployment phase has helped the company to scale this product.

Great Software Laboratory Pvt. Ltd., Pune, India, and formerly Chief Operating Officer (COO) of Persistent Systems, states:

I visited NetZero in 2002, in the capacity of Persistent's COO and Executive responsible for Persistent's product line in Directory Services. We were at that time evaluating various options for NetZero to deploy directory services in their network. I met with [the petitioner's] group during this evaluation.

* * *

During the evaluation of various options for Directory Services to Netzero, we studied the High-speed Accelerator work done by [the petitioner].

* * *

The primary contribution by [the petitioner] to this area is to apply a well-known technique called pipelining to improve the channel utilization, thus effectively addressing the slow web access problem for NetZero (now UOL).

The preceding comments reflect that the petitioner has lead a team that successfully applied an existing technique to incrementally improve the web page download times of his employer's NetZero HiSpeed Web Accelerator, but it has not been established that this work rises to level of a contribution of major significance in the field of software engineering. We accept that the petitioner has made contributions to the level of service provided to United Online's internet subscribers; however, it has not been shown how the field has

changed as a result of his work, beyond the incremental improvements in download time realized by his employer's internet subscribers.

In regard to the letters of support submitted with this petition, we note that all of the testimonials were written by individuals who have collaborated with the petitioner in the past or who are from institutions where he has studied or worked. This fact indicates that while the petitioner's work is valued by those close to him, others outside his immediate circle are largely unaware of his accomplishments and do not attribute the same level of importance to his work. With regard to the personal recommendation of individuals who have worked with the petitioner, 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. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of 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 letter of support from [REDACTED] states:

[The petitioner] has produced several 'white papers' for United Online. White papers are internally circulated research papers which outline the development work that has taken place and propose solutions to design problems and way to improve various products. These papers . . . are not published outside the company because of the proprietary nature of the information.

The plain language of this criterion, however, requires "authorship of scholarly articles . . . in professional publications or other major media." The petitioner's evidence does not meet this requirement.

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

Several of the letters of support previously cited discuss the petitioner's leading and critical role for United Online, Inc.

Gerald Popek further states:

As a Senior Director, [the petitioner] has played a critical role in the development of the product and continues to play a critical role in the improvement of the technologies used. He is only 1 of 12 Technology Senior Directors in a company of approximately 790 employees worldwide, and is in the top echelon of management of the company.

The director's decision stated: "The evidence of record is sufficient to demonstrate that the petitioner has, as a high-level manager, played a key role within the company where he is presently employed. However, there is no evidence that his present employer enjoys a distinguished reputation."

On appeal, the petitioner submits evidence showing that Juno/NetZero ranked 2nd in customer satisfaction in "J.D. Power and Associates 2004 Internet Service Provider Residential Customer Satisfaction Study." Additional industry rankings printed from the internet from various other independent sources demonstrate that Juno/NetZero has earned a distinguished reputation among internet service providers in the United States. In this case, we find that the petitioner's evidence is adequate to demonstrate that he performed in a leading or critical role for United Online and that this company has earned a distinguished national reputation.

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

The petitioner submitted his Form W-2, Wage and Tax Statement, for 2003 reflecting gross pay in the amount of \$242,157.57. The petitioner also submitted comparative data showing that his compensation was significantly high in relation to others in his occupation. Therefore, we concur with the director's finding that the petitioner's evidence satisfies this criterion.

In this case, we find that the evidence presented satisfies only two of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner 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 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.