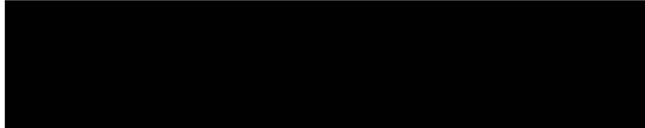


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FILE: [REDACTED]
EAC 05 043 50777

Office: VERMONT SERVICE CENTER

Date: MAR 15 2007

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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.

On appeal, counsel argues that the petitioner qualifies as an alien of “extraordinary ability in international accounting, financial management, financial information systems, and business engineering.”

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 November 28, 2004, seeks to classify the petitioner as an alien with extraordinary ability as the Treasurer and Director of Finance of the International Rice Research Institute (IRRI). A letter of support from [REDACTED] Director General, IRRI, states: “IRRI is one of the 15 non-profit, autonomous, scientific research and training Institutes in the system of the Consultative Group on

International Agricultural Research (CGIAR). The headquarters of IRRI is located . . . near Manila in Philippines. In addition, IRRI has 10 locations in Asia to carry out its work.”

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 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 his membership in the Association of Certified Accountants and the Institute of Chartered Accountants. The record, however, includes no evidence of the membership bylaws or the official admission requirements for these organizations. There is no indication that admission to membership in these organizations required outstanding achievement or that the petitioner was evaluated by national or international experts in consideration of his admission to membership. Thus, the petitioner has not established that he meets this criterion.

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. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “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). For example, evaluating the

work of accomplished professionals as a member on a national panel of independent experts is of far greater probative value than evaluating one's immediate subordinates.

A letter of support from [REDACTED], one of the CGIAR's leading funding sources, states:

Due to his outstanding professional and inter-personal skills, [the petitioner] has been appointed numerous times to participate in various expert teams to review different aspects of the CGIAR system. The most recent was for service on the CGIAR finance peer review team, responsible for reviewing the financial performance of the research centers of the CGIAR system.

While Shey Tata's comments indicate that the petitioner's input is valued by institutions directly affiliated with the CGIAR system, of which IRRI is a part, it has not been established that preparing financial guidelines for the CGIAR's member organizations and reviewing compliance with such guidelines is tantamount to judging the work of others in one's field for purposes of satisfying this criterion. The record includes no evidence showing the names of the individuals evaluated by the petitioner or their level of expertise. Further, there is no indication that the petitioner held final authority over compliance and performance determinations. Developing financial guidelines and reviewing financial performance are duties inherent to the petitioner's occupation. We do not find that the petitioner's inclusion on a financial review team for an organization that has direct oversight of his immediate employer demonstrates sustained national or international acclaim in the accounting or finance fields. Without evidence showing that the petitioner's involvement with the CGIAR's financial review teams elevates him above almost all others in his field nationally or internationally, we cannot conclude that he meets this criterion.

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

A letter of recommendation from [REDACTED], Chief Financial Officer, [REDACTED], states:

I have known [the petitioner] in a professional capacity since I met him for the first time in the mid-eighties in Monrovia, Liberia. He had recently been appointed as the Financial Controller of the West Africa Rice Development Association (WARDA) supported by the CGIAR. A few months prior to that, the CGIAR had launched a financial rescue mission for this organization. It was clear to us that the organization would not survive unless it instituted modern financial management techniques and systems under the leadership of an expert financial professional. [The petitioner] proved himself as that expert and got the job done. The organization has indeed survived. . . . [The petitioner] has since then served at two other CGIAR organizations, the International Center for Research on Semi-Arid Tropics (ICRISAT) headquartered in India and more recently at the International Rice Research Institute (IRRI) in the Philippines. His excellent professional progress within the organization is certainly due to his professional competence, he is a certified accountant with a chartered account certificate, but importantly his ability to work across cultures and continents, and, as well his professional integrity.

[The petitioner] has made significant contributions to the financial community within the CGIAR by taking a variety of leadership roles in complex technical issues such as accounting policy, indirect cost policy and financial management indicators. His service at the three Centers has almost always coincided with strategic challenges faced by the Centers. To cite a few examples, in addition to the survival problems at WARDA, he has had deal with a strategic reorientation of work programs from India to Africa in case of ICRISAT and management of liquidity in case of IRRI. In all instances, key ingredients of success have been his professional and collaborative approach to problem solving, his willingness to take on difficult issues and his appreciation of different cultures and traditions. [The petitioner] is well known in the CGIAR as a talented financial professional who always delivers.

states that the petitioner “has made significant contributions to the financial community within the CGIAR,” but there is no evidence showing that the financial work attributable to him has had a substantial national or international impact beyond the CGIAR. While the petitioner is admired within the CGIAR for his accomplishments, the evidence submitted by the petitioner is not adequate to demonstrate that he is recognized throughout the greater field for original contributions of major significance in accounting or finance. The petitioner has not shown how the accounting or financial management fields have changed as a result of his work.

With regard to the remaining recommendation letters from individuals who have been involved with the CGIAR, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of the GGIAR and its funding organizations (such as the World Bank or The Rockefeller Foundation). 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. We cannot ignore that section 203(b)(1)(A)(i) of the Act specifically requires “extensive documentation” of sustained national or international acclaim. Without extensive documentation showing that the petitioner’s work has been unusually influential or highly acclaimed at the national or international level, we cannot conclude that his work rises to the level of an original contribution of major significance in the accounting or finance fields.

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 a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

A letter of support from [REDACTED] Director General, [REDACTED] states:

I became acquainted with [the petitioner] in 2002, when he was hired as the Treasurer and Director for Finance for the International Rice Research Institute (IRRI). As Director General of IRRI, I have served as his supervisor for the past 2 ½ years.

As Director of Finance, he is responsible for the development and implementation of IRRI’s financial policies, management of the banking, investment and treasury function, and preparation of annual

program and work budgets. This is one of the most responsible and critical positions in the Institute. [The petitioner] has done an excellent job in all areas of his job responsibilities. He is very well trained and has an excellent work ethic. Upon his arrival at IRRI, he quickly became familiar with the position and the key staff in his department.

One area of his responsibility that is most important to the Institute is the development of annual budgets based on predicted donor grants and Institute expenditures based on program activities. This information updated throughout the year is crucial for the long-term sustainability of the Institute. [The petitioner] has done this extremely well. Another area of crucial importance is the development of investment policies for our reserves. Again, his advice and implementation of these policies have been excellent. IRRI's financial situation is very good and much of the credit is due to the efforts of [the petitioner]. He had previously worked with two other international research institutes and they had similar success in achieving financial stability.

IRRI is one of 15 international centers that make up the Consultative Group on International Agriculture Research (CGIAR). Within the CGIAR, [the petitioner] is clearly the most experienced and respected financial officer in the system. Recently, he was selected to develop the critical financial indicators for the entire system.

We accept that the petitioner's positions of Treasurer and Director for Finance at IRRI, Director for Finance and Administration at ICRISAT, and Director of Administration and Finance at WARDA are leading roles, but there is no evidence of independent press reports or other material establishing that these organizations have distinguished reputations. Receipt of funding from governmental or private sources is not sufficient to demonstrate that the grantee has earned a distinguished reputation at the national or international level. We note that it is commonplace for non-profit organizations to be funded by grants from a variety of public and private sources. Without independent evidence showing that the preceding organizations had distinguished reputations during the petitioner's tenure, we cannot conclude 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 petitioner initially submitted an illegible photocopy of an earnings statement from 2004. In response to the director's request for evidence, the petitioner submitted a letter of support from Robert Zeigler, Director General of IRRI, stating that the petitioner is employed as "the Treasurer and Director for Finance" at a salary of \$119,638 plus benefits. The petitioner's response also included median salary statistics for the occupation of "Financial Manager" printed from the payscale.com internet website. The petitioner's use of median salary statistics, however, is not an appropriate basis for comparison. The petitioner must submit evidence that his salary places him at the very top of his field, not in the top half. See 8 C.F.R. § 204.5(h)(2). The petitioner's bases for comparison are also flawed in that they limit comparison of the petitioner to lower-level financial managers or recent accounting graduates rather than including the more appropriate salary comparisons of Treasurer or Director of Finance. We find that the evidence submitted by the petitioner is not adequate to establish that he earns a level of compensation that places him among the highest paid individuals in his field at the national or international level. Thus, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

We note here that the petitioner's claim of eligibility under this classification rests primarily upon several recommendation letters prepared in support of the petition rather than contemporaneous first-hand evidence of his achievements and recognition. The benefit sought in the present matter, however, is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. See section 203(b)(1)(A)(i) of the Act. Further, the regulation at 8 C.F.R. § 204.5(h)(3) requires documentary evidence that the petitioner "has sustained national or international acclaim and that his . . . achievements have been recognized in the field of expertise." This regulation provides that eligibility may be established through a one-time achievement or through documentation meeting at least three of ten criteria. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The regulatory criteria require specific documentation beyond mere testimony, such as awards, memberships, published material about the alien, evidence of a high salary, and box office receipts. As an example of the specific nature of the documentation required, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the "title, date and author" of the published material about the alien. The only criterion for which letters of support are specifically relevant is the criterion relating to the alien's leading or critical role for an entity with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii). The first issue is the role the alien was hired to fill. According to 8 C.F.R. § 204.5(g), letters from employers are acceptable evidence of experience.¹ While letters from one's professional associates may place the evidence for the remaining criteria in context, they cannot serve as primary evidence of the achievement required by each criterion. In the present matter, the petitioner cannot arbitrarily replace such evidence with attestations from his close colleagues who assert that they find his abilities to be extraordinary. Further, while the regulation at 8 C.F.R. § 204.5(h)(4) permits "comparable evidence" where the ten criteria do not "readily apply" to the alien's occupation, the regulation neither states nor implies that letters of recommendation attesting to the alien's accomplishments are "comparable" to the strict documentation requirements in the regulations setting forth the ten criteria.² Evidence in existence prior to the preparation of the petition carries greater weight than letters of support prepared especially for submission with the petition.

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.

¹ We note, however, that an alien would also need to submit objective evidence of the reputation of the employer to satisfy the specific requirement of 8 C.F.R. § 204.5(h)(3)(viii).

² In the present case, there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” The record includes no such evidence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.