



U.S. Citizenship
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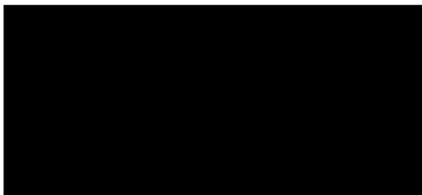
Office: NEBRASKA SERVICE CENTER

Date: OCT 11 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

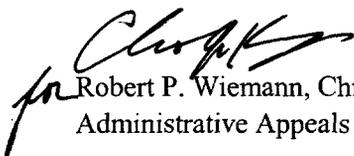
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 with extraordinary ability as a researcher, particularly in the field of computer science under 8 C.F.R. Section 204.5(h)(3), as [he] meets at least three (3) . . . of the ten (10) criteria.”

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 into 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, 60898-99 (Nov. 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 sustained national or international acclaim at the very top level.

This petition, filed on November 3, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a "Web Database Developer."¹ At the time of filing, the petitioner was pursuing a Ph.D. in Computer Science at Belford University.² The petitioner was also working for Lucky International Trading, Inc., where he had been employed since 2001.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). 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 evidence showing that he was honored in 1998 as a collegiate "All-American Scholar" by the United States Achievement Academy based on his academic achievements at Kansas City Kansas Community College. The record includes an undated letter from [REDACTED], United States Achievement Academy, stating:

It is my pleasure to inform you that Ms. Sherri Neff [Assistant Director, Admissions and Records] of Kansas City Kansas Community College has officially **selected** you to receive the Collegiate All-American Scholar Award. Award Selection is based **exclusively** on academic achievement as required by United States Achievement Academy Standards for Selection.

[The petitioner], you are a member of a **select group** of students who excel in all academic areas. Ms. Sherri Neff considers you to be one of the **top students** at Kansas City Kansas Community College.

* * *

To honor your accomplishments, the United States Achievement Academy will publish your biography in the Collegiate All-American Scholar Yearbook, a publication that honors academically outstanding college students **nationwide**.

¹ The petitioner holds a Master of Science degree in Computer Science from the University of Missouri-Kansas City dated December 15, 2000.

² The petitioner subsequently received his Ph.D. on June 24, 2005.

Since we have received your biography form, you will be featured with other students in the 1998 All American Scholar Awards yearbook. This publication honors the accomplishments of students nationwide

[Emphasis in original]

The record also includes a copy of the *1998 All-American Scholars Collegiate Directory* which lists thousands of students. The petitioner's brief entry appears on page 256. Page 5 of the yearbook states:

The United States Achievement Academy was founded on October 14, 1980 in Lexington, Kentucky to recognize outstanding students in America's high schools. Since its inception, the Academy has had the unique opportunity to honor America's outstanding, [sic] students and athletes and today includes our nation's college and university students.

Sixteen years ago, only four high school categories of recognition comprised the United States Achievement Academy in its first year of operation. Today the Academy recognizes more than 1.2 million students annually in 37 areas of achievement on the junior high, high school and collegiate level.

Each student recognized by the USAA has been nominated by a teacher, counselor, coach or community leader as among the sponsor's top students.

* * *

Student Qualification Standards

The Criteria for Selection are:

- Academics
- Citizenship
- Leadership
- Attitude
- Dependability

* * *

From 1980-1998, more than 16.5 million students have participated in the USAA program.

[Emphasis in original]

Being honored as a collegiate All-American Scholar does not constitute the petitioner's receipt of a lesser nationally or internationally recognized prize or award "for excellence in the field of endeavor." The preceding honor was intended to recognize student accomplishment rather than to recognize excellence among those already active in the computer science field. According to the above evidence, the petitioner's honor was based on his academic progress, citizenship, leadership, attitude, and dependability as assessed by [redacted] of Kansas City Kansas Community College. College study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner cannot restrict his field to exclude all those professionals who have long since completed their academic studies and therefore do not compete

for collegiate All-American Scholar recognition. We cannot conclude that receipt of such an award limited to students is an indication that the petitioner "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). Further, Ms. Sherri Neff's selection of the petitioner to receive the Collegiate All-American Scholar Award is more consistent with local recognition rather than national or international recognition. There is no evidence that the petitioner faced competition from students outside of Kansas City Kansas Community College.

In response to the director's request for evidence, the petitioner submitted a June 24, 2005 "Award of Excellence" from Belford University "[f]or performing all the duties diligently and enthusiastically for the Computer Science Project." The petitioner also submitted a June 24, 2005 "Certificate of Distinction" from Belford University "[i]n acknowledgement of exceptional performance in Computer Networks." The petitioner received these awards 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); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Commr. 1971). Accordingly, the AAO will not consider these awards in this proceeding. Nevertheless, we note that the awards from Belford University reflect institutional recognition rather than national or international recognition.

In addressing the three awards submitted by the petitioner, the director's decision stated:

The Service finds that such awards are presented not to established individuals with active professional careers, but rather to students in pursuit of an educational degree. . . . The visa classification sought by the petitioner is intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top.

The Service finds no evidence to establish that the petitioner has received a nationally or internationally recognized prize or award for excellence in the field of computer science.

We concur with the director's findings. Thus, the petitioner has not established that he meets 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 an October 21, 2004 letter reflecting his "associate membership" in Sigma Xi, The Scientific Research Society. The petitioner also submitted material printed from Sigma Xi's internet site stating: "Membership in Sigma Xi is by nomination. Those who have shown potential as researchers are invited to join as associate members. Full membership is conferred upon those who have demonstrated noteworthy achievements in research. Each year the Society initiates more than 5,000 new members." In response to the director's request for evidence, the petitioner submitted a copy of Sigma Xi's bylaws. Lines 55 -59 of the bylaws state: "Associate membership is offered to encourage young investigators with promise to continue careers in research. In making the nomination for such membership, both the nominator and the seconder attest to the nominee's potential for future promotion to Member." The evidence submitted by the petitioner reflects that "full membership" in Sigma Xi is a level above his "associate membership." Moreover, we cannot conclude that simply having "shown potential" or "promise" as a researcher is

commensurate with “outstanding achievements.” The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submitted a five-line entry from page 256 of the 1998 *All-American Scholars Collegiate Directory* stating: “KANSAS CITY KANSAS CMTY CLG KANSAS CITY KS NEFF, SHERRI; American Medical Association; Campus Computer Association; Chinese Karate Club; Chinese Students Association; International Student Council; Speech Club; Student Activities Board; COMP INFO SYS & COMP SCI; MA.” According to the letter from [REDACTED] the preceding information was obtained from the petitioner’s “biography form.” This brief entry in a directory of thousands of college students does not constitute published material about the petitioner’s work in the field of computer science. Further, the petitioner has not established that this directory qualifies as a professional or major trade publication or other form of major media. Moreover, the plain language of this regulatory criterion requires published material from more than one publication or major media source.

In light of the above, 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.

In addressing this criterion, the director’s decision stated:

The petitioner did not initially claim to meet this criterion. In response to the Service’s request for additional evidence[,] the petitioner went on record to claim status as a journal reviewer for the *Journal of the American Society for Information Science and Technology* and as a software reviewer for CdrInfo. However, the record is completely lacking documentary evidence to corroborate the petitioner’s claim. While the record contains information regarding these two entities[,] there is no evidence that the petitioner has conducted any type of review for either of them.

We concur with the director’s findings. The plain language of this criterion requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others.” 8 C.F.R. § 204.5(h)(3)(iv). The record includes no such evidence. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The petitioner does not challenge the director’s findings on appeal. Thus, the petitioner has not established 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.

Pages 3 through 6 of the director's decision include a thorough analysis of the petitioner's initial evidence as it relates to this criterion. We concur with the director's findings.

In response to the director's request for evidence, the petitioner submitted two additional letters of support. A May 1, 2005 letter from James Talent, United States Senator for Missouri, states:

[The petitioner] tells me that he has completed a Master of Computer Science degree at the University of Missouri-Columbia and has recently become a Ph.D. candidate focusing on management and organizational leadership at the University of Phoenix Online. He further states that his "cutting-edge research in software design for the Chinese language . . . make(s) information in databases more useful, which will open up the possibility for billions in commercial value each year." Additionally, I understand he was awarded the United States Achievement Academy's All-American Scholar Honors Program for his work as a student at the Kansas City Kansas Community College.

Given the above information, please show [the petitioner] all possible consideration for the approval of his I-140

Senator Talent's letter repeats information provided to him by the petitioner, but it does not state that the petitioner has made original scientific, scholarly, or business-related contributions of major significance in the computer science field. The assertion that the petitioner's research will someday "open up the possibility for billions in commercial value each year" is not an indication that his work has already resulted in a contribution of major significance in his field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. at 49. Individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Id.* Further, contrary to the statements contained in Senator Talent's letter, the evidence of record reflects that the petitioner earned his Master of Science degree in Computer Science from the University of Missouri-Kansas City (rather than the University of Missouri-Columbia) and pursued his Ph.D. studies at Belford University (rather than the University of Phoenix). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988).

A July 20, 2005 letter from [REDACTED] Associate Professor in the Department of Computer Science and Electrical Engineering at the University of Missouri-Kansas City, states:

[The petitioner] took two of my courses at the graduate level, the directed reading and the thesis courses, in 2000. I was the Chairman of the Committee of the Master's Degree in Computer Science for [the petitioner] at UMKC.

* * *

While his study [sic] at University in China, Kansas City [Kansas] Community College, UMKC, and his working at Lucky International Trading Inc., [the petitioner] was involved with web security related application. In his work, he discovered and widely disseminated the secret data collection mechanisms and the analysis data schema through searching the data stored in the database to monitor online users' activities. The design of secured structure schema of the WEB application also enabled the applications to automatically keep track [of] the users' suspicious behaviors on a twenty-four X server base. Therefore, his work has made the WEB e-commerce system and the Web-enabled database much safer and more efficient. He is the first researcher to have collected the information about the user's browsing behaviors into the design of a secured online application. Therefore, [the petitioner's] research and practice in Internet Web security area has had a significant impact on the e-commerce structural design and application implementation field.

The record, however, includes no evidence of this impact consistent with an original contribution of major significance in the field. For example, there is no evidence showing that the petitioner's online monitoring application has been successfully marketed at the national or international level or that it has been licensed by leading companies in the software industry. While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or scientific research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance in the field. 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. In this case, there is no evidence that the petitioner's original research contributions have been recognized outside of the educational institutions he attended. Without substantive evidence that the field of computer science has somehow changed as a result of petitioner's work or other evidence showing the impact of his work consistent with sustained national or international acclaim, we cannot conclude that he has made original contributions of major significance in the field.

The director's decision correctly noted that the experts offering letters of support regarding the petitioner's research contributions were limited to individuals from Kansas City Kansas Community College and the University of Missouri-Kansas City. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. 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. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim.

In light of the above, the petitioner has not established 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.

On May 11, 2005, the director issued a notice requesting the petitioner to provide “[e]vidence of [his] authorship of scholarly articles in the field, in professional or major trade publications or other major media.” The petitioner, however, failed to submit evidence showing that he meets the requirements of this regulatory criterion.

In addressing this criterion, the director’s decision stated:

In response to the Service’s request for additional evidence[,] the petitioner asserts that he has published four articles in scholarly journals in his field. However, the petitioner has not submitted a copy of any published articles. The record contains only a copy of the petitioner’s thesis and one article without any evidence that either of these have been published in professional or major trade publications or other major media.

On appeal, the petitioner submits a publication entitled *Internet Techniques and Applications*, a “21st Century Computer Science - College Study Guide.”³ The petitioner also submits a publication entitled *Solid Works: Study Guide to the Basics and Applications*. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. The translations accompanying the preceding publications were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that the preceding college study guides qualify as professional or major trade publications or other major media.

The director put the petitioner on notice of the required evidence on May 11, 2005 and gave him a reasonable opportunity to provide it for the record (twelve weeks) before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. If the petitioner had wanted the college study guides to be considered, he should have submitted them initially or in response to the director’s request for evidence.

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

In his appellate brief, counsel argues that the director’s request for evidence “did not give [the petitioner] enough time to get some of the documents translated, nor did it provide for an option to do so.” Counsel’s argument is without merit. As discussed previously, any document containing foreign language submitted to CIS shall be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The director’s May

³ The uncertified translation submitted by the petitioner identifies [REDACTED] as the author and the petitioner as the editor of this publication.

11, 2005 request for evidence afforded the petitioner "12 weeks to respond" as provided by the regulation at 8 C.F.R. § 103.2(b)(8). This regulation further states that "[a]dditional time may not be granted."

In this case, we concur with the director's finding that 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 national or international acclaim necessary to qualify as an alien of extraordinary ability. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor and earned sustained national or international acclaim.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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.