

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

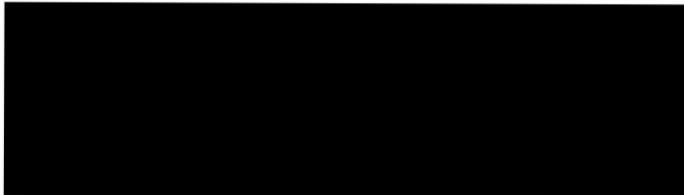
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B2

**PUBLIC COPY**



FILE:

LIN 07 077 52155

Office: NEBRASKA SERVICE CENTER

Date:

JAN 10 2008

IN RE:

Petitioner:

Beneficiary:

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

The petitioner seeks to classify the beneficiary 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 beneficiary’s sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel implies that the director found that the petitioner had submitted sufficient evidence relating to at least three of the regulatory criteria and that the director erred in not finding that the evidence satisfied the petitioner’s burden.

As will be discussed in more detail below, counsel mischaracterizes the director’s findings. What counsel characterizes as the director’s acknowledgement of the significance of various pieces of evidence is actually a reiteration of counsel’s initial assertions, which the director then dismissed as not supported by sufficient evidence. For the reasons discussed below, we uphold the director’s decision.

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, 60898-9 (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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as a Director of Applied Clinical Informatics. On appeal, counsel asserts that the beneficiary's field of medical informatics is small and does not generate "celebrity-style" acclaim within the general population. We concur with counsel that the petitioner need only demonstrate that the beneficiary enjoys national or international acclaim within his field. Counsel then asserts, however, that it "necessarily follows" from the small nature of the beneficiary's field that his achievements "would be recognized by a very narrow and small group of people, rather than nationwide." The statute, however, requires national or international acclaim, albeit within the alien's field. Nothing in the statute or regulations suggests that the requirement of national or international acclaim can be waived for small fields. In fact, the statute and regulations do not exclude the possibility that there may be some fields that lack the potential for their top members to qualify for this highly exclusive classification. Finally, we note that acclaim implies recognition beyond one's immediate circle of colleagues. Thus, mere employment in more than one country does not automatically establish international acclaim.

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.

On appeal, counsel asserts that the director required the evidence submitted to meet a given criterion independently establish national acclaim whereas it is the satisfaction of three criteria in the aggregate that ultimately establishes the necessary acclaim. Counsel cites *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. E.D. 1995) and *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. S.D. 1994) in support of the appellate brief.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Moreover, the two cases cited by counsel do not suggest that evidence relating to a given criterion must be accepted as meeting that criterion with no analysis of the significance of the evidence in the field. The court in *Muni*, 891 F. Supp. at 445-446, expressly acknowledged that the submission of evidence relating to at least three criterion "does not mandate a finding that the [alien] has sustained

national or international acclaim,” but found fault with the failure by the Immigration and Naturalization Service (legacy INS, now Citizenship and Immigration Services (CIS)) to explain why the evidence in that case was not sufficient in the aggregate. Similarly, the court in *Buletini*, 891 F. Supp. at 1234, acknowledges that CIS “must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria.”

In the matter before us, while the director did state that the evidence submitted to meet individual criteria did not demonstrate acclaim on its own, we interpret the director’s decision as finding that the documentation was not indicative of or even consistent with national or international acclaim. A petitioner cannot establish the alien’s eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether an alien 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 if that statutory standard is to have any meaning. An “accomplishment” that is inherent to the field or is otherwise unremarkable cannot establish sustained national or international acclaim simply by being accompanied by evidence of two additional “accomplishments” that also fail to set the alien apart from most members of that field. Such a conclusion would be untenable as it would not limit this classification to that small percentage who have risen to the top of the field. Finally, as will be discussed below, for many of the criteria the petitioner claims the beneficiary meets, the evidence submitted does not even comply with the plain language requirements of the relevant regulation.

The petitioner has submitted evidence that is claimed to meet the following criteria.<sup>1</sup>

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Counsel initially asserted that the beneficiary’s bonus, cash incentives and a preferred parking incentive from his former employer serve to meet this criterion. The director concluded that the awards were not nationally or internationally recognized as mandated by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). On appeal, counsel asserts that the director “conceded the numerous prestigious prizes and awards earned by the beneficiary for his work in the field.”

As noted above, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that any prize or award be nationally or internationally recognized to meet this criterion. We concur with the director that the record does not demonstrate that the beneficiary’s incentives as an employee of Siemens Medical Solutions USA, Inc. are nationally or internationally recognized. For example, the most renowned and experienced members of the field, regardless of employer, do not aspire to win these incentives. Moreover, there is no evidence that the selection of those receiving the incentives is reported outside of Siemens. Ultimately, the incentives were simply issued in recognition of and as appreciation for good

---

<sup>1</sup> The petitioner does not claim that the beneficiary meets any of the criteria not discussed in this decision and the record contains no evidence relating to those criteria.

job performance at Siemens. Thus, these incentives cannot serve to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

In light of the above, the petitioner has not established that the beneficiary 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 evidence of the beneficiary's membership in the American Medical Informatics Association (AMIA), the Institute of Electrical and Electronics Engineers (IEEE), the Israeli Medical Association and the Israeli Society of Anesthesiologists. The petitioner also submitted an unsigned letter purportedly from ██████████, Deputy Director of the Chaim Sheba Medical Center in Israel, confirming that the beneficiary meets the criteria of a system analyst and recommending him to be accepted as a member of the Israeli Society of System Analysts. An identification card in Hebrew accompanies this letter but is not accompanied by a full and certified translation as required pursuant to 8 C.F.R. § 103.2(b)(3).

In addition, counsel initially asserted that the beneficiary's "membership" on the staff and faculty of various institutions serve to meet this criterion.

The director did not address this criterion and counsel does not address it on appeal. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that the beneficiary be a member of associations that require outstanding achievements of their members. Thus, a mandatory factor for this criterion is the membership requirements for the associations of which the beneficiary is a member. The petitioner failed to submit any evidence establishing the requirements for membership in the above associations other than the letter purportedly from ██████████. This letter, however, is unsigned and, thus, has little evidentiary value. Regardless, the letter implies that the only membership requirement for the Israeli Society of System Analysts is that the prospective member qualify as a system analyst. Qualifying for employment in an occupation is not an outstanding achievement in that occupation. Finally, a job is not a membership in an association. Thus, we will not consider the beneficiary's staff and faculty "memberships" under this criterion.

In light of the above, the petitioner has not submitted the required initial evidence to establish that the beneficiary meets this criterion, specifically, the membership requirements of the associations of which the beneficiary is a member. Thus, the petitioner has not established that the beneficiary 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.*

On July 18, 2003, Siemens Medical Solutions hired the beneficiary as a Systems Analyst VI. The petitioner submitted five letters from employees and former employees at Siemens discussing his role at that company. [REDACTED], a former system analyst at Siemens, asserts that he and the beneficiary worked on the company's new Computerized Physician Order Entry (CPOE) product in the Soarian Department (DC6). Within their department, "there were several specific modules, each with its own team of analysts, managers, developers, designers, etc." According to [REDACTED], the beneficiary facilitated internal validation meetings with Siemens employed physicians. Georgian Grigore, a project manager and consultant with the Siemens Program and System Engineering (PSE) group, asserts that the beneficiary served as "primary medical advisor on a variety of medical informatics projects" and "facilitated internal validation meetings with Siemens-employed physicians on an IT solution."

Counsel relies on a series of internal electronic mail messages to and from the beneficiary during his time at Siemens to meet this criterion. These messages demonstrate that the beneficiary was involved in organizing meetings with physicians to validate various systems and summarizing the feedback from these physicians. On September 2, 2004, the beneficiary received a message asking him to "review" pharmacy documents prior to a pharmacy analysis work session as Siemens had decided to utilize him across projects rather than on one project alone. The record also contains his comments on a "Materials Management System" document. Another message from the beneficiary reiterates his duty to "review the approvers/reviewers documents for 6 DUCs and Supp. specs that are part of ORMS 1.5." On January 25, 2006, the beneficiary was asked to attend spring "review" meetings on a cardiology project.

The director did not discuss this evidence and counsel does not address this criterion on appeal. The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the beneficiary participated "as a judge," not merely that his regular employment duties included the review of work by his coworkers. The internal electronic mail messages document the typical sharing of ideas inherent to the design of electronic databases and systems. While the beneficiary's opinion was clearly valued by his employer, the statute contemplates acclaim and, thus, recognition beyond one's employer. Moreover, the use of the phrase "as a judge" implies an appointment to a formal judging position. While the petitioner need not demonstrate that the judging position required extraordinary ability, the position must be consistent with national or international acclaim. The record does not include evidence that the beneficiary formally served as an official judge of the work of others, such as but not limited to, evidence that the beneficiary served in a position in which he selected nominees or awardees for an award or that he served as an editor of a prestigious journal.

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

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

Initially, counsel relies on the beneficiary's patents and patent applications to meet this criterion. The director concluded that the beneficiary had yet to receive acclaim for his patented technologies. On

appeal, as stated above, counsel asserts that the evidence submitted to meet a given criterion need not establish acclaim on its own.

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. This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Commr. 1998) (hereinafter "NYSDOT"). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* Thus, a patent or patent application, while relevant to this criterion, must be accompanied by evidence of the patented technology's significance in the field if it is to be considered a contribution of *major significance*.

We acknowledge the submission of several reference letters. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

[REDACTED], Director of the Acute Care Hospital at the Chaim Sheba Medical Center, lists five projects on which the petitioner worked at that center. Specifically, the beneficiary configured, installed and/or designed a Datex information system for the anesthesiology department, a workforce scheduling and administration system used by 65 doctors on a regular basis, a point-of-care on-line help system sponsored by the European Society of Anesthesiologists, an infra-thecal chemotherapy database to monitor and follow-up on children undergoing chemotherapy and an anesthesia pre-op visit form.

██████████, Director of the Cardiothoracic Anesthesia Unit at the Chaim Sheba Medical Center, asserts that the beneficiary's Datex system "was the first system of the kind in Israel (actually our department was one of the pioneers in this area in the world)." ██████████ asserts that the customization, troubleshooting and maintenance of the system "demanded [an] extraordinary amount of work and talent."

The petitioner also submitted other letters from the beneficiary's colleagues in Israel that provide generalized praise of the beneficiary's work there. It is inherent to the beneficiary's field to install and customize information systems. The record lacks evidence that the Chaim Sheba Medical Center was ever noted in the trade or general media for its unique Datex information system or that the system is serving as a model for other hospitals.

As stated above, the beneficiary also coordinated several projects during his three years at Siemens. ██████████ notes the complexity of the programs on which the beneficiary worked, praises the beneficiary's skills and asserts that the beneficiary was "widely recognized throughout DC6 as demonstrated by his participation on so many teams." The statute, however, requires national or international acclaim, which necessitates recognition beyond one's own employer.

██████████ asserts that the beneficiary has received "widespread recognition from his peers and within the professional community" for his contributions to medical informatics. While ██████████ asserts that the beneficiary was active in the design and development of information systems for operating rooms, scheduling, pharmacy and cardiology departments, he does not provide any examples of these systems being licensed or otherwise utilized beyond Siemens.

██████████ a former project architect for Siemens, asserts that the beneficiary proposed a "new system requirement documentation tool" and that based on the beneficiary's recommendations, "the tool used for capturing the requirements was adopted as the de-facto standard for communicating acceptance criteria for the product." The record lacks evidence that this tool was adopted as an industry de-facto standard beyond Siemens.

All of the references discuss the importance of the beneficiary's unique knowledge in both information systems and medicine. The issue of whether the beneficiary has unique skills, however, is within the jurisdiction of the Department of Labor. *NYS DOT*, 22 I&N Dec. at 221.

The record establishes that the beneficiary's work at Siemens was original and valuable to Siemens. The record establishes that the beneficiary is listed as an inventor on patents and patent applications and that Siemens issued cash and other incentives to the beneficiary in recognition of his work there. Without additional evidence of the importance of the beneficiary's work to the industry as a whole, however, such as evidence that his work is widely licensed or otherwise adopted, we cannot conclude that his contributions are of *major significance*.

Finally, while the petitioner has been noted in the media for its efforts on automating its medical records and other processes, these mentions all predate the beneficiary's employment with the petitioner.

In light of the above, the petitioner has not established that the beneficiary 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.*

The record includes five medical articles coauthored by the beneficiary. The petitioner, however, seeks to classify the beneficiary as an alien of extraordinary ability in the field of medical informatics. Dr. [REDACTED], a former fellow medical student with the beneficiary, asserts that the beneficiary published an article on his computerized anesthesia chart. The record does not contain an article on this subject. The record does confirm, however, that the beneficiary presented work involving informatics at internal meetings, a conference in Israel and a conference in Bern, Switzerland.

The director concluded that while the evidence related to this criterion, it did not set the beneficiary apart from other medical researchers. On appeal, counsel asserts that the director conceded that the beneficiary meets this criterion.

As discussed above, the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. As the beneficiary seeks to work in the field of informatics, we will only consider the beneficiary's conference presentations relating to that field. We are satisfied that presentations at major conferences, rather than internal symposia, are comparable to published articles as they provide a similar avenue for national or international exposure. The record contains evidence of two conference presentations beyond the beneficiary's internal presentations and a class lecture to business students in Detroit.

While we concur with the director that medical researchers typically publish their findings, the beneficiary's field is informatics. The petitioner has not demonstrated, however, that informatics is a field where publication is unique or rare.<sup>2</sup> Without evidence that the beneficiary's two conference presentations set him apart from other members of the informatics field, such as evidence that his conference presentations have been cited or have otherwise impacted the field, we cannot conclude that two conference presentations and no published articles in the field of informatics are sufficiently indicative of or consistent with national or international acclaim to meet this criterion.

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

---

<sup>2</sup> The website [www.informatics-review.com/journals](http://www.informatics-review.com/journals) lists 37 journals dedicated to medical informatics.

The director concluded that the petitioner had not established that the beneficiary “has won acclaim” for his current role with the petitioner. On appeal, counsel asserts that the director agreed that the beneficiary plays a critical role for the petitioner.

We have already considered the beneficiary’s contributions while employed at Siemens above. At issue for this criterion are the role the beneficiary was hired to fill and the reputation of the entity that hired him.

The beneficiary’s position title at Siemens was System Analyst VI. Without an organizational chart, we cannot conclude that this position is leading or critical for Siemens beyond the company’s obvious need to hire competent system analysts. Finally, the record lacks evidence of Siemens’ reputation nationally.

Six months before the petition was filed, the petitioner hired the beneficiary as its Director of Applied Clinical Informatics. We concur with the director that the record establishes the petitioner’s distinguished reputation nationally. The petitioner operates 44 hospitals and 379 clinics and employs 56,000 full-time employees. The record includes the petitioner’s organizational chart for Clinical Operations Improvement. The beneficiary and three other informatics directors report to the petitioner’s “COI” Assistant and “TIS” Administrative Support. Both of these employees report to the Chief Medical Informatics Officer, who reports to the Executive Vice President of Clinical Operations Improvement. The Executive Vice President, [REDACTED] confirms the beneficiary’s duties, including playing a leading role as a member of the quality indicators and performance improvement team, responsible for the management of biomedical device data integration and managing a \$4 million budget proposal.

We concur with counsel that the petitioner does not need to demonstrate that the beneficiary’s role itself has earned him acclaim. We are satisfied that the beneficiary’s role is sufficiently critical to minimally meet this criterion.

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

Counsel initially asserted that the beneficiary’s current salary is 191 percent of the average salary in his occupation. [REDACTED] confirms that the petitioner is paying the beneficiary an annual salary of \$147,000. The petitioner submitted evidence that only 10 percent of “Medical and Health Services Managers” earn \$121,190 or higher.

The director quoted counsel’s claims and concluded that the beneficiary’s wages are not “dramatically higher than the 90<sup>th</sup> percentile salary estimate for this profession.” On appeal, counsel asserts that the director, “while conceding that this salary is well above the 90<sup>th</sup> percentile, seems to require specific percentile information about the wage, even though this type of information is nowhere to be found as a requirement in law or the regulation.”

The regulation requires that the petitioner demonstrate that the beneficiary's remuneration is "significantly high" in relation to others in the field. We interpret that phrase to require evidence that the beneficiary's remuneration is comparable with the most renowned and experienced members of the field, not merely that it is well above the average.

We concur that while the evidence establishes that the beneficiary's compensation is within the top ten percent in the larger field of "Medical and Health Services Managers," the petitioner has not demonstrated that the beneficiary's remuneration is "significantly high" in relation to other Directors of Applied Clinical Informatics. Thus, the petitioner has not established that the beneficiary 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 a system analyst or Director of Applied Clinical Informatics 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 a system analyst, 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.