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U.S. Citizenship
and Immigration
Services

B2



FILE: SRC 07 800 06588 Office: TEXAS SERVICE CENTER Date: JUN 10 2008

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

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for *Maura Deadrick*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 in software development. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that he qualifies 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 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 February 15, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a "Chief Architect for software for mobile phones and personal computers." The petitioner earned his Master of Science degree in software engineering from San Jose State University in 2003. At the time of filing, the petitioner was working as a Chief Architect and Senior Development Engineer for Bling Software in Pleasanton, California.

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 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, proficiency certifications, 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. Further, 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 a letter from the Institute of Electrical and Electronics Engineers (IEEE) thanking him for renewing his Computer Society "affiliation." The letter states: "If you apply for IEEE membership now, your affiliation fee will be credited towards your 2006 IEEE dues." There is no evidence showing that the petitioner's "2006 Society affiliation" is tantamount to IEEE membership. The petitioner also submitted documentation of his membership in the Association of Computing Machinery, the Mathematical Association of America, the San Jose State University Alumni Association, and the San Jose State University chapter of Tau Beta Pi. The record, however, includes no evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one.

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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York*

Times, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner submitted articles from January 2007 posted on MSNBC.com, webware.com, *Mobile Marketing*'s internet site, BusinessWeek.com, and *Ajax World Magazine*'s internet site. None of these articles specifically mention the petitioner. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires the published material to be "about the alien." As such, 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 professors on a national panel of experts is of far greater probative value than evaluating the work of students or trainees.

The petitioner submitted a January 23, 2007 memorandum from [REDACTED], Professor and Director of the Master of Science in Engineering program, College of Engineering, San Jose State University, stating:

[The petitioner] was a student in our Master of Science in Engineering (MSE) program at San Jose State University After graduation he returned to serve as industry advisor for a team of MSE students completing their project entitled "Web Base Management Tool," during academic year 2005-2006. His experience in [the] software industry, technical, economic and managerial[,] led to the successful delivery of the product. He provided technical supervision for the project from conception to the delivery. . . . [The petitioner's] guidance on this industrial-based project is evidence of his innovative skills and his willingness to give back to the community.

Advising students and providing technical supervision for an academic project are not tantamount to the petitioner's participation, either individually or on a panel, as a judge of the work of others in his field. Further, the evidence submitted by the petitioner does not indicate the means through which his alma mater selected him to participate or that his participation was consistent with sustained national or international acclaim at the very top of his field.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

On appeal, the petitioner submits material printed from the World Wide Web Consortium (W3C) internet site indicating that he served on the program committee for a Workshop on Mobile Ajax held on September 28, 2007. This material states: "To participate in the Workshop, you must submit a position paper to team-mobileajaxws-submit@w3.org by 15 August 2007." The petitioner's participation on this program committee occurred 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)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding.

In light of the above, 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.

The petitioner submitted several reference letters in support of the petition.

 Chief Executive Officer (CEO), Bling Software, states:

[The petitioner] is responsible for the architecture, design and development of software for mobile phones which requires exceptional skills and ability with advanced knowledge of mobile phones, embedded software.

[The petitioner] designed and developed [the] industry's first Ajax based Mobile Bling Player for mobile phones. He developed a Weather Application in Java ME for mobile phones which displays graphical images and the current weather information of a city based on zip code and dynamically fetches, parses the weather information from an rss feed based on any zip code entered in the United States.

[The petitioner] developed Barry Bond's (famous professional athlete) and Jay-Z's (famous recording artist) 40/40 club applications for the mobile phones. He also developed MOM extension classes in C programming language for the Bling Player Software Development Kit.

[The petitioner's] work was displayed at the CTIA [Cellular Telephone and Internet Association] wireless show (<http://www.ctiawireless.com>) which is the most important technology event of the year and is attended by the industry leading companies of wireless and mobile content. CTIA . . . is the international organization that represents all sectors of wireless communications – cellular, personal communication services and enhanced specialized mobile radio. As a nonprofit membership organization founded in 1984, CTIA represents service providers, manufacturers, wireless data and Internet companies and other contributors to the wireless universe.

* * *

[The petitioner's] work was displayed at DEMO and cited by the famous sports celebrity Mr. Barry Bonds (<http://www.demo.com/demonstrators/demo2007/91272.php>) held on January 30 – Feb. 1st

2007 which was widely reported in various leading domestic and international press. DEMO is the launch pad for emerging technology and is selected based on innovation. DEMO is the premier launch venue for new products, technologies and companies. For more than 16 years, DEMO has established a reputation for identifying and presenting to an elite audience the products most likely to have a significant impact on the marketplace and market trends in the coming year. Each product is carefully screened and selected by DEMO's Executive Producer, Chris Shipley, one of the top trend spotters in the personal technology product industry. DEMO is held two times a year; one in February, and one in September.

We cannot ignore [REDACTED]'s statement that the DEMO technology show "has established a reputation for identifying and presenting . . . products most likely to have a significant impact on the marketplace and market trends in the coming year." The record, however, includes no evidence showing that the software applications developed by the petitioner have already had "a significant impact on the marketplace and market trends" such that they can be considered original contributions of major significance in his field. Display of mobile phones utilizing the petitioner's software applications at the DEMO technology show and the CTIA wireless show demonstrate that his applications were introduced to consumers, but there is no sales data or other evidence establishing that his software applications qualified as contributions of major significance in his field as of the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *Id.*

[REDACTED], Associate Dean, College of Engineering, San Jose State University, states:

[The petitioner] was employed at the Human Automation Integration (HAIL) laboratory, which is part of the College of Engineering at San Jose State University from Jan. 1, 2001 to December 3, 2001. He was responsible for developing the software to connect two simulation models AIR MIDAS (Air Man Machine Design and Analysis System developed by HAIL) and RFS (Reconfigurable Flight Simulator developed by Georgia Tech) using Java and High Level Architecture (HLA /RTI-Software of Defense Modeling and Simulation Office, U.S. Defense).

[The petitioner] worked with several others in the laboratory team in this development and performed his software development duties adequately.

[REDACTED], Senior Director, Oracle Business Activity Monitoring, Oracle Corporation, states:

I was the most recent manager of [the petitioner] at Oracle Corporation. He worked for me as a member of the Oracle BAM development team through March 2006 as Software Engineer II.

[The petitioner's] development responsibilities included an object oriented, multi-threaded event engine. He worked on the design and development of a new rule XML definition for rules and the rule parser, which defines the grammar for the constraints and the corresponding actions for the event engine. In addition, he also developed new unit tests. The programming languages used were C#/.NET Framework and Java/J2EE.

[REDACTED] the petitioner's former Software Manager at BEA Systems, Inc., states:

While employed as a Software Engineer, [the petitioner] performed various job duties, including designing, developing, testing/QA, and implementing software. Specifically, he worked on the development and testing of BEA LiquidData product. [The petitioner] developed JSP pages to validate the JSP taglib, developed and wrote Xqueries, and mapped the source schema to target schema. He wrote the Xquery to test the Contivo Analyst product. [The petitioner] worked with JUnit framework, developing JUnit test cases. He also worked with different databases such as Oracle, MS SQL Server, and Sybase. Additionally, as part of the WLI CQE team, [the petitioner] developed and executed tests, reported results, and verified bug fixes. He developed automated tests using ant, Java, J2EE, SQL, scripting languages, contributing to the development of the framework on WebLogic Integration product which is comprised of business process management, B2B Integration, and Application Integration.

During [the petitioner's] employment at BEA Systems, he designed, developed, tested/QA, and implemented software utilizing Java and SQL computer programming languages.

[REDACTED], Senior SIE Manager, Aspect Communications Corporation, states:

This is to confirm that [the petitioner] worked with Aspect Communications Corp. in the position of Systems Integrity Intern from May 2001 to June 2002.

I would like to take a moment and acknowledge [the petitioner's] significant contributions to Web Interaction and IP Contact Server projects, working on updating test procedures, performing validation and assisting in lab setup.

While the preceding letters discuss the petitioner's job duties and work experience, they fail to establish that specific work attributable to him represents original contributions of major significance in his 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. While the petitioner's software development skills are admired by his current and former employers, there is nothing in the record to demonstrate that he has made original contributions of major significance in his field consistent with sustained national or international acclaim.

On appeal, the petitioner submits a March 23, 2007 letter from [REDACTED], Chief Technology Officer, BarryBonds.com, stating:

[The petitioner] architected and developed Barry Bonds application and 4040 club applications using the Ajax Bling Player for the mobile phones. The Barry Bonds application from the mobile phone connects to barrybonds.com website fetches [sic] journal entries and videos of Barry Bonds and displays it on the phone. The user has the option to select to play a video of a home run from a list of dated videos or read the journal entries from a list of dated journals of Barry Bonds, which was well received by the fans of Barry Bonds.

The letter from [REDACTED] goes on to discuss the display of the petitioner's work at the DEMO technology show. This discussion is identical to the fifth paragraph in Roy Satterthwaite's letter. It is not clear who is the actual author of the duplicative text in their letters of support, but it is highly improbable that these two individuals independently formulated the exact same wording. While it is acknowledged that these individuals have lent their support to this petition, it remains that one of them did not independently prepare a significant portion of his letter. As such, we find the duplicative statements to be of limited probative value. Regardless, there is no evidence showing that the software application the petitioner developed for BarryBonds.com qualifies as an original contribution of major significance in software engineering.

In this case, the letters of support from the petitioner's current and former superiors are not sufficient to meet this criterion. 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. 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 795-796. 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 software development engineer who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted evidence showing that mobile phones using his software applications were displayed at the DEMO technology show and the CTIA wireless show, but there is no evidence establishing that such venues garnered him sustained national or international acclaim at the very top of his field. Nevertheless, the petitioner's field is not in the arts. The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to software development engineers. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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

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

The petitioner submitted letters discussing his work experience for various employers. The record, however, includes no evidence showing that the companies for which the petitioner worked had distinguished reputations. With regard to the positions held by the petitioner, there is no evidence demonstrating how his role differentiated him from others holding similar positions (such as other software development engineers), let alone more senior executives (such as [REDACTED] CEO, or Mike Uomoto, Vice President of Products, Bling

Software). The evidence submitted by the petitioner is not adequate to demonstrate that he was responsible for his employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

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

The February 19, 2007 letter from [REDACTED] states: "[The petitioner] commands a high salary for the mobile software development in the region employed. His compensation is \$95,000.00 per annum apart from the shares in the company." On appeal, the petitioner submits a November 30, 2006 "Support Fee" receipt to Bling Software from GoTV Networks, Inc. in the amount of \$12,500 for software developed by him. The plain language of this regulatory criterion, however, requires the petitioner to submit evidence showing that he has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner has earned a level of compensation that places him among the highest paid chief software architects in the United States or any other country.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the 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 a 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.