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U.S. Citizenship
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Services

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FILE: WAC 03 217 52187 Office: CALIFORNIA SERVICE CENTER Date: MAY 17 2005

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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, Director
Administrative Appeals Office

DISCUSSION: The California Service Center Director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as company “dedicated [to] pioneering the design, development, manufacture and sale of embedded antennas for personal mobile devices.” The beneficiary is an electronic engineer. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in engineering. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of two years as its Director of Engineering. The petitioner has previously employed the beneficiary while the beneficiary held H-1B nonimmigrant visa classification.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of his field of endeavor.

On appeal, counsel for the petitioner asserts that the petitioner “submitted masses of evidence” to establish the beneficiary’s eligibility for the classification sought.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and an appeal.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

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 arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). 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. § 204.12(o)(3)(iii). 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.

The beneficiary in this matter is a 32-year old native and citizen of the United Kingdom. The record reflects that he earned three degrees at the Université de Paris Sud Orsay: a master’s degree in fundamental physics, a master’s degree in electronics, sensors and integrated circuits, and a PhD in physics. He performed post-doctoral work at the University of California Los Angeles electrical engineering department and began working for the petitioning organization on a part-time basis in June 2000. According to the Form I-129 petition, the beneficiary was last admitted to the United States on March 27, 2003, in H-1B classification, as a temporary worker.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as an engineer. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) 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 eight 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 that, it claims, meets the following criteria.¹

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

The petitioner asserts that the beneficiary satisfies criterion number one because he was recognized as the technical leader representing the petitioning organization when it accepted an award from the State of California, i.e., the Most Innovative New Product award in 2002.

According to the evidence on the record, this award was granted to the petitioning organization and not to the beneficiary individually. The award clearly states that the petitioning organization received the honor for its contributions to the field of technology. The beneficiary does not satisfy 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.

For criterion number two, while the beneficiary is a member of the Institute of Electrical and Electronic Engineers (IEEE), there is insufficient evidence that this is an association that requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. A review of the organization's website² confirms that membership does not require outstanding achievements of their members, as judged by recognized national or international experts in the field of endeavor.

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

For criterion number three, the petitioner submitted three articles that were published online. The first item states that the petitioning organization received the award described above. The second article is about the petitioning organization. None of the articles mention the beneficiary. The third item is about the Flarion Corporation and it is unclear what relevance, if any, the item has to the petitioning organization or the beneficiary. The beneficiary does not satisfy this criterion.

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

For criterion number five, while the beneficiary has published results of his research, the record does not show that his research is considered of "major significance" in the field. By definition, all professional research must be original and significant in order to warrant publication in a professional journal. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

² See membership requirements at <http://www.ieee.org/services/join> accessed on May 9, 2005.

The petitioner asserts that the beneficiary satisfies this criterion by virtue of his five patents and 25 patent applications pending. The granting of a patent documents that an invention or innovation is original, but not every patented invention or innovation constitutes a significant contribution in one's field. The petitioner failed to demonstrate that the beneficiary's patents are a significant contribution in relation to others in the field.

In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of endeavor. The beneficiary does not satisfy this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

For criterion number six, the beneficiary has published nine articles and 12 abstracts as of the date of the filing of the instant petition.

No citation history of the beneficiary's articles has been submitted. Published articles by the beneficiary that have been cited by others would more meaningfully establish that the beneficiary enjoys a measure of influence through his publications. The petitioner has not demonstrated that the beneficiary's work has had a major impact on his field of endeavor. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

For criterion number eight, the petitioner indicated that the beneficiary would earn an annual salary of \$125,000 plus stock options. No evidence of the beneficiary's salary history was provided, nor were salary surveys supplied to CIS so that the current salary offer could be evaluated. The petitioner failed to establish that the beneficiary satisfies this criterion.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.