

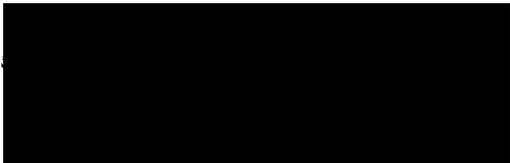
Identifying data deleted to prevent invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



[Handwritten signature]

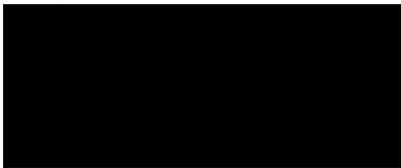
JUN 13 2007

FILE: EAC 02 200 52232 Office: VERMONT SERVICE CENTER Date:

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.

[Handwritten signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 business. The director determined that the petitioner had not established that the beneficiary had the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in business, specifically in the offshore information technology (IT) outsourcing industry to continue his employment as Chief Executive Officer (CEO) for the petitioner. The petitioner claimed the beneficiary was eligible under five regulatory criteria and submitted supporting materials including copies of his bachelor's and master's degrees, seven recommendation letters, the petitioner's financial statements, the merger plan between the petitioner and another Indian IT company, articles about and written by the beneficiary, and documentation of the beneficiary's past and proposed salary. The director issued a Request for Evidence (RFE) that asked the petitioner to submit, *inter alia*, evidence that the beneficiary had received a major internationally recognized award. In response to the RFE, counsel noted that the regulation does not require evidence of a major, internationally recognized award, but allows aliens to document their eligibility under at least three of ten other regulatory criteria. We agree that the director's request was unnecessary, but do not find this error to have

prejudiced the petitioner because the director considered the evidence submitted under the entire regulation at 8 C.F.R. § 204.5(h) in her decision including the documents submitted in response to the RFE: three additional recommendation letters, two media articles about IT outsourcing, a summary of project information (SPI) for a company of which the beneficiary is a shareholder and seven printouts from various websites mentioning the beneficiary or the petitioner.

The director determined that the evidence indicated that the beneficiary had made worthy contributions to offshore outsourcing in the IT industry, but did not establish that he was an alien of extraordinary ability. On appeal, counsel contends that the director improperly compared the beneficiary to all CEOs in the business world, rather than in the beneficiary's specific field of offshore IT outsourcing. Although some of the director's statements in the RFE and her decision suggest that she compared the beneficiary to all CEOs, the director did specifically discuss the record in the context of the beneficiary's contributions to offshore IT outsourcing. The evidence submitted and counsel's remaining contentions are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

(iii) 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 originally submitted five articles relating to his professional endeavors. Two articles are printouts from the website of *Business Line* which is subtitled "from THE HINDU group of publications." One article is a printout from the website of *ZDNet India*. The record contains no documentation that these two websites are professional, major trade publications or other major media. A fourth article is entitled "Divide to Prosper" and was published in the "Corporate Reports" of the March 16-31, 2002 edition of *Business India*. The article discusses the merger of the petitioner with Aptech, Ltd. and features a photograph of the beneficiary who is quoted repeatedly. Again, the record contains no circulation information or other evidence that *Business India* is a professional, major trade publication. The fourth article is an interview with the beneficiary entitled "Leading Player in Enterprise Application Integration" and was published in the January 14, 2002 edition of the *Wall Street Reporter*. Counsel claims that this article "most impressively" demonstrates the beneficiary's extraordinary ability, but the evidence does not support his assertion. Rather, the article is apparently a paid self-endorsement. Under the heading, "Important Notice and Terms of Use," the publishers state that "[t]he company featured in each interview, statement or article compensates Wall Street Reporter Magazine, and or its affiliates." The notice then states that the petitioner paid the magazine \$4,850. This paid self-endorsement is inconsistent with sustained national or international acclaim that would garner unsolicited – and uncompensated – media coverage.

In response to the RFE, the petitioner submitted seven additional articles, six of which were published after the petition was filed and consequently cannot be considered. The beneficiary must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The remaining article is entitled "Offshore Development Center in Chennai – Hexaware, Valtech Tie Up" and discusses a contract for the petitioner to set up an offshore development center for the French firm, Valtech. The beneficiary is pictured in a photograph and is briefly mentioned in the article which was published in the February 27, 2002 online edition of the *Business Line*. As stated above, there is no evidence in the record to demonstrate that *Business Line* is a professional, major trade publication or other major media. Accordingly, the beneficiary does not meet this criterion.

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

The director correctly determined that the beneficiary did not meet this criterion. The record contains ten recommendation letters from ten professionals in the beneficiary's field or related areas of specialization. Nine of the letters are written by individuals who have worked with the beneficiary or have known him for several years. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, recommendation letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim.

Most of the letters discuss the beneficiary's role in the growth of the Indian offshore software services industry. [REDACTED] is Director and Senior Vice President of Satyam Computer Services, Ltd., where the beneficiary worked previously. Director Murty credits the beneficiary with "help[ing] set up the very first high speed satellite connectivity for remote offshore software development between India and a US company (between [REDACTED] in 1992). This pioneering act played a very important role in establishing the foundation of the Indian IT services phenomenon." [REDACTED] Vice President of Birlasoft, Inc., states that he has known the beneficiary professionally and personally for more than 12 years. He explains that the beneficiary "was instrumental in helping place the Indian offshore software services industry on the global map. . . . In a way this opened the way for several US companies to get high quality and low cost software services from India." [REDACTED] Founder and Chairman of LifetecNet, Inc. explains that he has worked with the petitioner and known him for six years and is an advisor to the petitioner. [REDACTED] also claims that the beneficiary "helped to pioneer remote offshore information technology development business models and activities between India, Europe and the US in as early as 1992." [REDACTED] Vice President of Information Technology Association of America (ITAA) does not state how he knows the beneficiary, but further explains that the beneficiary "pioneered the remote development delivery model for computer software services at Satyam. He implemented the model through seven joint ventures that he personally directed for Fortune 500 clients such as General Electric, TRW and Computer Associates." [REDACTED] also notes that the offshore model did not exist 15 years ago and opines that "[i]t took pioneers like [REDACTED] to envision the opportunities and implement the vision in the form of unique and exciting international joint ventures."

The record contains no evidence to corroborate the claims made by the letters. For example, there are no materials documenting the beneficiary's purportedly "pioneering" development of the offshore IT model in the early 1990s. While the letters indicate that the beneficiary is well respected among his colleagues for his professional accomplishments, they do not establish that his contributions were of major significance to his field in a manner reflective of the requisite sustained acclaim. Consequently, the beneficiary does not meet this criterion.

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The record contains printouts of articles written by the beneficiary from the website of *Computers Today*. The record indicates that the beneficiary oversaw the marketing of this publication during his prior position as a

103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the beneficiary does not meet this criterion by virtue of his former role at Satyam.

However, the record is sufficient to establish the beneficiary's eligibility under this criterion through his current position with Hexaware (the petitioner). Many of the recommendation letters affirm that the beneficiary is the petitioner's CEO and briefly state that he forges joint ventures between Hexaware and European and U.S. Fortune 500 companies. Media articles corroborate the beneficiary's role at Hexaware. The aforementioned article from *ZDNet India* announces the appointment of the beneficiary as the CEO of Aptech Limited (Aptech), a company that later merged with Hexaware, and quotes Aptech's chairman as stating that the beneficiary "will be based in New Jersey, USA and will oversee the operations of Aptech's software business from there." An article entitled "Hexaware sees 40 pc growth," published in the August 22, 2001 edition of the online publication *Business Line's E-world* discusses the merger of Aptech and Hexaware and states that the beneficiary will head the merged company. The article in *Business India* previously discussed under the third criterion affirms that the beneficiary is Hexaware's CEO and quotes him extensively. This evidence is sufficient to establish that the beneficiary performs a leading role for Hexaware.

The *Business India* article also discusses Hexaware's reputation. According to the article, the company was "assessed at SEI-CMM Level 5, the highest quality accreditation" and lists several of the company's accomplishments, including being the largest provider of PeopleSoft (an enterprise resource planning package) in India and "a \$25-million deal to set up a worldwide development center in India for Valtech, an international e-business consultancy group headquartered in France. . . . a \$12 million assignment for Citibank in Germany spread over four years, a \$20-million deal over five years with Air Canada, and a \$15-million project from the Internal Revenue Service (IRS) department of the US Treasury." Two of these deals are confirmed by other sources. A printout from the PeopleSoft website states that the company "is partnering with software services firm, Hexaware, to set up an offshore customer services center in Bangalore The plan is to invest \$30-\$40 million over three years to develop the center Hexaware will be responsible for ownership, operations, people and management." The Valtech contract is also reported in the *Business Line* article submitted in response to the RFE and previously discussed under the third criterion. Although it also contains information relevant to this criterion, the article from the *Wall Street Reporter* previously discussed under the third criterion is of little weight because the publisher's notice explicitly states that the magazine "relies upon information received from the companies and individuals, which although believed to be reliable cannot be guaranteed as to completeness or accuracy." In response to the RFE, the petitioner submitted several other articles regarding the beneficiary and Hexaware that were published after the petition was filed and consequently cannot be considered. Eligibility must be established at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. Nonetheless, the pre-existing evidence submitted with the petition is sufficient to demonstrate that Hexaware has a distinguished reputation in India. Accordingly, the beneficiary meets this criterion by virtue of his position as CEO of Hexaware.

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

The record contains the beneficiary's 2001 W-2 form stating that his gross income was \$84,732 for that year. A contract between the beneficiary and Aptech Worldwide, Inc. (which subsequently merged with the petitioner) is dated February 27, 2001 and signed by the Director of Aptech, but not by the beneficiary. The contract states that the beneficiary will earn a base salary of \$250,000. The petitioner also submits a printout from the New Jersey Department of Labor website listing the level two wage of "chief executives" as \$132,891, although the

relevant comparison in this case is the salaries of chief executives at the very top of the petitioner's field, not merely the prevailing wage of all chief executives. Counsel claims that these documents establish the beneficiary's eligibility under this criterion because the base salary listed on his contract did not include bonuses based on the company's performance and that "if all goes as anticipated, [the beneficiary's] annual compensation by the year 2004 should reach \$500,000." Counsel explains on page 11 of his initial brief that the beneficiary joined Aptech in August, 2001 and so his W-2 form for that year only reflected one third of his new salary, but the record contains no evidence of when the beneficiary began working for Aptech. The regulation requires documentation that the alien "has commanded" a high salary and does not allow consideration of proposed, but not yet fully documented income. Moreover, a visa petition may not be approved based on speculation of future eligibility or after the beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. at 49. In this case, the only documentation of the beneficiary's income shows his compensation to be significantly below the prevailing wage for chief executives in his area as submitted by the petitioner. Accordingly, the beneficiary does not meet this criterion.

Finally, we note counsel's concern on appeal that an underlying basis of the director's decision was the "conclusion that off-shore IT outsourcing is not a 'good thing' for the United States." The director did not discuss the statutory requirement that the alien's entry into the United States "substantially benefit prospectively the United States" in accordance with Section 203(b)(1)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(iii), or even suggest that the beneficiary's field would not benefit the United States. Counsel's concern is misplaced and we do not reach the issue here because the beneficiary meets only one regulatory criterion and is consequently ineligible for classification as an alien with extraordinary ability.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A) only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his field. The petitioner bears this substantial burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner in this case has not sustained that burden. The evidence indicates that the beneficiary performs a leading role for the petitioner, a distinguished Indian IT company. Yet the record does not establish that the beneficiary was an alien of extraordinary ability in business at the time of filing. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.