

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

B2

PUBLIC COPY

FILE:

[REDACTED]
EAC 05 147 52616

Office: VERMONT SERVICE CENTER

Date: JAN 09 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.

Robert P. Wiemann, Chief
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 (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 business. 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, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 April 18, 2005, seeks to classify the petitioner as an alien with extraordinary ability in banking and finance. A July 1, 2006 letter from [REDACTED], Vice President, First Housing Management, Inc., New York, states that the petitioner has worked there since September 2005 and currently holds the position of operational manager.

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.

In a statement accompanying the petition, the petitioner states that in 2001 he was a winner of the Community Connections Program sponsored by Project Harmony. The petitioner submitted a March 7, 2005 letter from [REDACTED], Country/Program Director, Project Harmony Educational and Professional Programs, Tbilisi, Georgia, stating:

The Community Connections Program is funded by the Bureau of Educational and Cultural Affairs (ECA), U.S. Department of State and administered by Project Harmony in Georgia. The program offers a five week practical training internship in the United States. At the same time, the program combines seminars, workshops, site visits and meetings with American professionals and entrepreneurs. The goals of the Community Connections program are to provide professional training and exposure to day-to-day functions of the American business and professional environment, encourage public-private partnerships in Georgia and create grass-roots linkages between the United States and Georgian regions and communities.

Together with finalists from city Rustavi, Georgia, [the petitioner] was selected and traveled to the United States where the group was hosted by the Iowa Resources for International Services (IRIS). Undeniably, [the petitioner] was one of the most active participants . . . who had an opportunity to have an internship at First Federal Bank and F&M Bank.

The petitioner also submitted the following:

1. Certificate of Achievement from IRIS, Inc. stating that the petitioner successfully completed the Community Connections Program for Georgian Business Leaders from May 17 – June 19, 2001.
2. Certificate of Completion from the Central Iowa Division of First Federal Bank stating that the petitioner successfully completed his internship.
3. Certificate of Appreciation from F&M Bank in Newton, Iowa for the petitioner's performance of superior client services from May 22 – 31, 2001.
4. Certificate from "Junior – Achievement – Georgia" stating that the petitioner successfully completed a training program in Applied Economics in 2004.

5. Certificate of Attendance from Project Harmony – Georgia reflecting the petitioner’s completion of a training course in Leadership & Conflict Resolution in September 2003.
6. Certificate from University Caucasus Academic Center reflecting the petitioner’s completion of a “summer intensive course in English as a Foreign Language” with a “Grade” of “C” (2004).

Selection for and participation in a practical training internship and the successful completion of various educational courses and training programs do not constitute the petitioner’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Participation and completion of such programs and courses is not indicative of national or international acclaim, nor does it demonstrate that an 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). There is no evidence that the preceding certificates reflect national or international recognition for excellence in the field rather than simply an acknowledgement of the petitioner’s participation in training programs and his successful completion of course work.

March 7, 2005 letter also indicates that the petitioner participated in a “mini-grants competition organized by Project Harmony for the Community Connections program alumni.” It further states: “In 2002, [the petitioner] became winner of the mini-grants competition, which allowed him to create TV program ‘Time is Money.’ This TV program was made at the Rustavi TV station . . . and was offering theoretical knowledge to beginner businesspersons and small business representatives.”¹ A March 21, 2005 letter from [redacted] President of the Georgia and America Club, states that this television program “was very useful for the population of Rustavi.” The petitioner’s receipt of a mini-grant to produce a local television broadcast represents project funding for a Community Connections program alumnus rather than a nationally or internationally recognized prize or award for excellence in the field.

In light of the above, 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 evidence of his membership in the Bankers Association of Georgia and the Georgia & America Club. The record, however, includes no evidence (such as membership bylaws or official admission requirements) showing that these associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s or an allied field. As such, 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.

¹ A November 25, 2002 issue of the *Community Connection* Georgia newsletter states that the petitioner “applied for” this grant.

In general, 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.²

The petitioner submitted an "Alumni Profile" of him in the November 25, 2002 issue of the *Community Connection Georgia* newsletter. The author of this material was not identified as required by this regulatory criterion. A description of this newsletter appears on page 1: "The Community Connection Newsletter is produced by Project Harmony with support from the Public Affairs Section of the U.S. Embassy in Tbilisi. Funding for the publication is provided by the Bureau of Educational and Cultural Affairs of the U.S. Department of State through Freedom Support Act." The petitioner also submitted an article in the June 10, 2001 issue of the *Times-Republican*, a newspaper distributed in "Central Iowa." This article, entitled "Business leaders from Republic of Georgia visiting area," briefly quotes the petitioner, but it is not about him. The petitioner also submitted a newspaper article entitled "Shaking of Economic Effects the Banks." The name of the newspaper, its date of publication, and the author of the material were not provided as required by this regulatory criterion. Nor is there evidence (such as circulation statistics) showing that the preceding publications qualify as "professional or major trade publications or other major media."

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 evidence from the National Center of Intellectual Property in Georgia indicating that he and two others hold a patent for a coin storage box. The record, however, includes no evidence that this invention represents a contribution of major significance in the petitioner's field. While this patent may indicate that the petitioner has developed an original container for storing coins, there is no evidence showing substantial commercial interest in his box, its widespread manufacture, or that it has otherwise risen to the level of a contribution of major significance in the field of banking. Moreover, the plain language of this regulatory criterion requires "contributions of major significance in the field." The petitioner's development of a single invention does not meet the requirements of this criterion.

The petitioner also submitted several recommendation letters describing his past job experience, supervisory responsibilities, professional skills, educational background, and activities in his field. We accept that the petitioner has been successful as a bank manager in Georgia, but the petitioner's evidence fails to establish that he has made original business-related contributions of major significance in banking or finance. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous

² 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.

and, thus, that it has some meaning. While the petitioner is a dedicated manager who has clearly earned the admiration of his professional contacts, there is no evidence showing that the work attributable to him has had a substantial impact beyond his employers such that it can be considered a business-related contribution of major significance in his field. For example, the record does not show that the petitioner has significantly influenced others in the banking industry or that this field has somehow changed as a result of his work. Without extensive documentation showing that the petitioner's work has risen to the level of original contributions of major significance in banking or finance, we cannot conclude 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.

The petitioner submitted a February 7, 2000 certificate from the Georgian Technical University Central Scientific Library stating that it received the petitioner's work entitled "To Finance and Credit the Construction Industry in Georgia." The record, however, includes no first-hand evidence of the actual article. A petition must be filed with the initial evidence required by regulation. 8 C.F.R. § 103.2(b)(1). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Without a copy of the actual article, we cannot conclude that it was "scholarly" in nature or that it was published in a professional or major trade publication or other form of major media. As such, 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 employment letters reflecting that he served as Director of the Rustavi Regional Branch of the Georgian Post Bank, Director of T.I.M. Limited, and a lecturer at the Tbilisi National Institute RVALI. The record, however, includes no evidence that these organizations have distinguished reputations. Further, the preceding letters lack sufficient information about the petitioner's specific duties and responsibilities to demonstrate that he performed in leading or critical role for these organizations. Nor is there evidence demonstrating how the petitioner's role differentiated him from the other executives and managers who worked for the preceding organizations.

In response to the director's request for evidence, the petitioner submitted a July 1, 2006 letter from [REDACTED] indicating that he has worked for First Housing Management, Inc. since September 2005 and currently holds the position of operational manager. The petitioner's employment with this company commenced 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). Individuals seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Id.* Accordingly, the AAO will not consider the petitioner's employment with First Housing Management, Inc. in this proceeding.

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 petitioner submitted a March 21, 2005 letter from T.I.M. Limited indicating that he earned a wage of 750 Lari per month. The petitioner also submitted a March 22, 2005 letter from the Tbilisi National Institute RVALI indicating that he gave lectures there and received a wage of 350 Lari per month. The plain language of this criterion, however, requires the petitioner to submit evidence of 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.

A November 18, 2005 letter from [REDACTED] of First Housing Management, Inc. submitted in support of the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, states that the petitioner earned a salary of \$24,000. In response to the director's request for evidence, the petitioner submitted a July 1, 2006 letter from [REDACTED] stating that the petitioner earns a current salary of \$60,000.00. On appeal, the petitioner states: "The service pointed in two different part[s] of [the] Denial Letter to my salary - \$24,000 in year. But it is wrong because of when I was requested for additional evidences I sent the proof of my new salary - \$60,000 in year (see attached letter from First Housing Management Inc.)." The petitioner earned the \$60,000 salary subsequent to the petition's filing date. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence that the petitioner's \$60,000 salary is significantly high in relation to others in his field.

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 the 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.