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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: NOV 18 2009
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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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
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 classification 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 sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also questioned whether the petitioner intended to work in his area of claimed expertise upon entering the United States.

On appeal, the petitioner submits a statement. For the reasons discussed below, we uphold the director's findings.

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.

U.S. Citizenship and Immigration Services (USCIS) 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 he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a geologist / environmental engineer. 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. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

The petitioner initially submitted the following certificates:

1. A 1996 Best in Research Publication Award (Senior Author) issued by the Philippine Department of Science and Technology (DOST) and the Philippine Institute of Volcanology and Seismology (where the petitioner was employed);
2. A 1994 DOST Outstanding Research Award for Energy/Environment/Earth Science issued to the petitioner and 11 other individuals;
3. A 1991 Unit Award Certificate from the U.S. Department of the Interior "in recognition of Excellence of Service performed in connection with the Unit Award granted to [the] Philippine Institute of Volcanology and Seismology" and the "U.S. Geological Survey Volcano Crisis Assistance Team" and
4. A Third Prize 1987 DOST Outstanding Research Award issued to the petitioner and one other individual.

The petitioner responded to the director's request for evidence regarding the significance of the above awards. First, the petitioner submitted the full citation for the U.S. Department of the Interior's unit award in recognition "of extraordinary efforts to assess the volcanic hazards of Mount Pinatubo, to install monitoring equipment and provide warning to the large population of Filipinos and Americans living in hazardous areas around the volcano." The petitioner also submitted information about DOST, indicating that its outstanding research awards are given "to outstanding research outputs (not to individual researchers) of Filipino citizens covering the period 1958 to 2008." Each winner receives a cash prize of 20,000 Philippine pesos and a plaque of recognition. While the Institute of Volcanology and Seismology is a branch of DOST, the DOST awards are open to all Filipino researchers.

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

The director concluded that the awards preceded the filing of the petition by 13 years or more and, thus, could not serve to meet this criterion. On appeal, the petitioner asserts that the regulation does not require that the awards be within a decade of the filing of the petition and that his awards reflect sustained acclaim from 1987 through 1996.

We do not read the statutory standard of "sustained" acclaim as requiring acclaim "sustained" over several years but not through the date of filing. The requirement that the alien's entry substantially benefit prospectively the United States indicates that Congress does not intend for these aliens to immigrate to the United States and remain idle. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30704 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). In a similar vein, it can be expected that Congress intended this visa classification for aliens whose currently sustained acclaim indicates that the alien will substantially benefit *prospectively* the United States. We concur with the director that awards predating the petition by more than 13 years, in the absence of more recent acclaim, cannot serve to demonstrate sustained acclaim as of the date of filing.

In light of the above, the petitioner has not submitted evidence to meet this criterion that is indicative of sustained national or international acclaim in 2007.

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.

On appeal, the petitioner does not contest the director's conclusion that the petitioner had not demonstrated that the associations of which he is a member require outstanding achievements. We concur with the director that the record lacks the actual membership requirements of the associations of which the petitioner is a member. Thus, the petitioner has not submitted the required initial evidence to meet 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.

On appeal, the petitioner does not contest the director's conclusion that citations of the petitioner's work cannot serve as evidence of published material "about" the petitioner relating to his work. We concur with the director's analysis and conclusion. Thus, 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.

On appeal, the petitioner does not contest the director's conclusion that the petitioner's participation in the widespread peer review process in 1991 and 1992 is not indicative of sustained national or

international acclaim in 2007 when the petition was filed. We concur with the director. Thus, the petitioner has not established 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 several articles published in journals and conference proceedings between 1988 and 2000. In response to the director's request for additional evidence, the petitioner submitted evidence that his publications are referenced in other reports, on websites and in other articles. The director concluded that the petitioner's publication record was not consistent with a ranking among the small percentage at the top of the field.

On appeal, the petitioner asserts that some of his articles appeared in major publications. While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the community's reaction to the petitioner's published articles in a field where publication is expected of those merely completing training in the field. *Kazarian v. USCIS*, 2009 WL 2836453, *6 (9th Cir. 2009). As with the other evidence, the petitioner's published articles predate the filing of the petition by 7 years or more. Moreover, the petitioner documented only minimal citation of individual articles. Thus, the petitioner has not established that he meets this criterion with evidence indicative of *sustained* national or international acclaim in 2007.

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

The petitioner initially listed team leader and spokesperson responsibilities for his employer and also asserted that his participation as a "resource speaker" at a symposium serves to meet this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In support of the above assertions, the petitioner submitted a letter from [REDACTED] Administrative Officer at the Philippine Institute of Volcanology and Seismology, asserting that the petitioner has been employed at that institute since 1985. [REDACTED] confirms that the petitioner serves as a "Supervising Science Research Specialist." She then lists his duties, which do not include spokesperson responsibilities. The petitioner also submitted a certificate recognizing him as a "participant" at a symposium. In response to the director's request for additional evidence, the petitioner submitted evidence that the institute received a PAGASA Award issued by the Civil Service Commission in 1995.

The director concluded that the petitioner had not demonstrated the nature of his specific role for his employer or the period during which he served in such a role. Thus, the director further concluded that

the petitioner had not submitted evidence indicative of sustained national or international acclaim under this criterion.

On appeal, the petitioner notes that he received a certificate from the U.S. Department of the Interior. The petitioner's awards have already been considered above. We note that the unit award recognized the petitioner's entire institute, and did not single out the petitioner's leading or critical role within that unit.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position is indicative of or consistent with national or international acclaim. [REDACTED] does not indicate how many supervising science research specialists are employed by the institute or how that position fits within the institute. Without an organizational chart or other evidence documenting how the petitioner's position fits within the general hierarchy of the Philippine Institute of Volcanology and Seismology, the petitioner cannot establish 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.

On appeal, the petitioner does not contest the director's conclusion that the petitioner had not established that he received a significantly high remuneration due to the lack of evidence of comparative salaries in the petitioner's field. The petitioner fails to submit evidence of high end wages in his field on appeal with which we can compare his \$600 income in 2003, the only income documented in the record. Thus, the petitioner has not submitted the necessary initial evidence to meet 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 geologist / environmental engineer 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 geologist / environmental engineer (especially in the 1990's), but is not persuasive that the petitioner's achievements currently 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.

In addition, the regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be

accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

Initially, the petitioner submitted a work program detailing his experience and similarities between the Philippines and California. He identifies areas of seismology in which he is interested and asserts that he will write research proposals on these areas. In the request for additional evidence, the director quoted the above regulation and requested the evidence required under that regulation. In response, the petitioner submitted a new plan once again discussing seismology and mud flow issues in California, listing his areas of interest and asserting that he would author research proposals addressing those areas. The petitioner notes that he previously worked with the U.S. Geological Survey and asserts that he could collaborate with that agency or as a consultant for the State of California.

The director concluded that the petitioner's statement of what he would do in the United States were too vague, with no concrete examples provided. On appeal, the petitioner does not address this issue. We concur with the director that the petitioner's plans are insufficiently detailed. He provides no evidence that he has already prepared any research proposals or that U.S. or California agencies fund private geologists and seismologists rather than industry and university faculty.

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.