

identifying data deleted to
prevent clearly unwarranted
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



132

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 02 2005

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.

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. The director determined that the petitioner had not established 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 as an alien with extraordinary ability as a business intelligence systems analyst and developer. The petitioner originally submitted his resume, copies of his diplomas, six recommendation letters, printouts from the websites of two companies for which he did consulting work, and information regarding his compensation. The director determined that the record indicated that the petitioner was knowledgeable and talented, but did not demonstrate that his accomplishments had earned the sustained acclaim requisite to classification as an alien with extraordinary ability. On appeal, counsel claims the director applied an incorrect legal standard and submits four additional support letters. Counsel's claims and the additional evidence submitted on appeal do not overcome the substantive reasons for denial and we affirm the director's decision.

We first address counsel's contention that the director applied an incorrect legal standard. In her discussion of the applicable statutory and regulatory standard, the director stated:

Merely meeting three of the ten categories of evidence suggested by the regulation does not automatically establish the beneficiary's eligibility for the classification of "Alien of Extraordinary Ability." Determinations of eligibility are made on the basis of the quality and caliber of the evidence presented.

Counsel claims that our office "has held that this statement is legally incorrect" and cites an unpublished AAO decision. Pursuant to 8 C.F.R. § 103.4(c), designated and published decisions of the AAO are binding precedent on all Citizenship and Immigration Services (CIS) employees in the administration of the Act. However, unpublished decisions have no such precedential value. The case cited by counsel has not been published and consequently merits no deference as binding precedent. Nevertheless, we do not read the director's decision as imposing a standard outside of the statute and regulation. Rather, the director has correctly noted that evidence submitted in relation to the criteria at 8 C.F.R. § 204.5(h) must be evaluated on the extent to which the 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).

Counsel's remaining contentions, the evidence submitted and the director's decision are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

(iv) 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 director correctly determined that the petitioner did not meet this criterion. The petitioner submitted a letter from [REDACTED] Account Manager for the Kforce Professional Staffing Company ("Kforce"). The petitioner was a client of Kforce, through which he obtained a position as a business intelligence (BI) analyst and developer consultant at Waste Management, Incorporated. In his original letter, [REDACTED] stated that the petitioner "voluntarily participated" to evaluate the work of other individuals in his field "through many technical interviews" and "set up a methodology to assess others' previous design works."

The director found no evidence that the petitioner had judged the work of others in his field "beyond that required by his current and previous employment." In an additional letter submitted on appeal, [REDACTED] explains that his company asked the petitioner to judge the work of other BI systems analysis and design professionals because he "is an internationally renowned Business Intelligence Systems Analyst/Developer . . ." [REDACTED] notes that the petitioner is not an employee of Kforce "therefore, he doesn't perform judging other professionals as a part of his employment or required by his employment."

[REDACTED]'s letter reflects his respect for the petitioner's expertise in the BI field, but it only establishes the fact that the petitioner once helped Kforce company interview other BI systems professionals. This single service for one company does not reflect the sustained acclaim requisite to classification as an alien with extraordinary ability. Consequently, the petitioner 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 concluded that the petitioner did not meet this criterion. The petitioner submitted six recommendation letters from professionals in his field or a related specialty. The director found the letters insufficient to establish the petitioner's eligibility under this criterion in part because they did not indicate that the petitioner had "garnered sustained national or international acclaim . . . [and] recognition for his accomplishments beyond the circle of his personal and professional acquaintances." On appeal, counsel claims that the authors of the letters are "considered witnesses, and not the circle of his personal and professional acquaintances."

The record contradicts counsel's assertions. The letters' authors have all worked with the petitioner or for the same divisions of companies where he was employed and are thus familiar with his work. [REDACTED] a Project Manager at Waste Management, Inc., interviewed, hired and apparently supervises the petitioner as a BI analyst/developer consultant for Waste Management, Inc. [REDACTED] is a BI consultant for Waste Management, Inc. who works with the petitioner. [REDACTED] was also a BI consultant at Waste Management, Inc. who apparently worked with the petitioner for at least two months. [REDACTED] a Project Manager for Hewlett-Packard Company interviewed, hired and supervised the petitioner as a BI consultant. [REDACTED] is a BI Developer and Support Consultant for Managed Business Solutions, a company that supports BI systems developed by Hewlett-Packard. [REDACTED] worked with the petitioner and took over the support of systems developed by the petitioner after his departure from Hewlett-Packard. [REDACTED] as previously mentioned in the discussion under the fourth criterion, works for the staffing company that placed the petitioner at Waste Management, Inc. On appeal, the petitioner submits a letter from an "independent expert," [REDACTED] Professor of Information Systems and Management at Seattle Pacific University. However, Professor [REDACTED] letter is based largely on his review of letters from the aforementioned individuals, not his previous knowledge of the petitioner's accomplishments through independent sources. Professor [REDACTED] letter quotes extensively from the other letters and offers no additional substantive analysis of the petitioner's contributions to his field.

While letters such as these 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 evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. On appeal, counsel cites another unpublished AAO decision to support the claim that support letters from individuals associated with the petitioner "are not surprising where the petitioner is not a researcher who would have published a significant volume of work and is involved in a narrow field of expertise." We repeat that unpublished AAO decisions are not binding precedents. See 8 C.F.R. § 103.4(c). However, even if we accepted counsel's assertion, the record does not establish that the petitioner's field is exceedingly narrow or that original contributions of major significance to the field of BI systems analysis and development are not documented and recognized, for example, in trade publications, information technology journals or at professional conferences. Consequently, we review the support letters' claims while keeping in mind their limited probative value without additional evidence to corroborate the significance of the petitioner's contributions.

[REDACTED] of Hewlett-Packard states that the petitioner “developed a unique drill-through code for the engineering community. . . . No other Business Intelligence software vendor in the market offered this functionality. It is totally unique, original and custom made by [REDACTED]. In his first letter, [REDACTED] (who now supports the systems designed by the petitioner), confirms that the petitioner “designed an original and unique drill-through functionality” for the Warranty Management System (WMS) project at Hewlett-Packard. In his second letter submitted on appeal, [REDACTED] states that this “[d]rill-across feature first became popular within the Hewlett-Packard Company through the success of WMS and was spread through different divisions of HP and finally it was adopted by BI software providers.” Yet [REDACTED] does not name any software companies that have adopted this feature and the record contains no corroborative evidence that the petitioner’s “drill-through” code or feature had a major impact on, let alone was recognized by, the business intelligence systems field at large.

[REDACTED] manager of the Environmental Management Reporting project on which the petitioner currently works at Waste Management, Inc., states that the petitioner “designed an original MDX [Multidimensional Expressions] algorithm in BI field. I strongly believe that MDX design work by [REDACTED] resulted in an original technical and business contributions [sic] in the BI field.” [REDACTED] echoes this assessment of the petitioner’s MDX work and also states that the petitioner designed an XML Application Programming Interface (API) that “resulted in an original business and technical contribution in BI field because, I strongly believe, it’s the first Internet based BI system which doesn’t require the installation of traditional client side APIs.” In his first letter, [REDACTED] describes the petitioner’s MDX work as “a breakthrough algorithm in this field because MDX has no optimization tools and optimization information available in the market.” [REDACTED] also explains that the petitioner’s XML analysis work “resulted in an original business and technical contribution in this field because users will be able [to] access the BI system without downloading any client side components.” In his letter submitted on appeal, [REDACTED] claims that the petitioner’s “MDX Optimization Algorithm Design work resulted in a major accomplishment and an original contribution, which have [sic] been recognized as having advanced the field to a greater degree than others in the field . . . because it helped the evolution of MDX language in the field of BI.” [REDACTED] also claims that the petitioner’s “XML based API design” is an original contribution to his field that “has been recognized as having advanced the field to a greater degree than others in the field” Yet the record contains no independent evidence of this claimed recognition of the petitioner’s work.

In sum, the letters attest to the value of the petitioner’s work to the projects in which he was involved at Hewlett-Packard and Waste Management, Inc. They do not establish that his work made original contributions of major significance to his field at large that reflect the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

In order to meet this criterion, a petitioner must establish the nature of the alien’s role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization itself. The petitioner submitted the previously discussed support letters and printouts from the websites of Hewlett-Packard and Waste Management, Inc. as evidence of his eligibility under this criterion. The director correctly determined that the letters did not establish the petitioner’s eligibility. On appeal, counsel repeats claims made by the letters

originally submitted and also refers to the additional letters submitted on appeal. While the letters explain the significance of the petitioner's contributions to specific projects for two companies where he worked as a consultant, they do not establish that he held a leading or critical role for the companies or the specific departments in which he worked.

states that the petitioner was hired as a business intelligence consultant for the Warranty Management System project undertaken by the Enterprise Systems Group (ESG) at Hewlett-Packard. Although affirms that the petitioner "assumed a leading and critical role in the project," he does not state that the petitioner held a leading or critical role within the ESG. Rather, simply confirms that the petitioner did valuable work on one component of a project undertaken by one division of Hewlett-Packard. describes the similarly limited role of the petitioner at Waste Management, Inc. explains that the petitioner was hired as a "BI Analyst/Developer consultant" to work on the environmental management reporting project initiated by the Enterprise System Development Group at Waste Management, Inc. (WM). affirms that the petitioner "assumed a leading and critical role in this crucial and major project for WM," but does not state that he played a similarly significant role for the Enterprise System Development Group. The record indicates that the petitioner's work as a consultant was highly valued, but the evidence does not establish that the petitioner's role extended beyond the discrete projects on which he worked. In addition, the record contains no evidence that the Enterprise Systems Group at Hewlett-Packard or the Enterprise System Development Group at Waste Management, Inc. have distinguished reputations independent of the companies themselves. Accordingly, the petitioner does not meet this criterion.

(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 director correctly concluded that the petitioner did not meet this criterion. In his first letter, states that the petitioner's services "are worth \$65-\$70 an hour or \$130,000-\$140,000 a year." then references an attached "market pricing report" that ranks the petitioner "in the 99th percentile salary range" and claims that he therefore "commands a very high salary in relation to others in his field." However, this report is based on the median salary for "a typical Data Warehouse Specialist in Houston, TX," a job which only requires a bachelor's degree and two years of experience. In this case the petitioner has a master's degree and had over two years of experience at the time his petition was filed. By referencing the median salary of professionals with lower qualifications, the report inflates the value of the petitioner's purported compensation. In fact, the report lists salaries of three other BI systems professionals who have written support letters for the petitioner: of Hewlett-Packard (\$160,000); BI consultant (\$160,000); and a BI consultant (\$155,000). The petitioner's purported compensation of \$130,000 to \$140,000 is actually below, not significantly higher than, the salaries of these BI professionals who appear to be at the top of their field.

Most importantly, the record contains no primary evidence of the petitioner's actual salary or remuneration. A letter from President of ObjectWin Technology, Incorporated states that his company represents the petitioner "in employment negotiations, and we attest the wage commands is \$64.00 per hour." states that the petitioner's services command "\$75-\$85 an hour (\$150,000-\$170,000) a year. We, at HP ESG, paid in that range for services." Yet the record contains no proof of this compensation. states that the petitioner's services "are worth \$75-\$85 an hour or \$150,000 - \$160,000 a year" and states that his services "are worth in a range of \$150,000-\$170,000 a year," yet neither nor confirm that the petitioner actually received compensation in that range. Simply 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act 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 or her 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 petitioner is a talented business intelligence systems analyst and developer, but the record does not establish that he is an alien of extraordinary ability. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.