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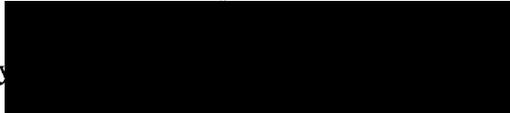
EAC 03 049 51970

Office: VERMONT SERVICE CENTER

Date: OCT 27 2005

IN RE:

Petitioner:
Beneficiary



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 in the sciences. 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.

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.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such 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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences as a structural design engineer. The petitioner initially submitted supporting documents including a letter from his employer, his two-time honorable mention for the [REDACTED] Medal competition, his American Society of Civil Engineers (ASCE) membership certificate, copies of three scholarly articles that cite his work, abstracts co-authored by the petitioner from two engineering conferences, copies of three published articles co-authored by the petitioner, and ten recommendation letters written by individuals who have worked with him. On appeal, counsel submits a brief, an excerpt of the ASCE bylaws, a list of citations to the petitioner's work, copies of five citing articles, and a second letter from the petitioner's employer. We address the evidence submitted and counsel's

contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria that are not discussed below.

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

The petitioner claims to meet this criterion through his honorable mention in the 1998 and 2000 competition for the Gzowski Medal. The record contains copies of two letters from the President of the Canadian Society for Civil Engineering (CSCE) informing the petitioner that two of his co-authored articles published in the *Canadian Journal of Civil Engineering* were awarded an Honorable Mention in the 1998 and 2000 competitions for the Gzowski Medal. Both letters state that the petitioner's honor would be published in the "CSCE Honours, Awards and Fellowships booklet" and that copies of the booklet would be available at the Awards Banquets. The petitioner did not submit copies of the CSCE booklets listing his honorable mentions and apart from the letters, the petitioner submitted no documentation of the significance of these citations or any other evidence that an honorable mention in the Gzowski Medal competition is a nationally recognized prize or award in the petitioner's field.

On appeal, counsel claims that the CSCE annually awards the "Sir Casimir Gzowski Medal for the best paper on a civil engineering subject in the area of surveying, structural engineering and heavy construction. Furthermore, the Gzowski Medal Selection Committee is allowed the discretion to select a paper judged to be second in this field to receive Honourable Mention." Yet the record contains no evidence to support these statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence submitted shows only that the petitioner received honorable mentions in a competition sponsored by CSCE for two of his co-authored articles published in the *Canadian Journal of Civil Engineering*. The record is devoid of any evidence that such mentions are nationally recognized awards or prizes for excellence in the petitioner's field. Accordingly, he does not meet this criterion.

(ii) 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 a copy of his ASCE membership certificate, but no evidence that outstanding achievements are prerequisite to such membership. On appeal, counsel claims that the petitioner meets this criterion because the submitted excerpt from the ASCE bylaws states that "[t]he standard for admission to the Society's grade of Member means definite responsibility for engineering work of substantial importance." The bylaws explain that to become a Member, the applicant must have been responsible for the direction and successful completion of engineering work without relying on a superior or higher authority figure. The record is not persuasive that a position of substantial responsibility is an outstanding achievement in the petitioner's field. Notably, while ASCE Members have held positions of substantial responsibility, they are not comparable to ASCE Fellows. The ASCE bylaws state that "[t]he standard required for advancement to the grade of Fellow is broad responsibility for engineering work of major importance. The duties and responsibilities of the applicant must have been definitely above those required for the grade of Member." Hence, the bylaws themselves indicate that outstanding achievements are not required of ASCE Members, but may be required of ASCE Fellows. Moreover, we note that the submitted excerpt includes only a portion of the section entitled

“Membership Grades and Qualifications,” which does not include the qualifications for Members. The excerpt thus does not establish that outstanding achievements, rather than experience in positions of substantial responsibility, are prerequisite to ASCE membership at the grade held by the petitioner. Accordingly, the petitioner does not meet this criterion.

(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 initially submitted copies of three scholarly articles published in the *Canadian Journal of Civil Engineering* in 1999 and 2000 that cite two of his co-authored articles. Yet citations of an alien’s work by other scientists in their scholarly publications rarely meet this criterion because the citing articles are primarily about the authors’ own research, not the work of the alien. In this case, the submitted articles cite the petitioner’s manuscripts in just one paragraph. In two of the articles, the petitioner’s work is cited in conjunction with three and seven other manuscripts.

On appeal, the petitioner submits a list of 12 manuscripts that cite his work and includes copies of five of these citing articles. We cannot consider four of these citing articles because they were published after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The remaining article cites one of the petitioner’s co-authored manuscripts in conjunction with the work of another research team. The submitted evidence shows that the petitioner’s work has been cited in four articles published in engineering journals. These articles cite the petitioner’s co-authored manuscripts in passing and do not discuss his work in depth. Accordingly, the citing articles are not about the petitioner’s work and he 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:

As initial evidence of his eligibility under this criterion, the petitioner cited three of his co-authored abstracts from two conferences in his field. The director acknowledged the petitioner’s conference abstracts and his three co-authored articles, but noted that such accomplishments “are not unusual for a researcher.” On appeal, counsel claims the petitioner’s conference presentations and his published articles meet this criterion because “[s]uch achievements in fact are unusual, are exceptional and have resulted in the widespread dissemination of Beneficiary’s research in his field of study.” The record contains no evidence to support this statement. Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506.

The record contains copies of three abstracts co-authored by the petitioner. One was presented at the Fifth U.S. National Conference on Earthquake Engineering in 1994 and the other two were presented at the World Conference on Earthquake Engineering in 1996. The petitioner submitted no evidence that he was an invited speaker at either of these conferences or that his presentations were especially well received or otherwise recognized as major contributions to his field. The petitioner also submitted copies of three articles co-authored by him and published in the *Canadian Journal of Civil Engineering* between 1996 and 2000. The record shows that two of these articles have been cited twice each in the published work of other engineers. As discussed

above under the third criterion, the petitioner submitted a citation list on appeal and copies of five citing articles. We cannot consider four of these citing articles because they were published after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N at 49. The petitioner's minimal publication and citation record does not reflect sustained national or international acclaim.

The record contains 12 support letters from the petitioner's employer and other individuals who have worked with him. 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, 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. In this case, the letters praise the petitioner's qualifications and character, but only one letter substantively discusses his work. [REDACTED], a principal at the firm of Nacamuli Associates, ELC, states that he has worked with the petitioner for two years while the petitioner was employed by [REDACTED] firm as a project engineer. [REDACTED] states that the petitioner

has authored a number of papers in the field of seismic design and analysis. His work in this area is a tremendous asset to the preparedness and mitigation activities that the Federal Government of the United States has mandated. Further, his publications and research directly contribute to the development and promulgation of specifications, building standards, design criteria, and construction procedures and practices under Executive Order 12699 signed by President Bush and the furtherance of the Earthquake Hazards Reduction Act (42 U.S.C. 7701 et seq.).

Yet [REDACTED] provides no specific examples of how the petitioner's work has directly contributed to governmental efforts to reduce earthquake hazards.

In his letter submitted on appeal, the petitioner's employer, Paul C. Beck, President of Paul Beck Associates, P.A., states that the petitioner "has been in charge of multimillion dollar projects and . . . has been directly in charge of the design of projects with an aggregate construction value exceeding several hundred million dollars." However, Mr. Beck's letter does not establish that projects of high monetary value necessarily make major contributions to the field of structural engineering, nor does Mr. Beck state that the petitioner's work on such projects has been widely recognized for its original contributions to his field.

While the support letters indicate that the petitioner is a successful structural engineer who is well respected by his colleagues and supervisors, the letters contain no documented description of how the petitioner's work has made original contributions of major significance to his field. In addition, the petitioner's minimal publication and citation record do not reflect the requisite sustained acclaim. Accordingly, he 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.

As discussed under the fifth criterion, the record shows that the petitioner in this case has co-authored three articles that were published in the *Canadian Journal of Civil Engineering* between 1996 and 2000. As discussed above under the first criterion, two of these articles received Honorable Mentions in the 1998 and

2000 CSCE competitions for the [REDACTED] and have been cited twice each in the published work of other engineers. The citation list submitted on appeal includes four other citing manuscripts (numbered nine through 12) that are not documented in the record, but are listed as conference or discussion papers. Four other citing articles on the list cannot be considered because they were published after the petition was filed. The petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N at 49.

As previously noted under the fifth criterion, counsel provides no evidence to corroborate his claim that conference presentations and scholarly publications are unusual and exceptional in the petitioner's field. Again, the unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner's minimal publication record thus does not reflect the requisite sustained acclaim and consequently does not satisfy this criterion.

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 evidence in this case indicates that the petitioner is an accomplished structural engineer who is well respected by his colleagues and supervisors. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as an engineer placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.