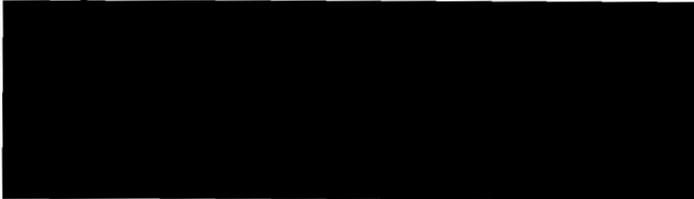




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FILE: LIN 05 065 50773 Office: NEBRASKA SERVICE CENTER Date: JUN 29 2006

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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 the beneficiary has earned sustained national or international acclaim at the very top level.

This petition, filed on January 3, 2005, seeks to classify the beneficiary as an alien with extraordinary ability as a Senior Systems Analyst. The beneficiary has been working for [REDACTED] and [REDACTED] in that capacity since January 2002.

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 asserts that the beneficiary meets 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.*

The appellate submission includes a letter from \_\_\_\_\_ President, \_\_\_\_\_ and \_\_\_\_\_ Bloomington, Minnesota, stating: “[The beneficiary] as recently received an award of excellence for maintaining the Website for Prairie Lakes District of the Boy Scouts Of America – formerly Indianhead Council – now Northern Star Council. He volunteers for this. He was recruited by the District Advancement Chair for this position.”

The record, however, includes no first-hand evidence of the “award of excellence.” 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)). Further, according to \_\_\_\_\_ description, this award reflects local recognition rather than national or international recognition. For these reasons, the petitioner has not established that the beneficiary 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.*

\_\_\_\_\_ further states:

As the Prairie Lakes District Web Master, [the beneficiary] sits on a committee to decide the content of what will be placed on the Council Web Sites. [The beneficiary] and all other district Web Masters meet quarterly with the Council Web Master to decide on the content that will be placed on all web sites. The committee needs to ensure that all sites follow the policies outlined by the Boy Scouts of America.

The plain wording of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” The record, however, includes no evidence from the Boy Scouts of America showing the beneficiary’s participation as a judge. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 158, 165. Further, we do not find that sitting on a committee whose function is to ensure that web site content complies with organizational policies constitutes judging the work of others for purposes of this criterion. Without evidence showing that the beneficiary has evaluated the work of other information systems professionals at the national or international level, we cannot conclude he meets this criterion.

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

On appeal, the petitioner submits an e-mail from Thomas Salmo, Project Manager, Wholesale Systems, \_\_\_\_\_, stating:

[The beneficiary] has been able to provide his current client with the ability to be able to easily communicate between two different database storage platforms which has never been accomplished before at Supervalu. He introduced the use of "called modules" into a system which was endangered of becoming cancelled, millions wasted. The system is a PC based transportation routing package which is fed by a Mainframe Legacy package. When [the beneficiary] was on this team the install was successful.

[The beneficiary] was also able to provide the ability to determine whether a called module was called by an on-line or a batch application. He worked with [REDACTED] system programmers and CICS application expert to make this a reality.

Currently [the beneficiary] has been asked to work on a SQL Server system, one he has not been exposed to using. In a short period of time [the beneficiary] has removed deadlocking issues and has resolved a great deal of the mysteries that were plaguing the current staff on the system. [The beneficiary's] ability to comprehend new technology and applications has been a tremendous benefit for us.

The preceding comments reflect that the beneficiary has performed admirably at [REDACTED], but it has not been established that his work rises to level of a contribution of major significance in the field of information technology. We accept that the beneficiary has helped to improve the functioning of his client's computer systems; however, it has not been shown how the greater field has changed as a result of this work.

The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond those who have worked with the beneficiary. If the beneficiary's reputation is limited to his immediate acquaintances and clients, then he has not achieved national or international acclaim regardless of the expertise of his witnesses. Without extensive documentation showing that the beneficiary's work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of major significance.

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

In response to the director's request for evidence, the petitioner submitted information printed from the U.S. Department of Labor's *Occupational Outlook Handbook* stating that "median annual earnings of computer systems analysts were \$62,890 in 2002" and that "the highest 10 percent earned more than \$93,400." We do not find that median salary statistics are an appropriate basis for comparison. The petitioner must provide evidence that the beneficiary's salary places him at the very top of his field, not in the top half. See 8 C.F.R. § 204.5(h)(2). Therefore, we find that the latter statistic offers a more appropriate basis for comparison.

On appeal, the petitioner submits the beneficiary's Form W-2s, Wage and Tax Statements, reflecting gross pay in the amount of \$110,523.87 in 1999, \$128,381.00 in 2000, \$105,014.74 in 2001, \$72,150.00 in 2002, \$76,128.00 in 2003, and \$88,344.00 in 2004.

In 1999, 2000, and 2001, we acknowledge that the beneficiary earned a high level of compensation in his field. The statute and regulations, however, require the beneficiary's acclaim to be sustained. Subsequent to 2001, the beneficiary earned a level of compensation significantly lower than the top ten percent of his field. During the three-year period preceding the petition's filing date, it has not established that the beneficiary was among the highest-paid systems analysts at the national or international level. The petitioner has not established that the beneficiary meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the beneficiary 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 beneficiary'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.