

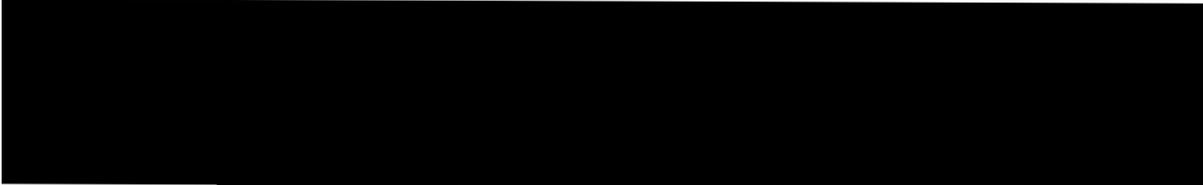


U.S. Citizenship  
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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 08 2007  
SRC 06 002 51884

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.

*Maura Deadrick*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner, a telecommunications company, 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.

On appeal, counsel argues that the beneficiary has satisfied 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 to 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, 60898-9 (November 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on September 30, 2005, seeks to classify the beneficiary as an alien with extraordinary ability as Director of Architecture, Research and Development, at Kodiak Networks, Inc. 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 a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. We find that the petitioner's evidence meets the following three criteria.

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

On appeal, counsel argues that the beneficiary's invention of a dispatch service architecture framework meets this criterion. Counsel states: "This invention relates to wireless communications systems, and more specifically, to a dispatch service providing 'push-to-talk' or 'instant calling' services in a cellular telephone system."

A letter of support from [REDACTED] Chief Executive Officer and President, Kodiak Networks, states:

In 2003, [the beneficiary's] Dispatch Service Architecture Framework international application was published. The record of [the beneficiary] is truly extraordinary in that he is one of only a few able to successfully apply the technical and scientific principles of dispatch service in a cellular telephone system to practical solutions. . . . [The beneficiary] has invented an innovative and critical wireless systems communications tool. His work has been assigned to Kodiak Networks, a leader in the wireless systems industry. . . . With the possession and use of such technology, Kodiak holds valuable intellectual property, providing it the marketplace edge. Indeed, industry leaders know that this powerful, innovative and cost effective dispatch service architecture framework will differentiate the service offerings by present wireless networks and provide a competitive edge.

A letter of support from [REDACTED] Co-Founder, and Chief Technology Officer, Kodiak Networks, states that the beneficiary's invention provides "group-based dispatch services that use existing networks with minimal changes." [REDACTED] further states:

We jointly conceived the innovative idea of developing Push To Talk technology for existing GSM [Global System for Mobile communications] and CDMA [Code Division Multiple Access] cellular networks, which led to be core [sic] of our invention and led to the growth of Kodiak Networks.

\* \* \*

The dispatch service architecture framework of the present invention allows the wireless network to provide an instantaneous voice messaging service wherein a group of users can exchange voice messages at any time from anywhere in the network. . . . Our invention discloses an apparatus for providing group voice services in a wireless network, comprising dispatch [sic] gateway that interfaces to the wireless network to provide the group services therein, wherein both the dispatch gateway and mobiles that use the group voice services communicated with each other using call setup and in-band signaling with the wireless network. It is important to note that such patent has been filed with the patent and trademark offices in the U.S., Europe and Japan.

The petitioner also submitted intellectual property documentation showing that the beneficiary is an inventor of the dispatch service architecture framework. More importantly, the petitioner submitted articles printed from Cingular Wireless' internet site, Lucent Technologies' internet site, *InfoWorld*, *EE Times*, *Telecom Redux*, *Wireless Week*, *Morningstar Business Wire*, *Forbes*, Yahoo's "Financial News" web page, *Telephony Online*, *Wall Street Reporter*, Andrew Seybold's *4Mobility* "Outlook" web page, and *The Dallas Morning News* indicating that the beneficiary's innovation is being widely utilized both nationally and internationally. The documentation submitted by the petitioner reflects that the beneficiary's technology has been deployed throughout the telecommunications industry by companies such as Cingular, Alltel Communications, Amp'd Mobile, Bluegrass Cellular, Carolina West, Cellcom, East Kentucky Network, Samsung, Sony Ericsson, and 3 Rivers Wireless.

In light of the above, we find that the beneficiary 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 record adequately establishes that the petitioner is an organization with a distinguished reputation. For example, several media reports submitted by the petitioner describe Kodiak Networks as a leading advanced wireless systems provider for cellular service carriers. The record further reflects that the beneficiary plays a leading and critical role for the petitioner as its Director of Architecture, Research and Development. Thus, the beneficiary 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 the beneficiary's Form W-2, Wage and Tax Statement, showing that he earned \$193,052.16 in 2004 and a letter from [REDACTED] Human Resources Manager stating the beneficiary receives a gross annual salary of \$160,000.00. The petitioner also submitted national wage statistics showing that the beneficiary's compensation was significantly high in relation to others in his field. Therefore, we find the petitioner's evidence is adequate to demonstrate that the beneficiary meets this criterion.

Accordingly, the beneficiary has satisfied three of the regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations as they are currently constituted, the beneficiary qualifies for classification sought.

In this case, the totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability. The petitioner has also established that the beneficiary seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has overcome the stated grounds for denial and thereby established the beneficiary's eligibility for the benefits sought under section 203 of the Act.

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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.