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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date: MAR 20 2009

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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.

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).

John F. Grissom, Acting 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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner meets 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 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, 60898-99 (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, filed on April 10, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a business operations specialist in the game music industry. A March 16, 2007 letter of

support from [REDACTED] a two-time Grammy Award winner and the Chief Executive Officer of Sumthing Else Music Works & Sumthing Distribution, states:

Video game music is now the fastest growing artistic platform for composers, musicians, and producers, due to the ground-breaking efforts of [the petitioner]. He has risen to the very top echelon of business operations specialists in this field and an [sic] instrumental leader in establishing game music as a legitimate music genre. With his unrivalled knowledge of the global game soundtrack marketplace he is the best in the business at cultivating and solidifying consumer demand for buying game soundtracks.

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, internationally 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 at least three of the regulatory criteria.

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

The petitioner submitted evidence showing that he received the [REDACTED] (GANG) Recognition Award and the award for [REDACTED] [REDACTED] at the Game Developers Conference [REDACTED]. The petitioner also submitted documentation demonstrating the significance of the preceding awards. As such, the petitioner has established that he meets 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.

The petitioner submitted material about him and his work in major trade publications such as *Develop*, an "international monthly for games programmers, artists, musicians and producers," and *MCV* magazine. The petitioner also submitted articles in such publications as the *Toronto Star*, *GameNews Weekly*, the *Hollywood Reporter*, *Chicago Tribune*, *Entertainment Today*, *Boston Herald*, and *Billboard* that reflect interviews or quotes of the petitioner.¹

In light of the above, the petitioner has established that he meets this criterion.

¹ While not all of these articles are primarily about the petitioner, they demonstrate that the preceding media sources view him as an international expert in his field and therefore are they consistent with his having sustained international acclaim in the game music industry.

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 petitioner submitted evidence showing that he served on the Board of Advisers for the Annual GANG Audio Awards in 2007. The petitioner also submitted evidence showing that he served as a panelist for the 9th Annual Interactive Achievement Awards in 2006. Material from this event states that “[p]anelists determine the finalists for each award category from the total set of nominations through a process of game-play, review, debate and discussion.” The petitioner’s evidence also included documentation showing that the National Academy of Video Game Testers & Reviewers Corporation elected him as one of seven delegates charged with oversight of the [REDACTED]

In light of the above, the petitioner has established that he meets this criterion.

In this case, the petitioner has satisfied three of the regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations, the petitioner qualifies for classification sought.

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability. The petitioner has also established that he 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 eligibility for immigrant classification under section 203(b)(1)(A) 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.