U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 2 7 2009
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IN RE: Petitioner:
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:

[redacted]

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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 asserts that the director minimized the petitioner's accomplishments and supplements the record with a new reference letter and a copy of a district court decision. For the reasons discussed below, we uphold the director's analysis and conclusions.

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, 60898-9 (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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an information technology consultant. 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 has submitted evidence that, she claims, meets the following criteria.[1]

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.

Counsel initially asserted that the petitioner meets this criterion by speaking at a seminar. Counsel does not explain whose work she "judged" during this seminar or what judging responsibilities were involved. Counsel's response to the director's request for additional evidence, which inquired as to how the petitioner's speaking role meets this criterion, does not address this criterion. It would appear that speaking at a seminar is more akin to the publication of scholarly articles and will be considered below as it relates to that criterion, set forth at 8 C.F.R. § 204.5(h)(3)(vi). The petitioner has not, however, established that she meets this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iv).

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

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. To be considered a contribution of major significance in the field of technology, it can presumed that the contribution will have had a demonstrable impact on technology in the field generally as opposed to merely consisting of the constant incremental upgrades in software inherent to the field.

Counsel initially asserted that the petitioner meets this criterion through her contributions to Oracle User Guides. The petitioner also submitted electronic mail correspondence between her and her colleagues. In response to the director's request for evidence as to the impact of the petitioner's work, counsel notes Oracle's market share and asserts that all of these users rely on the petitioner's user guides. The director concluded that the petitioner had not demonstrated that her influence is recognized as having major significance to the field. On appeal, counsel asserts that the director applied too high a standard and did not understand the field. The petitioner submits a new reference letter which we will consider below.

The petitioner is listed as a "contributor" to the 2000 Oracle Applications Global Accounting Engine User Guide, Release 11*i*, the 2003 Oracle Financials for France and the 2004 Oracle Applications

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Global Accounting User Guide Release 11*i*. The petitioner is listed as the author of a 1997 "AX Global Accounting Engine Mega Patch certification - Testing Information sheet" for Oracle. While the document is copyright protected, it is less clear that this document was published as opposed to serving as an internal document for Oracle. Specifically the "distribution" for the document is listed as "Project Library" and "Project Manager." While the petitioner submitted the 2000 Oracle Receivables with Vertex Quantum User Guide, she is not listed as a primary author, major contributor or contributor.

The petitioner submitted documents entitled "Payable – Invoices Approval" listing the petitioner as the "owner" of various documents listed under "Document Control." These documents are apparently client or prospective client demonstration presentations for which the petitioner was responsible.

The record contains an electronic-mail message from Lionel Siksik at Oracle announcing that OPSFI France has been implemented and thanking the "EADS Team" and the petitioner "who worked nights and days to help." In addition, several electronic-mail messages between the petitioner and other Oracle employees reflect her correspondence while working on this and other projects. The record adequately documents that the petitioner was an employee of Oracle and worked on projects. At issue is whether her contributions to projects at Oracle are recognized as having impacted the field beyond Oracle. These electronic-mail messages reflecting the general back and forth inherent to developing a software program for a client do not illuminate the petitioner's overall reputation in the field beyond her employer. We note that the statute and regulations do not require USCIS to review work product, such as thick user guides and electronic-mail correspondence, and make a subjective determination as to its significance. USCIS does not have the expertise to make such a determination. Rather, the statute and regulations require objective evidence that the alien enjoys national or international acclaim, which may be documented in part by contributions of major significance that, as explained above, must have demonstrably impacted the field as a whole.

The petitioner submitted several letters from Oracle employees. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify

contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through her reputation and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

, Director at the Washington, D.C. metro area Oracle Corporation, discusses the petitioner's work in Europe on the Oracle Globalization team and her work in Washington, D.C. on the Demo Services Team. Ms. praises the petitioner's knowledge, conscientiousness and language ability. Ms. does not provide any specific examples of a contribution that has impacted the information technology field as a whole.

The remaining letters are similar. , an applications engineer for Oracle India who worked closely with the petitioner on various projects, praises her functional and Oracle specific knowledge and conscientiousness. a financial functional consultant for Oracle ADS who credits the petitioner as a "mentor," describes the petitioner's work as a senior consultant build person, who builds existing software with industry data for demonstration by pre-sales consultants. Mr. notes that the petitioner built products that include federal financials, purchasing, "GL" and payables. praises the petitioner's dedication to the projects and ability to deliver high quality product functional designs. The petitioner also submitted a downloaded recommendation from Tim Dexter, a group manager at Oracle, posted at www.linkedin.com/references, accessed on November 2, 2006. Mr. praises the petitioner's professionalism and willingness to take the time to gain the necessary insights for the project. A form evaluation from , recommending the petitioner for an AAUW Educational Foundation fellowship, indicates he has known the petitioner as a colleague and fellow volunteer since 1995 and provides general praise. Finally, , Regional Vice President for Oracle's North America Business Integration Services, praises the petitioner's integrity, work ethic and interactions with customers. Ms. notes the petitioner's experience in both Oracle applications and accounting. None of these letters identify a specific contribution to the field of information technology or any other field and explain how that contribution has impacted the field as a whole.

On appeal, the petitioner submits a letter from , Lead Faculty of Management Information Systems and Business Administration at the University of Phoenix,[2] Jersey City, New Jersey. Mr. reviews the petitioner's education and considerable experience with Oracle and concludes that she has qualifications and experience rarely seen, even at the top of the field. Mr. does not claim to have

[2] The record does not reflect that the University of Phoenix is a regionally accredited university in the United States and we were unable to confirm such accreditation. *See* http://www.phoenix.edu/about_us/accreditation.aspx (accessed February 26, 2009 and incorporated into the record of proceeding).

ever heard of the petitioner or her work prior to being approached for a reference. Rather, he indicates that his opinion is based on a review of her "letters of commendation, awards of recognition, work experience and academic record." While education and lengthy experience are criteria for aliens of exceptional ability pursuant to section 203(b)(2) of the Act, *see* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), these factors are not relevant to the classification sought. Mr. does not explain how the petitioner has impacted her field.

While the petitioner's work is no doubt of value to Oracle, it can be argued that any work in information technology must be shown to be original and provide a useful service for clients. The petitioner has not demonstrated that her contributions to the Oracle user guides were original. Significantly, while the petitioner provided letters from multiple Oracle employees, none of them address what she "contributed" to these guides. It would appear that the guides to which she contributed were merely updated to reflect the current version of various Oracle products developed by others.

Regarding her other work, incremental improvements to various programs and development of programs for specific clients are inherent to the field of software development. It does not follow that every consultant who builds a software package for a client has inherently made a contribution of major significance to the field as a whole. Without evidence that the petitioner is recognized beyond Oracle and her specific clients for the demonstration products she built, she cannot establish that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

At the outset, it is useful to look at the plain language requirements set forth at 8 C.F.R. § 204.5(h)(vi). First, the regulation requires evidence of "authorship." In other words, the alien must have authored the text at issue. Second, the authored material must be "scholarly." Third, the authored scholarly article must be an "article." Finally, the authored scholarly article must appear in "professional or major trade *publications* or other *major media*." The director dealt with only one of these factors, determining that the user guides were not scholarly.

On appeal, counsel submits *Gülen v. Chertoff,* 2008 WL 2779001 (E. D. Pa. July 16, 2008). In this case, the court found that a work becomes scholarly by virtue of its author and subject matter, not the audience. *Id.* at *3. Significantly, while holding that the work need not be aimed at other scholars, the court readily accepted the requirement in the USCIS Adjudicators Field Manual that the petitioner must provide evidence of the scholarly articles' "reception in the scholarly community." *Id.* The court then noted that the alien's work in that case was "prominent in the syllabi of graduate and undergraduate courses at major American colleges and universities" and that "there have been academic studies of the petitioner's thought."

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

Even if we found the reasoning in *Gülen,* 2008 WL 2779001 at *3, persuasive, it does not mandate a finding that the user guides are scholarly. We acknowledge that the guides are thick and involve complex software development guidance. Clearly, as counsel asserts, they go beyond the "simple instructions manual for a new toy one would buy at a local toy store." That fact, however, does not elevate these guides to "scholarly." They do not involve a scholarly analysis of Oracle, but provide basic instructions, however complex, for using a given product. Such user guides cannot be compared with the original theological tracts authored by the alien in *Gülen.*

Moreover, the petitioner is never listed as an "author" of the user guides but as one of several "contributors." It would appear that the guides are primarily revisions of previously issued guides to account for updates to the product. The petitioner is not credited with a specific chapter or section within the guide that could be considered comparable to an "article" such that her contribution could be considered sufficient to meet the language set forth at 8 C.F.R. § 204.5(h)(3)(vi).

Further, the petitioner has not established that the user guides constitute professional or major trade publications or other major media. By definition, a publication must be published. The record does not establish that the user guides were "published" as opposed to being issued with the software product they support. Nor are they professional or trade publications, such as a peer-reviewed journal. While "other major media" is broader, the petitioner has not established that a user guide supplied to customers when they purchase a product is "major media" even if the client base is sizable.

We acknowledge that the petitioner has also given a presentation at a 1995 symposium. While a conference presentation can serve, on a case-by-case basis, as comparable evidence relating to this criterion, the record contains no evidence as to the impact of this 1995 presentation. As noted in the *Gülen* decision on which counsel relies, USCIS is justified in reviewing the impact of the scholarly articles in the scholarly community. *Gülen,* 2008 WL 2779001 at *3. The record contains no evidence of any impact that the petitioner's user guides or 1995 presentation have had on the scholarly information technology community.

In light of the above, the petitioner has not established that she meets this criterion.

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

Counsel asserts that the petitioner meets this criterion through her role at Oracle. The director requested evidence that set the petitioner's position apart from the thousands of other employees at Oracle and concluded, in the final decision, that the petitioner had not done so.

Counsel asserts that there are few experts who know Oracle sufficiently well to write the user guides, that the petitioner had to translate European accounting principals into system specifications and that she was the only user guide contributor with industry, product or Oracle Global Financials Products experience. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). None of the letters from Oracle employees confirm these assertions. Regardless, at issue for this criterion is not the petitioner's contributions while working for Oracle but the position the petitioner was selected to fill and the reputation of the entity that selected her. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

The record contains significant materials about Oracle's reputation nationally and even internationally, including a lengthy customer list and a press release indicating that Oracle enjoys 44.4 percent of the market, "well ahead of competing products." Thus, we do not contest the company's distinguished national or international reputation.

At issue is the nature of the petitioner's role with Oracle. According to the letters from Oracle employees, the petitioner worked as a senior consultant and senior consultant build person. The petitioner submitted information about Oracle downloaded from http://finance.yahoo.com/q/pr?s=ORCL (accessed November 2, 2006) indicating that Oracle employed 56,133 full-time employees at that time. The website http://finance.google.com/finance?q=ORCL (accessed July 26, 2007), also submitted by the petitioner, indicates that Oracle had 74,674 total employees at that time. The record does not contain evidence regarding how many senior consultants Oracle employs. Nor does the record contain an organizational chart that might demonstrate the significance of this position within Oracle. Without additional evidence, the petitioner has not demonstrated that the position of senior consultant is a leading or critical role for Oracle such that selection for the position in and of itself is indicative of or consistent with national or international acclaim.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as an information technology consultant to such an extent that she may be said to have achieved sustained

national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent and lengthy experience as an information technology consultant, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field. 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.