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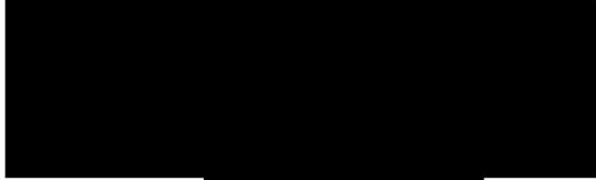
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



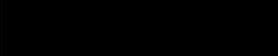
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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAR 27 2009**

LIN 07 199 53258

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).

JF Grissom
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 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 in the sciences and business. The director determined that the petitioner had not established the beneficiary's sustained national or international acclaim required for 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 of the beneficiary as an alien with extraordinary ability in the sciences and business, specifically as chief engineer and power plant operator. Initially, the following supporting documents were submitted: information about the petitioner, U.S. Department of Labor salary information about the beneficiary's occupation, the beneficiary's Institute of Electronic and Electrical Engineers ("IEEE") membership card and qualifications for IEEE membership, news articles about the petitioner, and three letters of recommendation. In response to a Request for Evidence ("RFE") dated July 10, 2007, the petitioner submitted the following supporting documents: an analysis of the beneficiary's qualifications,

engineering designs done by the beneficiary for the petitioner, pictures of the beneficiary at work for the petitioner, O*Net wage statements for other power plant operators, and one additional letter of recommendation. We address the evidence submitted in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim that the beneficiary is eligible under any criteria not addressed below.

(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 evidence of the beneficiary's membership in the IEEE. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation. The background information submitted about the IEEE does not indicate that membership requires outstanding achievement in the field. Instead, the membership requirements for the IEEE state that membership will be granted to those persons who receive an education degree in an appropriate field of study or who have an equivalent level of experience in an appropriate field of work. The IEEE information indicates that a second classification of member exists, senior member, which "is the highest [grade of membership]." The beneficiary's membership card reflects that he has not attained even this higher grade of membership, but is instead a regular member of the IEEE. The IEEE's bylaws do not indicate that outstanding achievement is necessary for membership nor do they indicate that membership is judged by recognized experts in the field. Finally, it is noted that although counsel claims that the beneficiary had an "association with organizations of outstanding reputation," this criterion requires actual membership instead of just an association with those organizations.

For all of the above listed reasons, the petitioner has failed to establish that the beneficiary meets 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 did not specifically claim that the beneficiary is eligible under this criterion, but submitted news articles in support of the petition. The news articles submitted are about the petitioner and its achievements and do not mention the beneficiary. Therefore, the published material is not about the beneficiary.

Accordingly, the beneficiary 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.

Initially, the petitioner stated that the beneficiary was eligible under this criterion by virtue of his design of various hydroelectric power plants including the petitioner's. The petitioner cited the letters of recommendation

as support for this assertion. The letter provided by [REDACTED], lead hydroelectric design engineer for the petitioner's construction, states that the beneficiary's "extraordinary engineering abilities and his expertise in renewable forms of energy were critical to the success of phase one of th[e] project, the construction of the facility." He further "credited [the beneficiary] with the design, implementation, and operations of the facility's control protocols and sensing elements" allowing the petitioner to operate at a high level. [REDACTED] executive director of a company that buys and resells electricity on behalf of the state of Vermont, wrote that the beneficiary is "credited with the successful output of the power generating plant that he manages, and for implementing and maintaining the security protocols requested by the Federal government." Mr. [REDACTED] wrote that the beneficiary could be credited with keeping the petitioner's facility online when all others in the area failed.

In response to the RFE, the petitioner wrote that the beneficiary's "engineering design and operation of a hydroelectric station . . . [has] been evaluated by nationally recognized experts who have concluded that these works identify [the beneficiary] as someone who has reached to [sic] top of this field." The petitioner submitted an additional letter of recommendation from [REDACTED], executive director of the [REDACTED]. Mr. [REDACTED] wrote that the beneficiary "has designed, specified, and installed control and sensing elements in new and existing hydroelectric projects through New England" while at the same time undertaking "the day to day operation of [the petitioner's plant]." Mr. [REDACTED] continues by writing that the beneficiary is a "rare and unique individual" who has "the combination of skills and experience to be able to do all of [the] jobs" undertaken. The petitioner also submitted an evaluation of the beneficiary as undertaken by [REDACTED] president of [REDACTED] who wrote that the beneficiary's ability to generate more kilowatts of power than the base load that the plant was designed to produce "is truly exceptional." Mr. [REDACTED] stated that the plant's high production is due to the beneficiary's "effective and well thought out design." In addition, [REDACTED] wrote that the beneficiary's ability to manage the facility in "a compliant and innovative manner" with regards to environmental demands.

Although the beneficiary's work may be valued by the petitioner, the petitioner did not submit any evidence showing that the work that the beneficiary did was original or was of major significance to the field as a whole. For example, the petitioner submitted no evidence that the work that the beneficiary did for the petitioner was communicated to other members of his field or that he used different methods or techniques that have since been adopted by others in the field. Even if the letters had included information indicating that the petitioner made an original contribution of major significance to his field, letters that attest to the importance of the petitioner's work 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 achieved sustained national or international acclaim. We note that [REDACTED] knowledge of the beneficiary's work is a result of the fact that his company was responsible for reviewing the petitioner's application as a low impact facility. Similarly, [REDACTED] evaluation of the beneficiary's skills and abilities appears to have been given as a result of being solicited solely for this petition. Dr. [REDACTED] does not indicate that he was aware of the beneficiary or his work prior to being contacted for his assessment.

In addition, duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself. Designing and operating the plant and implementing and maintaining appropriate security protocols appear to be an inherent part of the job description of chief of operations for engineer and safety. In order to establish that the

beneficiary meets this criterion, the petitioner must further demonstrate that the beneficiary's work made a contribution of major significance in his field. Such a demonstration may be made through other evidence such as, for example, national media discussions of the engineering work's impact, evidence of the use of the beneficiary's methods by other engineers for other companies, or other evidence that the beneficiary's work attracted significant attention in his particular field. The petitioner submitted no evidence outside of the letters of recommendation and none of those letters stated how these responsibilities either fell outside of the scope of a chief of operation's normal duties or made an original contribution to the field.

On appeal, counsel for the petitioner stated that the beneficiary's three turbine design of the hydroelectric station is "highly innovative" and cited the letters of recommendation and the design plans as evidence to support his statement. The evidence presented does not show that the beneficiary's designs or his plant operations were original, but instead shows that the beneficiary increased the capabilities of the plant in an enviable fashion. While the petitioner may be pleased with the increased performance, such pleasure does not amount to an original contribution of major significance in the field.

Without evidence that his means of increasing production or design of the facility were original and impacted his field, the beneficiary does not meet this criterion.

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

The petitioner initially claimed that the beneficiary met this criterion through his work with the petitioner's plants and with other companies with which the petitioner does business. Counsel cited eight letters in support of this claim, however, only one of the letters cited actually appears in the record. That letter, written August 15, 2005 by [REDACTED], head lineman and operator of [REDACTED], stated that the beneficiary "provided oncall support and technical services" to the company "for over 13 years" and "help[ed] with equipment upgrades and program/operation improvements." This letter evidences only a sporadic involvement of the beneficiary with [REDACTED]. The petitioner submitted no evidence regarding the beneficiary's actual role or that such sporadic assistance with [REDACTED] constitutes a leading or critical role for that company nor was any evidence submitted to show that [REDACTED] enjoys a distinguished reputation.

In response to the RFE, the petitioner contended that the beneficiary met this criterion by virtue of his work with the U.S. Department of the Interior, U.S. Fish and Wildlife Service and the University of Vermont. The petitioner's letter in response to the RFE cited "two letters from U.S. Department of the Interior, U.S. Fish and Wildlife Service acknowledging [the beneficiary's] significant contributions to the wild salmon preservation program," however, those letters do not appear in the record. Even if those letters had appeared in the record, the description provided of the beneficiary's "cooperation" with those entities does not show that the beneficiary performed a leading or critical role for these organizations. In order to meet this criterion, a petitioner must establish the nature of the alien's role within the entire organization or establishment. The petitioner presented no evidence that the beneficiary's role as "a principal player in the implementation of the preservation of the wild salmon project in the Winooski River" constituted a role within the entire U.S. Fish and Wildlife Service. Nor did the petitioner show how "the beneficiary's role in promoting the field of sustainable energy" constitutes a role within the University of Vermont. The petitioner also failed to demonstrate the distinguished reputation of these organizations.

As it relates to the petitioner, we acknowledge that ample evidence appears in the record of the beneficiary's leading and critical role for the petitioner. However, the petitioner presented no evidence of its distinguished reputation. For example, no evidence was included regarding the company's background, standing in the community or world, or any other aspect of its reputation. While the record demonstrates that the petitioner is a partnership 50% owned by [REDACTED], and "is a hydroelectric plant generating 28.4 million KWH/yr of environmentally safe electric power," such information has no bearing on the petitioner's reputation. Mr. [REDACTED] wrote that the petitioner "is one of the most sophisticated computer-controlled hydro projects in the world, and a leader in the use of domestic renewable fuels for the production of safe and clean electricity." Mr. [REDACTED] subjective statement does not speak to the reputation of the petitioner in the field as opposed to the capabilities of the facility. The news articles submitted by the petitioner are mostly about the construction of the facility and date from the early 1990s. In addition, these articles appear in local publications such as the *Burlington Free Press*, *New England Construction*, and the *Vermont Times*. Articles appearing only locally and from more than a decade ago are insufficient to establish the petitioner's current reputation.

Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

(ix) 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 claims that the beneficiary satisfies this category by virtue of his salary of \$100,000. While the information submitted from O*Net shows that the salary for power plant operators ranges from \$38,397 to \$68,515, the description offered in describing the job of "power plant operator" does not seem to match the job that the beneficiary does for the petitioner: "Chief of Operations, Engineering and Safety" according to Mr. [REDACTED]'s letter. The job descriptions provided by O*Net describe a mechanic's duties of "control[ing], operat[ing], and maintain[ing] machinery to generate electric power." The description of the beneficiary's duties in the June 6, 2007 letter from [REDACTED] states that the beneficiary "designed the control programs for the facility, and defined and implemented the station's operating, maintenance, and safety protocols," helps the petitioner meet its "obligations under the Federal Power Act, the Public utilities Regulatory Policy Act, as well as permits issued by the Vermont Public Service Board and the Vermont Agency of Natural Resources," coordinates "relations with State and Federal Inspectors, as well as, cooperative arrangements with the Vermont and U.S. Fish and Wildlife Service," and otherwise has "complete responsibility for [the petitioner's] largest power station." This job description encompasses the duties described on O*Net for a power plant operator, but also includes more duties and greater responsibilities than that of a power plant operator. The evidence presented does not provide information about others in similar position as the beneficiary so we are unable to conclude that his salary is higher than others in the field.

Accordingly, the beneficiary does not meet this criterion.

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Although the petitioner claimed that this category applied in the August 20, 2007 letter from [REDACTED], the plain language of the criterion requires evidence of commercial success *in the performing arts*. No claim has been made that the beneficiary's field involves the performing arts. Even if the category were expanded to include commercial success in all fields, the petitioner presented no evidence to show that the beneficiary was responsible for the petitioner's revenue.

Accordingly, the beneficiary does not meet 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 or her field. The record in this case does not establish that the beneficiary had achieved sustained national or international acclaim as an engineer or power plant chief of operations, engineering and safety placing him at the very top of his field at the time of filing. 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.