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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE:

SRC 09 042 51762

Office: TEXAS SERVICE CENTER Date:

JAN 13 2010

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)

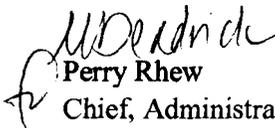
ON BEHALF OF PETITIONER:



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 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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 21, 2009, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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. The director determined that the petitioner did not demonstrate the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate the receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 sustained national or international acclaim at the very top level.

This petition, filed on November 24, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a computer systems analyst. 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 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).

*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 claims eligibility for this criterion based on his membership in the Institute of Electrical and Electronic Engineers, Inc. (IEEE). On appeal, counsel claims that the petitioner "is a member of an organization in the field which requires outstanding achievements of *some* of their members." The petitioner submitted a website page from IEEE indicating that the petitioner is an Associate Member. The petitioner also submitted information regarding membership requirements from IEEE for a Senior Member Grade. However, the record does not reflect, nor does the petitioner claim, that the petitioner is a Senior Member Grade. Rather, the record reflects that the petitioner holds Associate Member status in IEEE.

According to IEEE's website<sup>1</sup>, the following are requirements for select levels of membership:

1. Associate Member grade is designed for technical and non-technical applicants who do not meet the qualifications for Member grade, but who would benefit through membership and partnership in the IEEE, and for those who are progressing, through continuing education and work experience, towards qualifications for Member grade.
2. Member grade is limited to those who have satisfied IEEE-specified educational requirements and/or who have demonstrated professional competence in IEEE-designated fields of interest. For admission or transfer to the grade of Member, a candidate shall be either:

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<sup>1</sup> See <http://www.ieee.org/web/membership/qualifications/qualifications.html#Associate>, accessed on November 19, 2009, copy incorporated into the record of proceeding.

- a. An individual who shall have received a three-to-five year university-level or higher degree (i) from an accredited institution or program and (ii) in an IEEE-designated field;
  - b. An individual who shall have received a three-to-five year university-level or higher degree from an accredited institution or program and who has at least three years of professional work experience engaged in teaching, creating, developing, practicing or managing in IEEE-designated fields; or
  - c. An individual who, through at least six years of professional work experience, has demonstrated competence in teaching, creating, developing, practicing or managing within IEEE-designated fields.
3. The grade of Senior Member is the highest for which application may be made and shall require experience reflecting professional maturity. For admission or transfer to the grade of Senior Member, a candidate shall be an engineer, scientist, educator, technical executive, or originator in IEEE-designated fields.
- The candidate shall have been in professional practice for at least ten years and shall have shown significant performance over a period of at least five of those years, such performance including one or more of the following:
- a. Substantial responsibility or achievement in one or more of IEEE-designated fields; or
  - b. Publication of papers, books, or inventions in one or more of IEEE-designated fields; or
  - c. Technical direction or management of important work with evidence of accomplishment in one or more of IEEE-designated fields; or
  - d. Recognized contributions to the welfare of the professions encompassed by one or more of the IEEE-designated fields; or
  - e. Development or furtherance of important courses in one or more of the IEEE-designated fields at an institution in the REP list; or
  - f. Contributions equivalent to those of (a) to (e) in areas related to IEEE-designated fields, provided these contributions serve to advance progress substantially in IEEE-designated fields.

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, 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 petitioner failed to demonstrate that his Associate Member status in IEEE is based on outstanding achievement as judged by recognized national or international experts in their disciplines or fields.

Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner claims eligibility for this criterion based on his contributions at [REDACTED] and [REDACTED]. The petitioner submitted a letter from [REDACTED] at [REDACTED] stating:

[The petitioner] is one of a handful of Computer Systems Analysts in the U.S. who can work with GXS AI. GXS AI is the only computer translator in the world that features both native electronic data interchange (EDI) and native XML in a single user interface and management console.

The GXS AI project at Coca-Cola involved the development of a software system by [the petitioner] and his team of analysts at Coca-Cola that could essentially convert any computer program written in any language into a single, understandable standard, readable by the Coca-Cola Enterprises computer system. This was essential to Coca-Cola Enterprises as it is an international company operating in many different countries. It needed a software system that could convert all type of financial standards written in any computer language into one standard or into a different standard.

We also note that the petitioner submitted a letter from [REDACTED] of Coca-Cola Customer Business Solutions, reiterating the information in [REDACTED] letter.

While the letters describe the details of the petitioner's work for Coca-Cola Enterprises, the record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field beyond his immediate employer. The letter does not provide any evidence of the petitioner's original contribution of major significance in his field. For instance, while [REDACTED] notes that petitioner has "developed and is in the process of refining and testing an original breakthrough software system at Coca-Cola Enterprises unique to Coca-Cola Enterprises and unique

from any other GXS AI system in the world,” he fails to demonstrate that it is actually in use at Coca-Cola must less throughout the petitioner’s field as a whole. Accordingly, while he may have developed an original software system for Coca-Cola, he has not shown any impact or contribution beyond Coca-Cola.

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. While the petitioner has earned the admiration of those with whom he has worked and demonstrated his benefit to Coca-Cola, he has failed to demonstrate his impact beyond his immediate employer. There is no evidence demonstrating that he has made original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner’s influence on other computer systems analysts nationally or internationally, or that the field has somehow changed as a result of his work.

Without extensive documentation showing that the petitioner’s work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner has not established that he 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 petitioner claims eligibility for this criterion based on his position at [redacted] working at [redacted] In the previously mentioned letter from [redacted] he stated:

[The petitioner] plays a leading role at [redacted] [The petitioner] plays a key/critical role on the EDI project at Coca-Cola which is a Canada migration project from legacy system to SAP system by using GXS AI working on UNIX environment.

[The petitioner] is instrumental to the development and support of the EDI processes at Coca-Cola. EDI processes is conversion of EDI ANSIX12 standard to SAP IDOC and also converting SAP IDOC to EDI ANSIX12 for both Inbound and Outbound process. [The petitioner] is one of only a handful of Computer Systems Analysts in the world that could work on this project because of his experience and expertise in EDI and GXS AI. He is also highly experienced and received good feedback from earlier projects. Also he is meeting the challenging time tasks without fail. EDI and GXS AI can convert different formats/standards of data such as EDI ANSIX12, EDIFACT, IML, SAP IDOCS and flat files etc. across the world. EDI and GXS AI are programming languages/applications which very few Systems Analysts in the U.S. know due to the complexity of the languages.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

While the letters praise the petitioner for his expertise, the documentation, however, does not establish that his position is leading or critical to these companies as a whole. The petitioner failed to submit any evidence substantiating claim that the petitioner is one of only a handful of computer systems analysts that could work on the project. The petitioner failed to establish, for instance, that his roles directly led to the success and accomplishments at any of the companies. Further, the petitioner has not submitted an organizational chart or other similar evidence showing his position in relation to that of the other employees in similar positions at any of these companies. There is no evidence demonstrating how the petitioner's roles differentiated him from the other computer systems analysts, including other members of Coca-Cola's "team of analysts" as well as those in Coca-Cola's senior management. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

Accordingly, the petitioner has not established that he 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 documentary evidence that he received a salary from [REDACTED] of approximately \$112,000 for 2007 and 2008. The petitioner also submitted information from the Bureau of Labor Statistics' Occupational Outlook Handbook (2008-2009 edition) indicating that the median annual earnings for computer systems analysts in May 2006 was \$69,760. Furthermore, the highest 10 percent earned more than \$106,820. Based on the submitted documentation, the petitioner has established that he has commanded a high salary in relation to others in his field. Therefore, we withdraw the director's finding regarding this criterion.

Accordingly, the petitioner has established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner 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 petitioner's achievements set him significantly above almost all others in his field at a 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.