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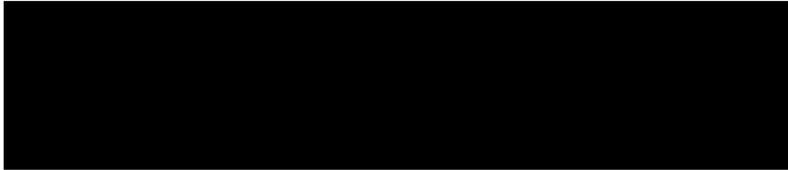
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 200 51253 Office: TEXAS SERVICE CENTER Date: JUL 23 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.

Maury Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company engaged in pipeline integrity management. The beneficiary is an engineer. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in the sciences. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a lead Guided Ultrasonics Limited (GUL) technician.

The director denied the petition, finding that the petitioner failed to meet the evidentiary criteria to demonstrate that the beneficiary had achieved sustained national or international acclaim.

On appeal, counsel submits a brief and additional evidence.

Section 101(a)(15)(O)(i) of the Act provides classification to an alien who

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, and seeks to enter the United States to continue work in the area of extraordinary ability[.]

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i).

The corresponding regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) prescribes:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) 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;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The record contains no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Accordingly, we address the beneficiary's eligibility under the relevant criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Counsel does not claim that the beneficiary meets any criteria not discussed below.

(2) 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.

Counsel did not initially claim that the beneficiary met this criterion. In her response to the director's Request for Evidence (RFE), counsel claimed the beneficiary satisfied this criterion through his certification as a Level II GUL operator. The record does not support counsel's claim. The petitioner submitted a copy of a certificate stating that the petitioner is a Level 2 operator of GUL's Wavemaker™

SE16 Pipe Screening Equipment. The bottom portion of the copied certificate is illegible and the portion of the certificate stating that the petitioner is affiliated with the petitioning company has been visibly altered by placing the company's logo onto a copy of the certificate. The partial illegibility and alteration of this document greatly detracts from its veracity and probative value. Yet even if it confirmed the petitioner's technical qualification, the certificate would evidence a professional credential, not membership in an association as this regulatory criterion requires.

The petitioner submitted GUL's training and qualification brochure for the Wavemaker™ SE16 Pipe Screening Equipment and a letter from [REDACTED] Chairman of GUL. These documents show that GUL is a company that supplies equipment, training and consultation for the testing of pipelines using guided ultrasonic wave techniques. The Wavemaker Pipe Screening System is one of GUL's products for which it provides training and certification. Both the brochure and [REDACTED] state that GUL certifies operators at three levels. As [REDACTED] explains, "Level I is the initial practitioner grade, Level II is the top practitioner grade and Level III is the highest qualification[.]" [REDACTED] reports that in the last five years, GUL has certified only three individuals at Level II, including the beneficiary, and that the beneficiary is the first person outside of GUL employees to have been invited to take the Level III training and examination. While the beneficiary's alleged Level II certification may be a significant achievement, the evidence indicates that the certification is a professional credential, not membership in an association, which requires outstanding achievements as judged by recognized national or international experts in the beneficiary's field. GUL is a company, which provides training and certification in the operation of one of its products. The petitioner has not established that GUL is an association or that Level II operators of GUL's Wavemaker Pipe Screening System have otherwise formed an association in the beneficiary's field. Consequently, the beneficiary does not meet this criterion.

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

As evidence of his original scientific contributions, the petitioner submitted the following documents:

1. An article entitled, "Application of Long Range Guided Wave Ultrasonic Testing as an Integrity Management Tool." The beneficiary is the third-listed author of this article which was presented at the 44th Annual Underground Corrosion Short Course at Purdue University in February 2005;
2. The program for this conference, which shows that the beneficiary was a co-presenter of the article at one of 42 sessions held at the conference;
3. Preliminary program for the American Society for Nondestructive Testing, Inc. (ASNT) Fall Conference scheduled for October 2005, which shows that the petitioner is one of four speakers scheduled for one of 36 planned sessions;
4. Abstract of an article written by the beneficiary, which counsel stated would be submitted to the ASNT Fall Conference; and
5. Support letters from five individuals working in the beneficiary's field.

The record contains no evidence that any articles authored by the beneficiary have been published in professional journals in his field or that his work has been cited by or has otherwise significantly influenced other individuals working in his field. Rather, the evidence shows that the beneficiary was the co-presenter of one article, of which he was the third author, at one of 42 sessions held in one conference in his field. The program for the 44th Annual Underground Corrosion Short Course does not indicate that the beneficiary was a keynote speaker at the conference or that his work otherwise received significant recognition by conference attendees or other individuals in his field.

The ASNT Fall Conference was scheduled to take place after this petition was filed. Accordingly, the beneficiary's scheduled participation and intended article submission cannot be considered. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Even if the ASNT Fall Conference had occurred before the petition was filed, the submitted documents do not indicate that the beneficiary's contribution was of major significance to his field.

The petitioner submitted support letters from [REDACTED] Chairman of GUL; [REDACTED] also of GUL; [REDACTED], of the Department of Mechanical Engineering at Imperial College London; [REDACTED], Professor of Mechanical Engineering at the Imperial College London; and [REDACTED] Staff Engineer at Shell Westhollow Research Center.¹ While such letters provide relevant information about an alien's experience and accomplishments, they 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. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

[REDACTED] states that the beneficiary is one of only three individuals who have been certified by GUL as Level II operators and that he is first person, outside of GUL employees, to have been invited to take the Level III training. [REDACTED] conducted the beneficiary's Level I training course and confirms that the beneficiary, as of the date of [REDACTED] letter, is one of only three practitioners who have been certified as Level II operators by GUL and adds that the beneficiary "has been at the forefront of work to develop procedures for inspecting concrete lined pipes and risers on offshore platforms." [REDACTED] taught part of the beneficiary's Level II training and states that the beneficiary "is one of only two or three who are capable of taking the use of the

¹ The petitioner also submitted a letter from [REDACTED] Professor and Director of the Center for Nondestructive Evaluation at Iowa State University. However, Professor [REDACTED] simply states that there are no labor unions or organizations governing the beneficiary's occupation in the United States. Professor Thompson does not evaluate the beneficiary's achievements or contributions to his field.

technology forward in new and demanding applications.” ██████████ praises the beneficiary as “the most experienced and technically competent operator of [GUL] technology that I know of globally.”

██████████ Professor ██████████ and ██████████ all praise the beneficiary’s skills and exceptional technical qualifications, but the record does not indicate that the beneficiary’s accomplishments have been recognized as major, original contributions to his field. Rather, the evidence shows that the beneficiary is a highly qualified technician who is the third author of one unpublished article, which he co-presented at a single session of one conference in his field. Accordingly, the beneficiary does not meet this criterion.

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

As discussed above under the fifth criterion, the record shows that the beneficiary is the third author of one article that was presented at one conference in his field, the 44th Annual Underground Corrosion Short Course. We cannot consider the beneficiary’s abstract of his article, purportedly submitted to the ASNT Fall Conference in 2005, because the conference was scheduled to occur after the petition was filed. Again, the petitioner must establish the beneficiary’s eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249.

The record does not show that the beneficiary’s single article presented at the 44th Annual Underground Corrosion Short Course at Purdue University has been published in a professional journal or other major media. On appeal, counsel claims “there is **no requirement** that the original works by the beneficiary be ‘published’” (emphasis in original). Counsel’s interpretation disregards the plain language of the regulation. Counsel fails to explain how scholarly articles could appear in “professional journals, or other major media” without being published.

In the alternative, counsel claims that the beneficiary’s article was “indeed ‘published’ by Purdue University.” Yet the petitioner submitted no copy of the beneficiary’s article as it appeared in any conference publication issued by Purdue University. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. 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).

Even if the beneficiary’s article had been published, the record is devoid of any evidence that the article has been cited or has otherwise received significant recognition by other individuals working in the beneficiary’s field. Accordingly, even if published, the article of which the beneficiary is the third author, would not be consistent with sustained national or international acclaim.

The beneficiary fails to satisfy this criterion.

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

Counsel claims the beneficiary meets this criterion because the petitioning company submitted a grant proposal to the Office of Pipeline Safety (OPS), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, in which the beneficiary “would play an essential role as the representative of IMPro Technologies in the actual and practical application of the technology as well as demonstrating for further research and developmental purposes as proposed.” The record contains no evidence that OPS had accepted the petitioning company’s proposal at the time this petition was filed. Accordingly, the beneficiary’s proposed role, however essential, cannot meet this criterion. The regulation requires evidence that the alien “*has been employed* in a critical or essential capacity” (emphasis added). 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). Proposed employment in the future will not suffice. Moreover, the petitioner must establish the beneficiary’s eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249.

The record also does not establish that the petitioning company has a distinguished reputation. The petitioner submitted no independent evidence that IMPro Technologies has received distinction in its field. On appeal, the petitioner submits a document entitled, “A Brief Market Report on the Potential Use of Long Range Ultrasonic Testing (LRUT) in the USA” prepared for IMPro Technologies by an unidentified source and dated August 2005. We cannot consider this report for two reasons. First, the document is dated after the petition was filed. Again, a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Id.* Second, the document was solicited by the petitioning company itself, the authors of the report are unidentified and the manuscript consequently has little probative value. Moreover, counsel fails to articulate how the potential use of LRUT in the United States evidences the distinguished reputation of the petitioning company. Accordingly, the beneficiary does not meet this criterion.

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

The petitioner submitted a rate sheet for its services and a purchase order, which shows that the company charges \$7,500 per day for “D.O.T. Pipeline Inspections using 3rd Generation – Wavemaker G-3.” Contrary to counsel’s assertion on appeal, however, these documents do not demonstrate that the beneficiary himself would be compensated at \$7,500 a day. Rather, the evidence simply shows that the petitioning company charges its clients \$7,500 a day for inspections that would be performed by the petitioner.

The petitioner also submitted a copy of the beneficiary’s 2004 federal income tax return, which states his adjusted gross income as \$106,245, and a printout stating that the Level 4 wage for mechanical engineers in the beneficiary’s geographical area is \$86,466 a year. In its June 21, 2005 letter, the

petitioning company states that the beneficiary's base, annual salary will be \$124,000. The fact that the beneficiary's past and proposed salaries are higher than the Level 4 wage for mechanical engineers is not probative. The record shows that the beneficiary is a GUL technician or nondestructive testing (NDT) inspector. Throughout these proceedings, counsel has repeatedly stressed the significance of the petitioner's specialized training and alleged certification in GUL's Wavemaker system. On appeal, counsel reiterates that the beneficiary's field is "Long Range Guided Wave Ultrasonic Technology." To broaden the petitioner's field to mechanical engineering in general, and only for the purpose of assessing the beneficiary's eligibility under this criterion, is thus disingenuous and inconsistent. Accordingly, the pertinent comparison is to the salary, or other remuneration, of other mechanical engineers employed as GUL technicians or NDT inspectors. The petitioner submits no such evidence, without which it is impossible to determine whether the beneficiary has or will command a high salary or other remuneration in his specific field that is consistent with sustained national or international acclaim. Accordingly, the beneficiary does not meet this criterion.

In order to establish the beneficiary's eligibility for nonimmigrant classification as an alien with extraordinary ability in the sciences, the petitioner must demonstrate the alien's "sustained national or international acclaim" and show that the alien's "achievements have been recognized in the field through extensive documentation." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). In this case, the petitioner has not demonstrated that the beneficiary has achieved sustained national or international acclaim or that his achievements have been recognized in his field through extensive documentation.

The regulation further requires the petitioner to establish that the beneficiary is "one of the small percentage who have arisen to the very top" of his field. 8 C.F.R. § 214.2(o)(3)(ii). When discussing the beneficiary's alleged Level II GUL certification, [REDACTED] states:

Other level two operators, such as myself . . . and [REDACTED] Pavlakovic are recognised world experts in this field and have Doctorates from Imperial College The expertise and knowledge developed by [the beneficiary] over the last four years is equivalent to that of a BSc [Bachelor of Science degree] (Engineering, specializing in the application of guided waves).

[REDACTED] statement, combined with the limited evidence of the beneficiary's achievements, indicates that the beneficiary is a highly qualified technician, but does not demonstrate that the beneficiary has arisen to the very top of his field. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.