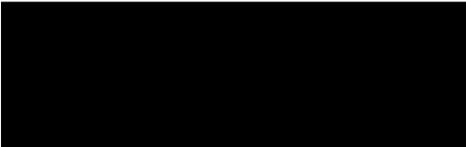




U.S. Department of Justice
Immigration and Naturalization Service

B2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



File: EAC 99 131 52493 Office: Vermont Service Center Date:

SEP 19 2000

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

* Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 that he qualifies as an alien of extraordinary ability in his field of endeavor.

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 to the United States will substantially benefit prospectively the United States.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner, who specializes in intelligent tutoring systems ("ITS"), seeks employment as a senior research scientist, designing "computer-based intelligent tutoring systems" [REDACTED]

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

A certificate in the record indicates that the Association for the Advancement [REDACTED] and the [REDACTED] presented the petitioner and a collaborator with "the prize for The Best Artificial Intelligence and Education paper at the [REDACTED]

" [REDACTED] The petitioner asserts that this award is "internationally recognized," and indicates that the prize "included a full membership in [the] International Society of 'Artificial Intelligence in Education' and free subscription to the Journal of Artificial Intelligence in Education."

A journal article discussing the conference states that roughly 300 researchers attended the above conference, half of them from the CIS (formerly the USSR). The article indicates that "best paper" prizes were awarded in three categories, one of which was artificial intelligence in education ("AI-Ed"). In all, five papers, with a total of eleven authors, won "best paper" prizes in the AI-Ed category. Assuming that the three categories were equally represented among the 300 attendees at the conference, and that all of the authors were in attendance, 11 out of 100 AI-Ed specialists at the conference won "best paper" prizes. While some witnesses assert that the prize is among the most prestigious in the field, the above statistics do not persuasively establish that the "best paper" prize carries the significance contemplated by the regulation. Consideration for the prize appears to have been limited to the comparatively small number of researchers in attendance at the conference.

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 current or past membership in the Russian Association of Artificial Intelligence, the International Society of Artificial Intelligence in Education, the International Forum of Educational Technology & Society, and the Learning Technology Standards Committee ("LTSC") of the Institute of Electrical and Electronics Engineers ("IEEE"). The petitioner states that "active membership in the mentioned professional associations requires outstanding scientific achievements in the AI-ED field," but no evidence supports this assertion.

The head of the IEEE/LTSC offers the somewhat vague statement that "[t]he LTSC staff has done our best to attract the best scientists and practitioners in the field of Learning Technology," but never specifies the criteria themselves. Also, a committee within a larger association is not an association in its own right.

For the above reasons, the petitioner has not demonstrated that his memberships satisfy this criterion.

Published materials 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 has demonstrated that his name has appeared in print in various contexts, but he has not submitted any articles which are primarily about him and his work. The petitioner makes claims about several articles which are not in the record. It cannot suffice for the petitioner simply to claim that the materials exist. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 record indicates that the petitioner is an executive peer reviewer of Educational Technology & Society, the journal of the International Forum of Educational Technology & Society. The record reflects a comparatively small number of such reviewers. This duty appears to be more significant than the more common ad hoc peer review of manuscripts, which appears to be routine in many scientific disciplines.

The petitioner has demonstrated that he has not merely performed occasional peer review of manuscripts, but rather he has established that international-level organizations have repeatedly

and consistently relied upon the petitioner's evaluation and input, both individually and on panels. The petitioner has also demonstrated that he has acted as a judge at high levels.

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

The petitioner states that his most significant contributions consist of:

- Learner Models and Modeling Techniques based on Systems Theory and Fuzzy Logic.
- Mathematical Methods and Algorithms of computer-based Shell and Tool for testing and diagnosing of Learner's knowledge/skills.
- Mathematical Methods and Algorithms of computer-based Shell and Authoring Tools of Intelligent Tutoring Systems.

The petitioner asserts "[t]hese scientific achievements were pioneering in ITS field and [the petitioner] continues to hold the worldwide leading role in these research directions."

To support his claim, the petitioner cites the numerous witness letters in the record. Most of the initial witnesses are the petitioner's former professors, employers, collaborators, or supervisors. The petitioner has also, however, submitted letters from witnesses with no evident close connections to himself. These witnesses represent prestigious institutions in several countries, and they assert that the petitioner has made major contributions which are known worldwide within the petitioner's field. For example, [REDACTED] director of Computer-Managed Instruction at [REDACTED] asserts that the petitioner's "work in [the] USA is vital for the success of several important defense-related projects." [REDACTED] of [REDACTED] University, [REDACTED] of the International Artificial Intelligence in Education Society, states that the petitioner's "outstanding scientific results . . . are still in use in world-wide standards development."

[REDACTED] of the IEEE Learning Technology Standards Committee, asserts that the petitioner is "an internationally recognized scientist in . . . [the] ITS field." He continues:

[The petitioner's] original scientific contribution and practical experience in Learner modeling, Cognitive Diagnostics, and ITS design are of major significance in the CBT field and are very important for the development of the Learning Technology Standards.

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

The petitioner claims approximately 50 publications. The petitioner initially provided only a list of these publications, but he has since submitted actual copies of some of his works, and as noted above several witnesses have attested to the significance of the petitioner's published work.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner claims to have shown his work "at exhibitions or showcases." This criterion, by its wording, is clearly intended for artists, and the petitioner cannot conform this regulation to his advantage simply by omitting the word "artistic." The petitioner indicates that he has designed software which has been exhibited at several trade shows. These shows were not organized for the primary purpose of showing the petitioner's work. The petitioner has not demonstrated that only the very top professionals in his field exhibit their work at trade shows. It is absurd to suggest that the petitioner gained significant acclaim simply by making his work available for public viewing.

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

██████████ above, asserts that the petitioner "has performed a critical role in the work of the IEEE Learning Technology Standards Committee." While IEEE as a whole certainly has a distinguished reputation, it is not clear that individual IEEE committees enjoy the same distinction.

The petitioner cites contract projects for various prestigious clients. Such work does not connote a leading or critical role for those clients.

The director denied the petition, stating that while the petitioner "has experienced and will experience a measure of success in his field of endeavor, this does not establish that his continual presence will prospectively benefit the United States." The director added that the petitioner's satisfaction of individual criteria does not mandate approval of the petition.

On appeal, the petitioner analyzes and rebuts the director's decision paragraph by paragraph. Some of the petitioner's arguments rest on groundless speculation; for instance, the director's decision mentioned the petitioner's age and nationality. The petitioner asserts that this mention was prejudicial and

discriminatory. The director, however, appears to have cited these facts solely to identify the petitioner; there is no indication that the petitioner's age or national origin played any role in the denial of the petition.

The petitioner agrees that meeting individual criteria may not always demonstrate eligibility, but he argues that the overall picture presented by the evidence justifies approval of the petition. Upon careful consideration of the evidence of record, we concur. The petitioner has categorized his evidence to fit into a number of the criteria, but that evidence does not always satisfy those criteria. For the required minimum of three criteria, however, the petitioner has shown that he does not only "technically" satisfy those criteria; he has presented evidence that demonstrates sustained acclaim in the context of those criteria.

Certainly, there are multiple weaknesses in this petition, which the petitioner appears to have compiled and prepared entirely by himself. These weaknesses, however, do not raise questions of credibility or otherwise undermine the stronger elements of the petitioner's claim.

In review, while not all of the petitioner's evidence carries the weight imputed to it by the petitioner, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 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.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.