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

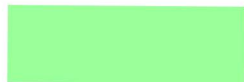


U.S. Citizenship
and Immigration
Services



DATE: DEC 17 2014 OFFICE: NEBRASKA SERVICE CENTER

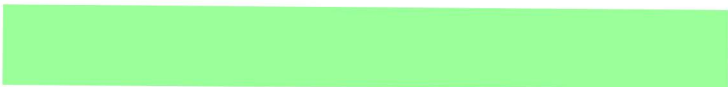
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IN RE:

PETITIONER:

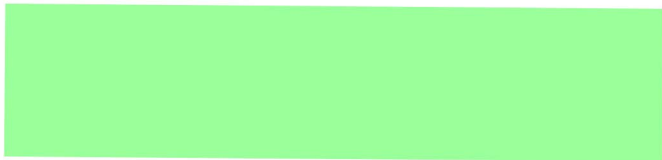
BENEFICIARY:



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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on September 16, 2013. On March 7, 2014, after granting the petitioner's motion to reopen and motion to reconsider, the director again denied the petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO) on March 25, 2014. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary as an "alien of extraordinary ability" as a creative director in the field of videogame development, 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 that the petitioner had not established the beneficiary's sustained national or international acclaim necessary to qualify the beneficiary for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that the beneficiary meets all but one of the ten criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and the beneficiary is at the very top of his field and has sustained national or international acclaim. For the reasons discussed below, the petitioner has established the beneficiary's eligibility for the exclusive classification sought.

I. THE LAW

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the beneficiary's sustained acclaim and recognition of his or her achievements in the field. Such acclaim must be

established either through initial evidence of a one-time achievement (that is, a major, internationally recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of initial evidence relating to a one-time achievement or at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination); *see also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of the beneficiary's one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through its evidence that the beneficiary is the recipient of a major, internationally recognized award at the level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence relating to the beneficiary under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements. In his [REDACTED] 2014 decision, the director concluded that the petitioner submitted evidence that satisfies the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the published material about the beneficiary criterion at 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), and the leading and critical role criterion at 8 C.F.R. § 204.5(h)(3)(vi).

The record supports the director's conclusion that the petitioner submitted evidence that satisfies at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). For example, with respect to the leading and critical role criterion at 8 C.F.R. § 204.5(h)(3)(vi), the petitioner has submitted reference letters showing that the beneficiary, as the Creative Director for [REDACTED] a part of [REDACTED] performs in a leading or critical role for [REDACTED]. In addition, the petitioner has submitted reference letters showing that the beneficiary performed in a leading or critical role for [REDACTED] a videogame publisher and developer.

As another example, with respect to the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner has submitted a letter from [REDACTED] former Director of [REDACTED] stating that the beneficiary "perform[ed] due diligence and peer reviews on key titles in [the company's] slate in order to provide creative oversight, recommendations and risk mitigation for [the] multimillion dollar investments." The petitioner has submitted a number

of the beneficiary's writings that review, critique and provide recommendations for videogames in development. These writings include [REDACTED]

[REDACTED] The beneficiary also served on an [REDACTED] design judging panel.

While the record is less persuasive with respect to the director's other favorable findings,¹ the record also contains evidence of the beneficiary's high salary, discussed below. See 8 C.F.R. § 204.5(h)(3)(ix). As we further discuss below, other evidence that has probative value includes the beneficiary's credited essential work on video games that were award-winning, critically acclaimed, and commercially successful.

B. Final Merits Determination

As the petitioner has submitted the requisite initial evidence, we will conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary enjoys a level of expertise indicating that he is one of a small percentage who have risen to the very top of the field of endeavor, and (2) that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise. Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010). Based on the evidence in the record and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), the petitioner has made the requisite showing.

The beneficiary's employment in a leading or critical role for a number of well-known companies in the videogame industry, including [REDACTED] is probative of the beneficiary's eligibility. Since 2010, the beneficiary has been the Creative Director at [REDACTED]. According to [REDACTED] Director of Production at the [REDACTED] the beneficiary is "part of the Development Planning Group . . . [that] is a strategic committee responsible for shaping and steering all worldwide [REDACTED] projects, as well [as] evaluating prospective partners and third party development teams" According to [REDACTED] Director of Engineering, [REDACTED] "the company relies heavily on [the beneficiary's] extensive experience to help the company bring games to market. His ability to step in and save a project has been instrumental to the organization's success." According to [REDACTED] Director of Development at the [REDACTED] the beneficiary has been "indispensable to [Mr. [REDACTED] team and to [REDACTED] [The] team and [REDACTED] Production group in [REDACTED] [California] heavily rely on [the beneficiary's] experience and judgment in [d]esign to help guide the development of products representing \$100's of millions revenue." Mr. [REDACTED] further states that the beneficiary's "contributions to [REDACTED] products have been key to [its] continued success." The evidence in the record establishes that [REDACTED] is an organization that has a distinguished reputation.

¹ The record contains minimal evidence establishing that the beneficiary is the recipient of any award either individually or as a member of a winning team, and the petitioner did not submit a certified translation of the foreign language published material.

According to [REDACTED] "is a creator and publisher of numerous critically acclaimed AAA video games including multi-million dollar hits" According to [REDACTED] [REDACTED] has won "numerous prestigious awards including [REDACTED] and was the top rated [REDACTED] game of [REDACTED]. According to [REDACTED] Vice President of Development at the [REDACTED] [REDACTED] has created "critically acclaimed video games across all major gaming consoles." An online article the petitioner submitted supports the above letters, stating that sales of [REDACTED] boosted [REDACTED] overall financials.

When the beneficiary was at [REDACTED] he was its Lead Game Designer and Creative Director and contributed to the development of a number of the company's videogames. According to [REDACTED] the Creative Director for [REDACTED] which won eight [REDACTED] awards in [REDACTED] the beneficiary "is one of the most talented and creative individuals [REDACTED] ha[s] ever had the pleasure to work with. [The beneficiary's] experience, abilities and accomplishments have certainly made him a recognizable figure in the gaming industry." According to [REDACTED] Studio Manager of [REDACTED] the beneficiary's "knowledge of game theory and his ability to implement ideas both creatively and technically is truly remarkable. Such a force in this industry is very rare and places him without a doubt amongst the very best, most talented game developers in the world." [REDACTED] Senior Producer at [REDACTED] similarly states that "without a doubt, [the beneficiary's] creative and design skills rank him among the very best in the industry." According to [REDACTED] Lead Designer at [REDACTED] the beneficiary was [REDACTED] Lead Game Designer and Creative Director and the beneficiary's "knowledge and expertise were key contributors to developing [the videogame [REDACTED]" [REDACTED] states that "[a]t [REDACTED] [the beneficiary] introduced design principles on adding rhythm and pacing to create an engaging experience, methods that were adopted and used by [REDACTED] chief editorial teams." The evidence in the record establishes that [REDACTED] is an organization that has a distinguished reputation. [REDACTED] videogames received [REDACTED] awards in [REDACTED]. According to [REDACTED] videogame [REDACTED] has been voted [REDACTED] and was featured on [REDACTED] 2004 annual report lists [REDACTED] as its top selling game.

Given the beneficiary's continual performance in a leading or critical role for multiple organizations in both Canada and the United States that enjoy a distinguished reputation and widespread notoriety, this evidence is consistent with the beneficiary's status as one of the small percentage at the top of his field.

The petitioner's evidence showing that the beneficiary, at the requests of industry experts, has assessed, judged and provided recommendations during the development phase of a number of videogames, is also probative of eligibility. For example, according to [REDACTED] the beneficiary "has consistently provided invaluable feedback, recommendations, and assessments to [REDACTED] Executives and . . . Studios worldwide that have substantially improved [REDACTED] products and revenue, leading [it] to one [of its] best years with close to a [REDACTED] in revenue for 2011." [REDACTED] states that the beneficiary's "expert understanding of game design theory, game

development acumen and experience made him exceptional at evaluating and assessing the works of others – of which [REDACTED] relied upon very often.” According to [REDACTED], while at [REDACTED], the beneficiary “was often called upon to review the work of his peers at [REDACTED]” Supporting these statements, the record contains detailed reviews. The beneficiary also served as one of a limited number of credited judges in a worldwide [REDACTED] design competition. As such, he has judged the work of others both internally at his place of employment and externally for a worldwide award competition that credited him as one of a limited number of judges. Considered in the aggregate, the beneficiary’s judging experience is consistent with a finding of the beneficiary’s status as one of the small percentage at the top of his field.

In addition, the petitioner submitted probative evidence relating to the beneficiary’s salary that is consistent with a finding that he is one of a small percentage who have risen to the very top of the field of endeavor. Specifically, the record establishes that the beneficiary has earned well over the [REDACTED] for wages in his occupation.

Finally, the beneficiary has been involved in the development of videogames that have had a high level of commercial success and are critically acclaimed. The beneficiary is credited as the Creative Director for [REDACTED] which won the [REDACTED] according to [REDACTED]. According to [REDACTED] videogame [REDACTED] for which the beneficiary served as the Creative Director, sold [REDACTED] copies within the first month of its release. The [REDACTED] videogame [REDACTED] sold [REDACTED] units during [REDACTED] fiscal period, and received [REDACTED] awards, including the [REDACTED]. According to [REDACTED] the beneficiary was “responsible for designing the game[']s [REDACTED] system” and “helped lay the foundation down for the award winning [REDACTED] system of the [REDACTED]” [REDACTED] indicates that the beneficiary’s [REDACTED] design . . . helped lay the foundation for the [REDACTED] system that would go on to be one of the most critically acclaimed in the industry.” The petitioner also submitted a review of this game posted at [REDACTED] stating that the game is [REDACTED]. The same review characterizes the control and play mechanics as [REDACTED].

The beneficiary’s design approaches have been innovative and some have been adopted in the field. For example, according to [REDACTED] the beneficiary used innovative design approaches during the development of the [REDACTED] including giving the [REDACTED] ability to [REDACTED] fluidly and quickly in a 360 degree radius.” [REDACTED] states that this design approach “may be commonplace today, but was very unique for its time.” The beneficiary is credited as the “Lead Game Designer” and providing “Original Concept” for the [REDACTED] videogame [REDACTED]. According to [REDACTED] the beneficiary created “an ambitious design with a collection of [REDACTED] like systems,” including the “implementation of the [REDACTED]” [REDACTED] states that the beneficiary’s “creative technique was a first in game design at the time, and resulted in an exciting and cinematic experience.” Similarly, [REDACTED] states that the beneficiary’s “ability to create a seamless experience between [REDACTED] multiple [REDACTED] modes was very inventive for the time, even by today’s standards.” [REDACTED] states

that the beneficiary's work in [REDACTED] stood out because of his "unique and innovative approach to systems design and tuning whereby he was able to create compelling simulations of [REDACTED] - gameplay modes that, at the time, hadn't been explored before in games." The beneficiary is also credited for "Game Design" in the [REDACTED]. According to [REDACTED] when designing [REDACTED] the beneficiary "demonstrated his ability to innovate in design by creating the first of its kind ever adventure game [REDACTED] . . . There were many design concepts introduced in this title that were completely new to games at the time. To this day the title stands as a cherished and most unique experience by [REDACTED] gamers in particular."

Considered in the aggregate, the petitioner has established by a preponderance of the evidence that the beneficiary is one of the small percentage who are at the very top of the field and demonstrates his sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h)(2), (3).

III. CONCLUSION

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 have risen to the very top of his or her field of endeavor.

The petitioner has submitted qualifying evidence relating to the beneficiary under at least three of the ten evidentiary criteria and has established that the beneficiary has a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor" and "sustained national or international acclaim." The beneficiary's achievements have been recognized in his field of expertise. The petitioner has shown that the beneficiary seeks to continue working in the same field in the United States. The petitioner has established that the beneficiary's entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established the beneficiary's eligibility for the benefit sought under section 203 of the Act.

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 been met.

ORDER: The March 7, 2014 decision of the director is withdrawn. The appeal is sustained and the petition is approved.