

2023

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
P.O. Box 82521
Lincoln, NE 68501-2521



U.S. Citizenship
and Immigration
Services

KUMARESH BABU TANTHULLU ATHMARAM



RE: KUMARESH BABU TANTHULLU
ATHMARAM
I-140, Immigrant Petition for Alien Worker

NOTICE OF INTENT TO DENY

This is in reference to your Form I-140, Immigrant Petition for Alien Worker, filed on behalf of KUMARESH BABU TANTHULLU ATHMARAM on [REDACTED] 2023. You have submitted all required initial evidence, but that evidence does not establish eligibility for the requested benefit. Pursuant to Title 8, Code of Federal Regulations, Part 103.2(b)(8)(iii), we hereby notify you of our intent to deny this petition.

The petitioner intends to work as a Solutions Architect in the field of sciences.

INA Section 203(b)(1)(A) defines an "alien with extraordinary ability" in the following terms:

--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.

Title 8 Code of Federal Regulations (8 CFR), 204.5(h)(2) defines "extraordinary ability" as:

A level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor.

USCIS and the legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas in the extraordinary ability classification. See 56 Federal Register 60897, 69898-99 (Nov. 29, 1991).

8 CFR 204.5(h)(3) indicates that an individual can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the individual's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an individual to establish the sustained acclaim necessary to qualify as an individual of extraordinary ability. The criteria are outlined below.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (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;
- (iv) 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;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

A two-part analysis is used to determine whether the beneficiary is an individual of extraordinary ability:

- First, we determine whether the petitioner has submitted evidence to show that the beneficiary:
 - Has received a one-time achievement (a major internationally recognized award); or,
 - Qualifies under at least three of the ten regulatory criteria required for this classification.
- Second, we determine whether the petitioner has submitted evidence demonstrating that the beneficiary:
 - Has sustained national or international acclaim.
 - ◻ In determining whether the beneficiary has enjoyed "sustained" national or international acclaim, such acclaim must be maintained. A beneficiary may have achieved extraordinary ability in the past but then failed to maintain a comparable level of acclaim thereafter; and,
 - Has achievements that have been recognized in the field of expertise, indicating that the beneficiary is one of that small percentage who has risen to the very top of the field of endeavor.

Part I: Criteria Analysis

The petitioner has not established that the beneficiary has received a one-time achievement that is a major, internationally recognized prize or award. As a result, the evidence must demonstrate that the beneficiary has fulfilled at least three of the ten criteria listed in the regulations.

USCIS has determined that the petitioner has provided sufficient documentation to establish the beneficiary has met the following regulatory criteria:

- 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 specialization for which classification is sought;
- Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media; and,
- Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

USCIS has determined that the petitioner provided documentation, but failed to establish eligibility for the following criteria:

Documentation of the beneficiary's membership in associations in the field for which classification is sought. The association must require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner cites Fellow Member of the Institute of Engineering and Technology; and Senior Member of IEEE. Supporting documents include copies of the following:

- The Institution of Engineering and Technology Royal Charter and Byelaws posted to theiet.org/media/3330/charterbyelaws2016.pdf, as well as additional material posted to the website;
- Letter dated July 11, 2023, notifying the petitioner that he is a Fellow Member of IET, as well as a certificate;
- Letter dated June 17, 2023, notifying the petitioner that he is a Senior Member of the IEEE, as well as a certificate; and,
- Requirements for IEEE Senior Member Grade posted to ieee.org/membership/senior/senior-requirements.html.

The plain language of this criterion requires evidence (1) of membership in an association, (2) that the association be in the alien's academic field, and (3) that the association require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields.

This criterion has not been met because the evidence does not show that the associations require outstanding achievements of its members. The IET bylaws state that there are five membership categories: Honorary Fellow, Fellow, Member, Associate and Student. Fellows shall have met the requirements for admission as a Member and in addition shall have demonstrated significant individual responsibility, sustained achievement, and professionalism in areas relevant to the interests of the IET to a level required by the Board. It is noted that this is below the level of Honorary Fellows, which the website indicates are persons distinguished by their work in any engineering discipline falling within the objects and purposes of the IET, or distinguished persons whom the IET desires to honor for services rendered to the IET or whose association is of benefit to the IET. While members holding the level of Fellow within the IET may have accomplished outstanding achievements, that is not a requirement. Nor is it the eminent level of membership within the association.

IEEE Senior Membership requires the member shall be an engineer, scientist, educator, technical executive or originator in IEEE-designated fields; shall have been in professional practice for at least ten years; shall have shown significant performance over a period of at least five of those years; and must supply three references from current IEEE members holding the grade of Fellow, Senior

Member, or Honorary Member. While members holding the level of Senior within the IEEE may have accomplished outstanding achievements, that is not a requirement.

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

Supporting evidence includes copies of the following:

- the petitioner's published scholarly research, which includes an article and a conference abstract;
- promotional material from the petitioner's current and previous employers;
- internal communications and documents from the petitioner's current and previous employers;
- letter dated September 7, 2023, from [REDACTED] Director of Engineering, Sloan;
- letter dated July 7, 2023, from [REDACTED] Vice President, Services and Product Development [REDACTED] Group;
- letter dated March 21, 2023, from [REDACTED] Specialist, Digital Engineering, [REDACTED] Instruments. Inc;
- partial letter, first page only with no signature, dated July 14, 2023, from [REDACTED] Founder and CEO, [REDACTED]

In order to satisfy this criterion, a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout his field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

This criterion has not been met because the evidence submitted does not show that the petitioner's contributions are considered to be of major significance in the field of endeavor.

While the evidence supports that the petitioner has made original contributions to the field, based on the publishing of the petitioner's scholarly article in a noted journal in the field, the evidence does not sufficiently demonstrate that the petitioner's contributions are of major significance to the field at large. USCIS has reviewed the letters of recommendation submitted on the petitioner's behalf. These letters, while they speak well of the petitioner and the petitioner's contributions to the field, are insufficient to demonstrate the significance of the petitioner's contributions. Essentially, the evidence to support the claims made in these letters does not support the claim that the petitioner's contributions are of major significance.

[REDACTED] states he has worked with the petitioner and states the petitioner is responsible for the business process that generates Sloan's custom- fabricated sinks, and that this work was fundamental to the company's success in producing sinks efficiently. However, the supporting evidence does not corroborate the claim that this work is an original contribution of major significance to the field.

[REDACTED] states that he has known the petitioner for several years and that his company has recommended the petitioner to their clients and that their clients have said their interactions with the petitioner greatly benefited their PLM solution portfolio expansion. However, the supporting evidence does not corroborate the claim that this work is an original contribution of major significance to the field.

[REDACTED] states that the petitioner has shared a part number generator program created for his employer with Pradeep Sukumaran's company and their company has deployed a version based on it since 2022. However, the supporting evidence does not corroborate the claim that this work is an original contribution of major significance to the field.

[REDACTED] states that he has never worked with the petitioner. The writer states that he knows of

the petitioner's work at Sloan through professional networking, and that the petitioner specializes in product lifecycle management (PLM) and enterprise resource planning (ERP) technology to create products at Sloan, including AER DEC stinks. The writer states that petitioner's efforts to implement engineer to order processes in the PLM and ERP application platforms to create the AER DEC product are commendable. However, the supporting evidence does not corroborate the claim that this work is an original contribution of major significance to the field.

the authors of these letters indicate that they know the petitioner from previous experience. As personal acquaintances, their letters do not represent wide-spread recognition of the petitioner's contributions to the field. Furthermore, the letters provide general statements that lack detail to show specifically what aspects of the petitioner's work have been recognized by the larger field as original contributions of major significance. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. Similarly, USCIS need not accept primarily conclusory statements. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Ayir Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y. 1997), and *1756, Inc. v. US Atty Gen.*, 745 F. Supp. 9,15 (D.D.C. 1990).

The petitioner has published an article and a conference abstract; however, there is no indication that this work has been cited by other researchers in the field.

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

The petitioner cites his previous experience with Bajaj Auto Limited, Allison Transmission Inc., Kennametal Inc, and Sloan. Supporting evidence includes copies of the following:

- letter dated July 3, 2023, from [REDACTED] R&D operations leader of Bajaj Auto Limited in Pune, India;
- letter dated August 24, 2023, from [REDACTED] Customer Success Director, [REDACTED] address not shown;
- letter dated August 17, 2023, from [REDACTED] Assistant Vice President, IT Applications and Projects at [REDACTED] address not shown;
- letter dated August 9, 2023, from [REDACTED] Chief Information and Process Officer, Retired, [REDACTED] address not shown;

To meet the plain language requirements of this criterion, a beneficiary must establish that they have performed in either a leading or critical role, and that the role has been for an organization or establishment (or a division or department of an organization or establishment) having a distinguished reputation. If a leading role, the evidence must establish that the beneficiary is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. For a critical role, USCIS looks at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment activities or those of a division or department of the organization or establishment.

This criterion has not been met because the evidence does not indicate that the role the beneficiary has performed for Bajaj Auto Limited, Allison Transmission Inc., Kennametal Inc, and Sloan is/was leading or critical. [REDACTED] states that the petitioner was his employee from 2009 to 2010. The letter praises the petitioner's work for the company; however, the writer does not claim that the petitioner held a leading or critical role for Bajaj Auto Limited. [REDACTED] states he previously worked for GyanSys when the petitioner was employed at Allison Transmission. The letter describes the petitioner as having a critical role in collaborating with engineering and other departments. However, it does not appear that the writer is positioned to make the claim that the petitioner held a leading or critical role with either company. [REDACTED] states that he worked with

the petitioner at Kennametal between 2013 and 2016. The letter states that the petitioner played a pivotal role in the global deployment of PLM systems integrated with ERP systems while at Kennametal. However, it does not appear that the writer is positioned to make the claim that the petitioner held a leading or critical role with Kennametal. [REDACTED] states that he recruited and worked with the petitioner from 2016 to 2020 at Sloan. The writer states that the petitioner played a pivotal role in implementing Sloan's PLM system. However, it does not appear that the writer is positioned to make the claim that the petitioner held a leading or critical role with Sloan.

If the petitioner believes the beneficiary qualifies under any of the regulatory criteria that USCIS has determined that the petitioner has failed to establish eligibility under, or any additional regulatory criteria, the petitioner should submit clarifying evidence, or submit additional evidence in response to this portion of the notice of intent to deny.

Part II. Final Merits Analysis

As the petitioner has submitted evidence to demonstrate the beneficiary has met at least 3 of the 10 regulatory criteria, USCIS must now examine the evidence presented in its entirety to make an initial final merits determination, of whether or not the petitioner, by a preponderance of the evidence, has demonstrated that the beneficiary possesses the high level of expertise required for the E11 immigrant classification.

Establishing eligibility for the high level of expertise required for the E11 immigrant classification is based on the beneficiary possessing:

- Sustained national or international acclaim.
 - In determining whether the beneficiary has enjoyed "sustained" national or international acclaim, such acclaim must be maintained. A beneficiary may have achieved extraordinary ability in the past but then failed to maintain a comparable level of acclaim thereafter; and,
- Achievements that have been recognized in the field of expertise, indicating that the beneficiary is one of that small percentage who has risen to the very top of the field of endeavor.

While the evidence demonstrates that the beneficiary meets at least three of the regulatory criteria, USCIS does not find that the beneficiary has sufficiently demonstrated sustained acclaim and that the beneficiary is one of that small percentage who has risen to the very top of the field.

The petitioner has recently received an offer of employment as an Enterprise Architect located in the Chicago area and the base pay will be [REDACTED] per year and total compensation will be [REDACTED]. USCIS will allow this evidence to satisfy the relevant criterion. However, this compensation represents the value this employer places on the petitioner's services and does not show sustained acclaim in the field.

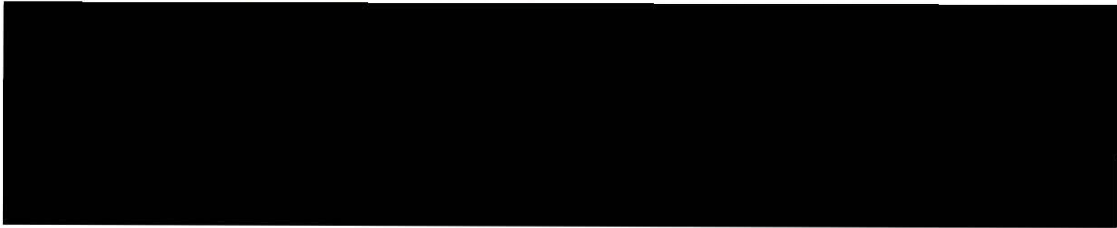
The petitioner has provided documentation of participating as a judge in the 2023 Globee Awards and the 2023 Codie Awards. In addition, the petitioner has participated in the September 2023 IEEE Membership Application Review Panel and recent IET recruitment and fellowship assessment. This participation is important for these organizations to continue their business. While this participation is noteworthy, it does not show that the petitioner has demonstrated sustained acclaim in the field.

The petitioner has co-authored an article posted to sae.org/publications/technical-papers/content/2003-26-0036, meeting the regulatory requirements for the associated criterion. However, there is no indication that this article has been widely cited by other researchers and does not establish sustained acclaim in the field, or that the petitioner is one at the top of his field.

As discussed, USCIS has evaluated the evidence and determined that the evidence does not establish

that the beneficiary is an individual of extraordinary ability in accordance with 203(b)(1)(A)(i) of the INA.

It is also noted that the petitioner has submitted letters from the following individuals that do not include required contact information:



However, Title 8 CFR § 204.5(g)(1) states:

General. Specific requirements for initial supporting documents for the various employment-based immigrant classifications are set forth in this section. In general, ordinary legible photocopies of such documents (except for labor certifications from the Department of Labor) will be acceptable for initial filing and approval. However, at the discretion of the director, original documents may be required in individual cases. Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

Pursuant to section 291 of the INA, whenever any person makes an application for an immigration benefit, he shall bear the burden of proof to establish eligibility. Accordingly, the petitioner must prove by a preponderance of the evidence, in other words, that it is more likely than not, that the beneficiary is qualified for the benefit sought. See *Matter of E-M-*, 20 I. & N. Dec. 77 (BIA 1989). After a careful review and analysis of all evidence within the record, USCIS finds that the petitioner has not established eligibility for the benefit sought.

The petitioner is hereby notified that it is the intent of USCIS to deny this Form I-140 petition. The petitioner has 30 (thirty) days (33 (thirty-three) days if this notice is received by mail) to submit evidence in response to this request. Any evidence submitted will be carefully reviewed. Failure to submit evidence in response to this notice of intent to deny will result in the denial of this Form I-140 petition based upon the reasons set forth in this notice.

PLACE THE ENCLOSED COVERSHEET ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS COVERSHEET WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Miller".

L. Miller
Director
Officer: 0134