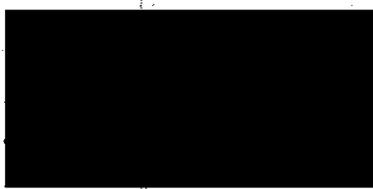




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U.S. Department of Justice
Immigration and Naturalization Service

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



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File: [Redacted] (LIN-99-198-52707)

Office: Nebraska Service Center

Date: **AUG 3 2001**

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

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:



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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

Aug 301_04B2203

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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 in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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). 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 Service 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 that the petitioner has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary petitioner as an alien with extraordinary ability as a scientist. 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, international 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. The petitioner has submitted evidence which, he claims, meets the following criteria.

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

The petitioner received the following teaching awards:

1. Second Rank of the Seventh Young Teacher's Outstanding Teaching at Beijing Institute of Technology, September 1994.
2. Second Prize on the Fourth Young Teachers' Teaching Demonstration at Beijing Institute of Technology, June 1994.
3. Outstanding Young Teacher, Beijing Institute of Technology, 1993.
4. Second Teaching Prize for 1991, 1992, College of Vehicular Engineering, Beijing Institute of Technology.
5. Outstanding Collective Teaching Prize, 1990, Beijing Institute of Technology.

The awards in teaching are not awards in the petitioner's field of endeavor, engineering, and cannot be considered towards this criterion.¹ Initially and again on appeal, counsel refers to other awards and scholarships received by the petitioner while a student. Academic study is not a field of endeavor, but training for a future field of endeavor. Awards based on academic achievement cannot be considered to meet this criterion.

The petitioner also received the following awards based on his work in engineering:

1. Outstanding Paper of the Year, 1993, awarded by the Editorial Department of the Volume of Armored Vehicle, Tank & Engine, ACTA ARMAMENTA.
2. Outstanding Paper, Second Annual Conference of Emission Control and Energy Saving of Chinese Automotive Engineering Society, 1993, issued by the Research Center of Chinese Automotive Technology.
3. Model Individual, 1990, Group of Beijing Motor Vehicle Emission Control.

An award issued by a journal limited to authors whose work appears in the journal is not a national award which reflects sustained national acclaim. The significance of ACTA ARMAMENTA is unknown. The significance of the award issued by the Research Center of Chinese Automotive Technology is also not sufficiently documented in the record. Finally, while Beijing is a large city, an award issued by a Beijing group limited to Beijing researchers is not a "national" award.

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.

¹ For example, an individual could be an excellent teacher of a basic, first level course without being the foremost expert in the subject matter. While we do not suggest the petitioner was only teaching basic courses, the example is offered as an explanation of why teaching awards are not evidence that the recipient is the top expert in the subject matter he teaches.

The petitioner has demonstrated student membership in the following organizations: the American Society of Mechanical Engineers and the Engineering Society for Advancing Mobility by Land, Sea, Air and Space (SAE International). The record contains no evidence regarding the membership requirements for these organizations. Regardless, as stated above academic study is not a field of endeavor; rather, it is training for a future field of endeavor. Student membership in an organization cannot meet this criterion.

The petitioner has demonstrated standard membership in the following organizations: Air and Waste Management Association, The Chinese Society of Automotive Engineering, Society of Chinese Engineering Thermophysics, and the Chinese Society of Internal Combustion Engines, ARMAMENTA. A "brief explanation" provided at the bottom of the translation of the verification of these memberships indicates the prestige of these organizations and that "technical and academic work is considered" for membership. The record does not indicate that outstanding achievement is required for membership in any of these organizations.

The petitioner was also a fellow of the Emission Control and Energy Saving Committee of the Chinese Automotive Engineering Society. A "brief explanation" added to the bottom of the translation of this verification indicates fellow members must have a senior title in the field and have outstanding academic ability. The source of this information is not provided. As stated above, outstanding academic ability is not the same as outstanding achievements in a field of endeavor. Regardless, to meet this criterion, the organization must require outstanding achievements for its general membership. It is insufficient to be in a higher membership category of an organization which does not require outstanding achievements for its general membership.

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 petitioner was the "paper reviewer" in the field of motor vehicle emission control from 1993 to 1996 for the Volume of Armored Vehicle, Tank and Engine of ACTA ARMAMENTA. In October 1995, the petitioner was appointed as the associate chief (one of nine) on the editorial board of the technical magazine "Family Car," published for the first time in November 1995. The Beijing Institute of Technology verified this position, suggesting the journal is published by the Institute. The Institute also verified that the petitioner was appointed the "examiner in the field of Environment Protection" by the ARMAMENTA industry. In a "brief explanation" at the bottom of the translation, the petitioner indicated the position involved reviewing or examining engineering projects for the ARMAMENTA industry. In 1993, the petitioner was invited by the Beijing Motor Vehicle Emission Control Leading Group to be a technical advisor. The petitioner was also invited to review papers in the field of combustion for the Journal of Vehicular Engines for three years.

The significance of these appointments is only addressed by the "brief explanations" at the bottom of the translations, which appear to be the petitioner's own explanations. Thus, it is not clear that these appointments reflect that the petitioner has sustained national or international acclaim. Even

if we were to conclude that the petitioner minimally meets this requirement, it is only one requirement.

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

Professor Xueren Zhao at the Beijing Institute of Technology writes:

While working toward his Master's Degree, [the petitioner's] Thesis Paper, "Simulation and Experimental Research on Performance of Insulated Diesel Engine," involved research on lowering heat rejection in diesel engines. Through this research, [the petitioner] demonstrated that using insulation to reduce the amount of heat to the coolants from the combustion chamber in the diesel engines, as well as further optimizing cooling systems, can simplify diesel engine structure, reduce its size and weight, and lessen breakdown rate and maintenance. At the same time, [the petitioner] also began substantial exploration of the application of ceramics on internal combustion engines at BIT. Through this research [the petitioner] developed innovative computer software to effectively demonstrated [sic] the influence of insulation on the temperature of the combustion chamber and heat transfer in engines. The research conducted by [the petitioner] greatly contributed to advancements in the field, and as evidence of its continued relevance and value, his Thesis Paper has been cited many times in subsequent theses at BIT.

...

Besides working on lowering heat rejection in diesel engines, [the petitioner] has had significant accomplishments in efforts focused on decreasing fuel consumption and controlling vehicle emissions. In 1990, the Engine Research Laboratory of BIT was selected by the National Environment Protection Agency (NEPA) as an Emission Control Product Testing Center. At the same time, [the petitioner] was appointed to a research group founded to evaluate emission-control products, which was composed of experts in the field. As a member of this group, [the petitioner's] intelligence and expertise in the field were well recognized as he was named as the group's second highest ranked contributor and was responsible for all of the testing work for the project. In that position [the petitioner] performed a great deal of research work and provided NEPA with numerous compilations of on-site testing data.

Together with Professor Zhiyuan Chen, [the petitioner] published two highly regarded and valuable research papers related to their involvement in this group of experts in the field. . . . The conclusions of [the petitioner] evidenced in these papers have played a crucial role in guiding the control of motor vehicle exhaust emissions in China.

The results of [the petitioner's] research in the area of motor vehicle exhaust emission control are well recognized due to their significant contributions to the field. This wide-spread recognition is based on the fact that the results directly benefited environmental conditions in Beijing during the 11th Asian Games in 1990, which was the biggest sporting event ever held in China.

... Consequently, the Beijing Environment Protection Agency (BEPA) recognized [the petitioner's] expertise in the field and appointed him to serve as Group Leader on a project at BIT to study the problem. ... Combining his extraordinary abilities and knowledge in the field with further research, [the petitioner] and his colleagues made numerous valuable contributions, including training the staff from BEPA, providing technical consulting, and testing emission control products. ...

Through his leadership in this research group, [the petitioner] also took on another area of environmental research involving the city's many buses with diesel engines, which created a serious problem due to extensive production of exhaust smoke. Based on the fact that buses idle much and start and stop frequently, [the petitioner] conducted profound research on instantaneous smoke and its measurement. In 1992, the results of this research were published in two highly rated research papers. ... Furthermore, [the petitioner] drafted two local motor vehicle exhaust emission control criteria for Beijing. ... These criteria were implemented in July 1, 1994 and are still in execution today.

A personal friend and colleague, Reed Brown of General Motors, who has cooperated in joint efforts with the Chinese Wan Yuan Company, reiterates the information quoted above.

Professor David E. Foster, University of Wisconsin, writes:

[The petitioner] is a leading researcher in the area of powertrain system modeling and simulation. Through his research endeavors, he has updated the full dynamic system models developed by previous researchers for the M916 Freightliner Semi-tractor, the HMMWV, and the M1A1 Abrams Main Battle Tank. In addition, he has added the VGT (variable geometry turbocharger), the EGR (Exhaust Gas Recirculation), the second thermodynamic law (Availability or Energy) analysis capability and "State Flow" state transition modeling to these models and published two significant papers on the results. Because of [the petitioner's] research our laboratory has been contacted by two additional companies for incorporating his conceptual ideas into their research plans. This is an impressive testimony to his capabilities.

Professor John Moskwa, University of Wisconsin, provides similar information. While letters from the petitioner's colleagues and collaborators are useful in detailing the petitioner's work, without additional documentation, they cannot establish that the petitioner has made major contributions to his field, recognized by sustained national acclaim. The record contains no letters from

independent researchers or interested government agencies familiar with the petitioner's work who have applied the petitioner's methods.

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

The record contains several articles published by the petitioner. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The petitioner's colleagues indicate that the petitioner's work has been cited by several theses at the Beijing Institute of Technology. The petitioner submits several of these theses. That students cited the work of their professor is not evidence of sustained national acclaim. The record contains no evidence that the petitioner's work has been cited by independent researchers.

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

The petitioner served as Deputy Director of the National Laboratory of Automotive Performance and Emission Test at the Beijing Institute of Technology beginning in February 1994. According to the notes at the bottom of the verification, the laboratory is one of the national key field labs in China's Seventh Five Year Plan. In his letter, Professor Zhao indicates the laboratory was also partially funded by the World Bank. The petitioner also served as Vice President of Vehicles Engineering College at the Beijing Institute of Technology. The record contains little evidence of the reputation of these organizations other than the petitioner's personal assertions. That the laboratory was funded by the Chinese government or even the World Bank does not necessarily imply that the laboratory has enjoyed a distinguished reputation. Clearly the fact that the Chinese government and the World Bank chose to found an emissions laboratory at the Beijing Institute of Technology suggests that the Institute and the Vehicles Engineering College enjoy a distinguished reputation. While additional information from independent sources might bolster the petitioner's case, it appears that he meets this criterion.

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 has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an engineer 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 indicates that the petitioner shows talent as a engineer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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 burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.