



U.S. Department of Justice

Immigration and Naturalization Service

102

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



PUBLIC COPY

AUG 23 2001

File: [redacted] Office: Vermont Service Center Date:

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:



Identifying data removed to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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

**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 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 he has sustained national or international acclaim at the very top level.

At the time he filed the petition, the petitioner was a research assistant and Ph.D. candidate under Professor Louis Bloomfield at the University of Virginia, studying the magnetism of metal clusters. The petitioner received his doctorate in August 1998, and continued working for Prof. Bloomfield as a research associate.

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 four of the criteria.

*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 asserts that the petitioner satisfies this criterion, but does not elaborate. The petitioner submits copies of membership cards from two associations, the American Physical Society ("APS") and Mensa. The petitioner submits no evidence to establish that either of these organizations requires outstanding achievements as judged by recognized national or international experts. Documents in the record show that APS has "over 40,000" members, a high number which does not suggest exclusive membership requirements.

Mensa, according to documents in the record, "has no other eligibility requirements other than IQ testing." Mensa is not an "association in the field" because it is open to anyone, of any age, who can demonstrate high intelligence. Occupational specialty is not a factor, and there is no evidence that membership applications are judged by individuals in the same field as the petitioner. Mensa is even larger than the APS, claiming 100,000 members worldwide. Membership in Mensa demonstrates that the petitioner is highly intelligent, but it has nothing to do with acclaim as a physicist. Mensa's own materials in the record indicate "[t]here are famous Mensans and prize-winning Mensans, but there are many, many whose names you wouldn't know." While the petitioner submits some documentation pertaining to the APS, this documentation does not discuss membership requirements.<sup>1</sup>

---

<sup>1</sup>The constitution of the APS (available at the association's official web site, [www.aps.org/exec/const](http://www.aps.org/exec/const)) states, at Article 3, paragraph 2:

There may be accepted for Membership persons of any of the following classes: (a) graduate students specializing in physics; (b) teachers of physics; (c) other persons professionally trained in physics and engaged in its advancement; (d) persons engaged in lines of work related to physics; (3) persons who are not professionally engaged in either physics or related lines but whose interest and activity in the science would make them desirable Members.

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

Counsel states "[t]he scientific contributions made and being made by [the petitioner] substantially exceed those being made by most researchers in his field of clusters." In a separate statement, the petitioner lists some of these contributions. For instance, he states:

I am the **first researcher** who discovered experimentally the magnetism of chromium clusters and studied it in great detail. The chromium clusters at low temperatures are observed to be ferromagnetic and their magnetizations are very much size-dependent. Also, I discovered that the temperature played a very important role in the magnetization of chromium clusters, which explains why other groups can not detect the magnetism in chromium clusters. . . . This research work has been considered to be a **breakthrough** since it will put chromium with rhodium as the only two non-ferromagnetic elements known to exhibit ferromagnetic phases when reduced to nearly atomic dimensions after thulium studies were carried out almost 40 years ago.

The petitioner states that he also "discovered semi-locked moment behavior experimentally in terbium clusters" and "discovered the shell structure and surface enhanced magnetism in nickel clusters," and that he is "able to study magnetism of clusters at very low temperatures . . . and this has been **the best experimental achievement** in the field of cluster magnetism so far worldwide."

Simply listing the petitioner's achievements does not establish their major significance in the field. It is important, therefore, for us to consider how others in the field have reacted to the petitioner's work. If the petitioner's work is not widely praised outside of the universities where he has studied, then we cannot conclude that he enjoys sustained national or international acclaim as one who has reached the very top of his field.

The petitioner submits letters from several witnesses. Professor Louis A. Bloomfield, who has supervised the petitioner's studies at the University of Virginia, states:

---

Thus, the official web site of the APS demonstrates that the association does not require outstanding achievements as judged by nationally or internationally recognized experts; it requires only employment or interest in physics. Becoming a fellow, rather than a member, of the APS appears to require a higher level of achievement, but there is no evidence that the petitioner is a fellow of the APS. Several of the petitioner's witnesses are APS fellows.

The mission of my laboratory is to study the electronic and magnetic properties of clusters, particles that occupy the size regime between atoms at the small end and bulk materials at the large end. . . . [The petitioner's] research concerns the magnetic properties of atomic clusters. In addition to their importance in basic research, magnetic clusters are of substantial technological value. As the capacities of magnetic storage media grow and the information densities inside them increase, the magnetic structures that record the information necessarily become smaller. These structures are rapidly approaching atomic dimensions. The effects of quantum and thermal physics on these ever shrinking magnetic systems are significant and complex. [The petitioner's] work is contributing significantly to the understanding of these magnetic systems.

Prof. Bloomfield credits the petitioner with "truly groundbreaking" work regarding the confirmation of ferromagnetism in chromium clusters and the properties of clusters of nickel, rare earth, and cobalt.

[Redacted] Jones, assistant professor at the University of Virginia, more specifically defines clusters as "aggregates of 2 to a few thousand atoms." Dr. Jones states "Lou Bloomfield is one of the world's leading experts in cluster physics," but does not place the petitioner in this same category. Rather, he asserts that Prof. Bloomfield seeks out "the best students in the department."

Professor [Redacted] of the [Redacted] of Sciences, where the petitioner once worked (although not for Prof. Gao), states that the petitioner "has become one of the major investigators in the field of cluster magnetism," and that the petitioner's "findings have generated considerable interest among scientists from all over the world." Prof. Gao indicates that the petitioner's work has potential applications in communications, chemistry and other areas.

Professor [Redacted] of [Redacted] states that "Dr. Bloomfield's laboratory is one of the two laboratories in the world equipped to do magnetic measurements," which would severely limit the size of the petitioner's "field," if that field is defined as individuals conducting magnetic measurements of clusters. The petitioner cannot place himself at the top of his field merely by defining that field so narrowly that only a tiny number of researchers remain within it. Professor Khanna states:

We had long suspected that while the solid chromium is non-magnetic, small chromium particles may be magnetic. Initial experiments however did not detect any magnetism. [The petitioner] however, has repeated the experiments and has now found that they are indeed magnetic. This could have important applications in magnetic storage industries.

Prof. [REDACTED] statement, and similar statements from many other witnesses (including Prof. [REDACTED]), indicate that the petitioner did not so much discover the magnetic properties of chromium clusters, as confirm already-existing predictions about such magnetism.

All but three of the initial witnesses are faculty members at the University of [REDACTED], where the petitioner was a student at the time he filed the petition. Of the three remaining witnesses, two are at the Chinese Academy of Sciences, where he trained (and one of them was the petitioner's supervisor), and the last, Dr. [REDACTED], works at a university not far from the University of [REDACTED]. On appeal, the petitioner refers to Dr. [REDACTED] as one of his collaborators. These initial letters, while highly complimentary toward the petitioner, do not represent first-hand evidence of a major reputation outside of the University of [REDACTED] and the [REDACTED] Academy of [REDACTED].

Many of the witnesses describe their own backgrounds, and in so doing appear to establish levels of consistent achievement significantly beyond the petitioner's own level. For example, Prof. Bloomfield states "I have received a number of local, state, and national awards for my research and teaching. . . . I am also a fellow of the American Physical Society and have published roughly 80 articles." Many witnesses also qualify their statements, using such restrictive phrases as "top young researcher," thus avoiding comparison between the petitioner and the most experienced and accomplished researchers.

In response to a request for further evidence, counsel states "[t]he Service seems to downplay the achievement of [the petitioner] being one of the first four people in the world who discovered experimentally the shell structure and the surface enhanced magnetism in nickel cluster." The petitioner was, at the time of filing, a doctoral student, and doctoral students are generally expected to make original findings. Indeed, if the petitioner was not "one of the first" to discover this property of nickel clusters, he would not be "discovering" it at all. Every original, new finding involves (necessarily and by definition) being among the "first" to make such a finding. Also, as some witnesses have observed, Prof. [REDACTED] laboratory is one of only two in the world with the necessary equipment to make such a discovery in the first place, thereby vastly increasing the probability that the discovery would take place at Dr. Bloomfield's laboratory.

Barring evidence that most doctoral students simply repeat the work of others, the fact that the petitioner was among the first to make a particular discovery carries little weight. Of far greater importance in this proceeding is the importance to the field of the petitioner's discoveries. The petitioner must show not only that his discoveries are significant to one department at the University

of [REDACTED], but throughout the physics community at a national or international level.

Counsel stresses, in response to the director's notice, that the petitioner "has been seen as one of the very top young researchers in the field." "Young researcher," however, is not a field of endeavor. Certainly the petitioner's youth is not automatically a disqualifying factor; Albert Einstein was only 36 years old when he unveiled relativity theory in 1905. But when considering whether the petitioner has reached the top of his field, we must include in that field tenured professors and researchers with decades of experience; we cannot artificially limit our consideration to other graduate students.

The petitioner's response to the director's notice also includes new letters. While many of these witnesses also claim connections to the University of [REDACTED] or the [REDACTED] Academy of Sciences, some witnesses appear to be more independent of the petitioner. Dr. [REDACTED] of [REDACTED] University, who states that she learned of the petitioner's work through his publications, asserts that the petitioner "is now at the very top of his field where his contributions have substantially exceeded those made by the vast majority of researchers." Dr. [REDACTED] of [REDACTED] Company states "the contributions made by [the petitioner] have substantially exceeded those made by the vast majority of researchers in his field of cluster magnetism. . . . [The petitioner] is now at the very top of his field." The various letters contain numerous similarities, such as the use of the phrase "outstanding researcher of extraordinary ability," suggesting that the letters are not entirely of independent origin.

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

The record shows that the petitioner had published seven articles as of the date of filing, with other articles in preparation. The petitioner initially claims 21 citations of these articles, but the record contains no direct evidence of these citations.

Subsequently, the petitioner has submitted documentation to show that Physical Review Letters, which has published some of the petitioner's work, will only publish papers that "report a substantial advance in a field of physics or have significant implications across subfield boundaries" and "keep broadly interested physicists well informed on vital current research." As noted above, witnesses have praised the petitioner's "strong publication record."

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

Counsel asserts that the petitioner fulfills this criterion owing to his work for "Dr. [REDACTED] laboratory, one of the world's top laboratories in the field of cluster research." The record does not establish that Prof. [REDACTED] laboratory, by itself, is an organization or establishment. Rather, it is one of several laboratories in the Physics Department of the University of [REDACTED]. The reputation of the laboratory appears to rest heavily on the individual reputation of Prof. [REDACTED] himself. While Prof. [REDACTED] has surely earned a significant reputation as a researcher in his field, we are reluctant to conclude that whatever group of assistants and collaborators happen to be working with him at any given time represents an organization or establishment. There is no formalized structure to the laboratory (apart from the hierarchical organization of every university laboratory) that will remain after the retirement or departure of Prof. [REDACTED]; the reputation attaches to the individual rather than to the group.

The petitioner's resume lists a series of internship and training positions; indeed, he was still a student at the time he filed the petition. To qualify for this highly restrictive visa classification, the petitioner must demonstrate not only that he is one of the top graduate students in his field, but that he is at the top of the field as a whole, including tenured professors and the most experienced researchers. Graduate study is not a field of endeavor; rather, it is advanced training for future entry into such a field.

The director denied the petition, stating that the evidence of record fails to place the petitioner at the top of his field. The director stated that stressing the importance of specific contributions cannot suffice to establish the national or international acclaim which, by law, are necessary and essential requirements for this highly restrictive visa classification.

On appeal, the petitioner asserts that his work "will open doors to better and more efficient magnetic recording," "can provide some critical insights on the development of nanotubes with C<sub>60</sub> clusters . . . [which] exhibit superconductivity," "will open new doors for understanding catalysis," and "can be applied to the development of quantum dot lasers" (all emphasis in original). The petitioner thus discusses what could potentially arise as a result of his work, rather than substantive changes that the petitioner's work has already effected within the field. The hypothetical possibility of future impact does not in any way demonstrate present impact or acclaim. Also, for obvious reasons, the petitioner's own opinions regarding the significance of his work do not establish that the field as a whole shares those opinions at a national or international level.

The petitioner repeats various prior claims. For instance, he asserts that he "was accepted as a formal member of APS because of [his] outstanding accomplishments in atomic and solid state physics

field," but he offers no evidence at all that the extent of his accomplishments played any role at all in the acceptance of his APS membership application.

The petitioner discusses his published articles on appeal. The total number of published articles remains at seven, although other articles were said to be in preparation at the time of filing. The number of citations claimed has risen to 45 but there is still no direct evidence of these citations.

The petitioner submits further letters on appeal, primarily from witnesses who had offered letters previously. The statements in these letters are largely similar to previous assertions in the record, focusing on advances that may one day result from the petitioner's work, rather than concrete examples of major advances in theory or technology that have already taken place owing to the petitioner's efforts. As before, most of these witnesses are current or former faculty members of the University of [redacted] or the [redacted] of Sciences, and the only witness falling outside these groups is Dr. [redacted], whom the petitioner identifies as a collaborator. We cannot dispute the expertise of these witnesses, but the very narrow witness base does not support the conclusion that the petitioner is known throughout the United States, if not the world, as one of the most highly acclaimed physicists in his field. The fact that the petitioner has worked with individuals who enjoy such acclaim does not reflect similar acclaim on the petitioner himself.

The remainder of the appeal submission consists of copies of previously submitted documents, which we have already discussed above. Counsel states that a brief is forthcoming within 30 days. To date, over two years after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

Considering the evidence of record, the petitioner has at most satisfied two of the criteria, pertaining to publication of his work and contributions of major significance. Even the latter of these two is somewhat questionable, as the record contains little independent evidence to show that experts with no connection to the petitioner consider his innovations to be among the most important in the field. The petitioner has claimed to have satisfied only two other criteria, regarding memberships and performing in a leading or critical role for distinguished organizations. As explained above, the petitioner has not shown that he is a member of any association which requires outstanding achievement (rather than training in a given field, or a particular level of innate intelligence), nor that Prof. Bloomfield's laboratory constitutes a distinguished establishment or organization, as opposed to the workplace of a distinguished individual.

The petitioner has clearly impressed his collaborators and mentors, as well as at least a small number of other researchers. We do not

doubt the intrinsic importance of the petitioner's field of research. It remains, nevertheless, that at the time of filing the petitioner was a student, completing his professional training in preparation for a full-fledged career which he had yet to begin. To assert that he was already, at that very early stage, one of the very top figures in his field, raises the question as to why the petitioner himself clearly believed additional training and education to be necessary. As we have noted, many of the petitioner's witnesses have accumulated significantly more and greater honors and credentials than has the petitioner himself. While these accolades lend weight to their assertions, they also necessarily demonstrate that the field contains many far more accomplished and experienced researchers just at the one university where the petitioner has studied, let alone nationwide or worldwide. For these reasons, we cannot conclude that the petitioner was at the top of his field at the time he filed this petition.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a physicist 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. We cannot define the petitioner's "field" so narrowly as to encompass only the staff of the two laboratories in the world that are equipped to perform the kind of work in which the petitioner has been engaged. The evidence indicates that the petitioner has performed impressive work as a physicist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.