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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

JUN 18 2001

File: [Redacted] Office: Nebraska 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:



identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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

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

This petition seeks to classify the petitioner as an alien with extraordinary ability in space engineering and science. 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, counsel claims, meets the following criteria.

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

Counsel notes that the petitioner holds a patent for the "automated reserved control system for filling cryogenic acceleration block system," and that the petitioner has directly supervised the preparation of cryogen compartments on various launch vehicles. The record shows that the petitioner is the fifth of seven credited inventors on the 1997 patent.

Dr. [REDACTED] president of MidWest Jet Industries, Ltd. (in which the petitioner is a partner¹), states:

I [have known the petitioner] since 1988. Since that time, we worked together for several scientific and applied projects related to the development of special equipment for the space rocket launchings. [The petitioner] is known well as the international expert in the field of developments, production, and control of Power Supply Systems for space rocket launchers. He is among very few world-class specialists and decision makers in automatic system and software developments for the provision of the reliability of space rocket starts. . . .

All Russian space rocket launchers are now equipped [with] the power supply and automatic systems that were developed and produced under [the petitioner's] leadership and coordination

Dr. [REDACTED] adds that the petitioner could provide valuable advice to U.S. aerospace authorities, but he submits no evidence that NASA or other authorities have, to date, sought such assistance from the petitioner or from MidWest Jet Industries since its 1995 founding.

The petitioner submits copies of letters attributed to Professor [REDACTED] head of Automated Systems for the Control of Space Ships at the [REDACTED] Military Academy of Space Engineering, and [REDACTED], director of the St. Petersburg Institute of Information and Automation Systems at the Russian Academy of Sciences. Upon examination, these two letters are virtually identical. The translations of both letters contain the following passages:

[The petitioner] is well known both in Russia and abroad as an expert in the field of elaboration and application of automated

¹The petitioner's signature appears on the company's articles of incorporation.

systems for the control of preparation and launching of rocket carriers and space ships. He can be characterized as a specialist with extraordinary talent in this field of science and technology. . . .

He is the author of the following articles, widely quoted in the papers of many specialists in Russia: "Assessment of efficacy of human-computer systems functioning: probability approach" and "Assessment of the quality of technological processes: use of approximating probability models."

Other translated passages, while not identical, incorporate only minor variations. For example, one letter reads "[The petitioner] can be considered one of the leading scientists in this field of science and technology," while the other letter contains the same phrase except that it substitutes the word "called" for "considered." The overall format and structure of the two letters are very similar to one another. We cannot ignore that both of these witnesses, from the descriptions of their accomplishments, appear to have amassed considerably more recognition than the petitioner has in Russia's scientific community. For example, Dr. Yusupov has published 250 articles and 12 books, compared with the four articles the petitioner had published as of 1998. Dr. Shapiro, identified above, has received two gold medals from the then-Soviet government, and holds 57 patents.

owner and managing director of ACEA Handels und Anlagenbauges mbH, states:

I have known [the petitioner] since 1995. Since that time, we worked together for special Electric Power Supply System dedicated for the space rocket launches on Russian start "Baykonur."

Since that time, I recognized [the petitioner] as an international leader and coordinator of developments of Power Supply Systems and Automatic Control Systems, as well. . . .

In the second generation of this special power supply equipment, [the petitioner] developed and implanted a new visual operation system for control and documentation of the power supply units, with universal interfaces to the Microelectronic Products of international concerns. . . .

The Ground Energy Supply System worked without any problems during all starts of different space-crafts including American commercial space-crafts.

Subsequently, the petitioner has submitted another witness letter. Professor [redacted], chief manager of Salyut Design Bureau, states:

Within the framework of the Space Center's international cooperation projects he led the development of the surface complex for control, preparation, and launching of the cryogen oxygen-hydrogen stage of the Indian career rocket GSLV at the launching ground "Shar" and a number of elements of this block, he led the preparation of the infrastructure of the launching ground "Baykonur" for the launching of commercial spacecraft with the rocket "Proton." He is a leading participant in the design of carrier rocket "Proton-M," "Rockot," "Angara," block KBRB, also the testing of the capabilities of the MIR station and the attaching modules for the purposes of increasing their term of service and assuring the safety of the crew. . . .

[The petitioner's] scientific developments have led to significant improvement of the processes of creation of space rocket systems, as well as planning and regulation of processes of launch preparation of rocket carriers and spacecraft.

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

Counsel states "[w]e have included a list of scholarly articles published by [the petitioner] in professional scientific collections. Some of these works, pertaining to the Russian space industry are still confidential." If a given paper was, and remains, a classified government document, then such a paper cannot be considered to have been published in major media. The fundamental purpose of publication is to disseminate scientific findings. Classification, on the other hand, serves the opposite goal of concealing and protecting such findings. While a scientist who conducts classified work may earn acclaim once the results of his or her work become known (as was the case with, for instance, Dr. [REDACTED], classified documents cannot qualify as published work in major media. The list of documents identifies the published articles as being in "print," whereas the confidential works are identified as "manuscripts."

The list of the petitioner's works is attested by V.F. Nagavkin, identified as the secretary of the Scientific-Technical Seminary. Of the six works labeled "non-confidential," two are said to be "in press," meaning that four of the articles had actually been published as of the preparation of the list in 1998. The four published works appeared in various collections published in St. Petersburg in 1995. The two works identified as "in press" were set to be published in journals of the Institute of Electrical and Electronics Engineers in 1998, but the record contains no direct evidence that the articles were in fact published prior to the petition's June 1999 filing date.

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

The petitioner's official work record shows he has, since 1991, been a department head at the Salyut² Design Bureau of the Khrunichev Space Center, which counsel deems to be "Russia's main space rocket producer." The Salyut Design Bureau and the Khrunichev Space Center merged in 1994. Counsel asserts that the petitioner supervises 104 employees, and that the petitioner has directed several projects including "[p]articipation in the development of the land segment of the INTERNATIONAL SPACE STATION."

Documentation from the Salyut Design Bureau contains few details regarding the bureau's organizational structure, but it appears that a department head performs in a leading role for the bureau. It is less apparent that the petitioner performs in a leading role for the Khrunichev Space Center as a whole, as counsel contends.

The director denied the petition, stating that the petitioner has not shown that he is among the most acclaimed figures, nationally or internationally, in the field of aerospace design and engineering. Such acclaim does not automatically arise from holding a managerial position with a national space agency.

On appeal, counsel submits a brief with 28 documentary exhibits. The exhibits appear to be simply copies of documents already in the record.

Counsel argues that the director's decision contains factual errors, such as a reference to the petitioner's employment by NASA. Specifically, the director stated "the record contains . . . materials from . . . NASA. . . . Counsel has asserted that the alien petitioner is employed by the foregoing organizations on the role of the Space Center Khrunichev." In fact, counsel had indicated only that the materials from NASA indicate that the Khrunichev Space Center is collaborating with NASA and other entities on the design and construction of the International Space Center. The director's assertion, while unclear due to poor grammar, appears to be that the petitioner, in his capacity as a Khrunichev Space Center employee, is working with NASA. While the director's decision does contain some factual errors, these appear to be superficial in nature, rather than prejudicial errors without which the petition would have been approved.

Counsel states that the director unfairly required evidence that the petitioner played a critical role for a distinguished organization, when the regulatory requirement is a "leading or critical" role (counsel's emphasis). While the petitioner has certainly played a leading role for one department of the Salyut Design Bureau, and thus arguably for the bureau as a whole, the petitioner has not shown that his role was leading or critical for

²Various documents in the record list variant spellings such as "Salute," "Salut" and "Saljut." The spelling "Salyut" appears to mirror most closely the pronunciation of the Russian "САЛЮТ."

the entire Khrunichev Space Center, as counsel has claimed. Even if the petitioner had made such a showing, this would fulfill only one of the regulatory criteria and the denial of the petition did not hinge on this claim.

Counsel argues that the director disregarded key evidence, such as witness letters. While the director did not discuss these letters individually and in depth, the director did refer to the letters (in the aggregate) in the decision. As noted above, we cannot ignore that many of these witnesses appear to have earned considerably more prestige and authority than the petitioner in the Russian scientific community; they hold higher degrees, have won awards for their work, have published orders of magnitude more articles than the petitioner, and so on. We also cannot ignore persuasive evidence of common authorship of at least two of the letters, indicating that at least some of the witnesses did not choose their own words, but rather lent their names to the statements of others. In such instances, the precise wording used carries significantly less weight. Also, it remains that the individuals providing letters for the petitioner have all worked with him to some extent, if not as "co-workers" employed by the same institution, then as collaborators working on a common project or supervising the petitioner's studies. The letters do not demonstrate the wider reputation which is critical to a demonstration of sustained national or international acclaim.

The record shows that the petitioner and counsel have disregarded requests by the director. For instance, the only evidence that the petitioner has produced regarding his published work is a list of such publications, prepared by a third party. The director requested further evidence regarding the publications in which the petitioner's articles appeared, as well as copies of the articles themselves. Counsel has never directly addressed this request, instead submitting additional copies of the list and offering unsubstantiated assertions regarding the publications. The assertions of counsel do not constitute evidence. Matter of [redacted] 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Counsel and several witnesses have claimed that the petitioner's work is "widely cited" but to date the record does not contain any direct evidence of such citations (such as a citation index or copies of articles which cite the petitioner's work). We cannot conclude from the available evidence that the petitioner's published work places him at the top of the field of spacecraft engineering.

The director, noting the patent certificate in the record, stated that the petitioner has not shown that his contribution was more important than that of the other co-authors named on the certificate. Counsel asserts that "[t]he patent has been presented as one example of [the petitioner's] scientific contributions of major significance to the field, and not as part of his critical or leading role." This response begs the question of why this

patented invention is more important than thousands of other patented invention. A patent may recognize originality, but nothing in the record shows that only the most significant new inventions or methods receive patent protection.

The petitioner has repeatedly listed the specific contributions he has made to the Russian space program. Listing them, however, does not establish their significance. Spacecraft and launch vehicles, by nature, contain a bewildering quantity and variety of functional parts, from electronic components to hydraulics to protective apparatus, as well as life-support systems for manned spacecraft. Every aspect of these spacecraft demands careful study and rigorous precision, and each is important in its own way, but from this we need not conclude that every supervisor or manager involved in the construction of such spacecraft must be a nationally or internationally-known figure, as was the case with (for instance) [REDACTED]

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 space scientist and 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 has been successful and productive in his field, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field, nationally or internationally. 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.