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

[redacted]

Public Copy

File: WAC 99 025 51809 Office: California Service Center Date: MAY 24 2001

IN RE: Petitioner:
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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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, California 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 that she has earned sustained national or international acclaim.

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). These criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a researcher specializing in materials science. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The

petitioner has submitted evidence which, counsel claims, meets the following criteria.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a researcher specializing in materials science. The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The petitioner has submitted evidence which, counsel claims, meets the following 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.*

The petitioner establishes that she is a member of The Electrochemical Society. The record, however, contains nothing from the society to establish that outstanding achievement is a requirement for admission to membership. The petitioner cannot satisfy this criterion simply by joining a professional association.

> *Published materials 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.*

Currents, a newsletter of Ernest Orlando Lawrence Berkeley National Laboratory ("LBNL" or "Berkeley Lab"), carried an article about a new prototype fuel cell. A similar article, with the same accompanying photograph, appeared in Berkeley Lab Research Review. The articles mention the petitioner and two other researchers who collaborated on the fuel cell. The petitioner has not shown that Currents or Research Review are national or international publications, rather than purely internal publications distributed only to researchers and employees of LBNL.

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

The petitioner submits three letters discussing her scientific contributions. Professor Lutgard C. De Jonghe of the University of California-Berkeley and program leader for Advanced Ceramics at LBNL, states:

> [The petitioner] worked on our Solid Oxide Fuel Cell (SOFC) research group at LBNL as a Postdoctoral Fellow from the

beginning of 1994 through September 1996. Her work focuses on Thin-Film Solid Oxide Fuel Cell.

Fuel Cells are devices that convert chemical energy of a fuel . . . into usable electricity. . . . They are a technology that will significantly change our future - devices that can power automobiles with little or no tailpipe emissions, and provide energy to homes and factories with virtually no smokestack pollution. . . .

[The petitioner] has importantly contributed in the R&D of SOFCs. She build single fuel cells that demonstrated record performance by using tailored sintering and thin-film deposition methods. The procedures established by [the petitioner] are scalable, inexpensive, crucial for the successful commercializatin of SOFC, and can be used in the production of gas separator membranes, sensors and related technologies.

[The petitioner's] expertise and contribution to SOFC technology has earned her professional recognition within the scientific community. Copies of her publications, single fuel prototypes and single fuel testing demonstrations have been requested by researchers from other research institutions and universities as well as by the industrial sector. . . .

The methodology developed by [the petitioner] represents an important step forward in demonstrating the commercial viability of SOFCs and giving the incentives to SOFC technology to penetrate the world energy market.

W.T. Bakker, manager of High Temperature Materials Technology at the Electric Power Research Institute ("EPRI") and the petitioner's supervisor during a collaboration between EPRI and LBNL, states:

[The petitioner's] achievements have added to optimism among experts that higher-performance fuel cells can be economically manufactured for several commercial applications. She built single fuel cells which demonstrated a record single cell-power density in excess of 1 W/cm^2.

The above witnesses have collaborated actively with the petitioner. There is no indication that the remaining witness has done so. Dr. Subhash C. Singhal, manager of Fuel Cell Technology at Westinghouse Electric Corporation's Science and Technology Center, states:

[The petitioner] has made significant contributions to the development of solid oxide fuel cells. . . . This work has brought solid oxide fuel cells closer to being manufactured

cost-effectively for clean and efficient electric power generation.

The record offers no persuasive indication that the petitioner's innovations are intrinsically more significant than those of other researchers working on fuel cell technology. Every development in the field, major or minor, brings the cells "closer to being manufactured" and "add[s] to optimism" about the potential for fuel cell-powered vehicles and devices. The petitioner does not establish contributions of major significance simply by showing that she is a capable and productive researcher. The record does not indicate that the petitioner actually invented the fuel cells or came up with the theoretical framework that makes such cells possible, or that the petitioner has overcome one of the primary technical hurdles which must be cleared before fuel cell technology becomes practical on a mass-market basis. Incremental improvements on existing technology are not original contributions of major significance.

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

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. A researcher can earn sustained acclaim through his or her published works; but it is the content of those works, rather than the mere fact that they were published, which determines the merit of the works and, consequently, the reputation that arises therefrom.

While the record shows that the petitioner has co-authored several published articles, the record does not establish (through heavy citation, for example) that the petitioner's published work has had a greater impact than the countless thousands of other articles published every year.

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

Counsel states that the petitioner fulfills this criterion, but does not elaborate. Certainly the Berkeley Lab is an establishment with a distinguished reputation, but the record does not show that the petitioner performs in a critical role for the lab as a whole (as opposed to one of countless projects underway at the lab).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel states that the petitioner satisfies this criterion, but the record contains nothing to establish the petitioner's own salary, nor to establish that the petitioner's earnings substantially exceed those of almost everyone else in her field at a national or international level.

The director denied the petition, stating that the record "does not distinguish the petitioner from other conscientious, hardworking researchers."

On appeal, counsel states that a brief is forthcoming within 45 days. To date, fourteen months 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.

We note that, among the evidence that counsel has sought additional time to obtain, counsel mentions "further corroborating evidence from Prof. de Jonghe [and] Dr. Visco." Both named individuals are the petitioner's collaborators at LBNL. The petitioner cannot establish sustained national or international acclaim by demonstrating that her work is admired by her collaborators. Her reputation must extend throughout the field of endeavor, and the record must establish a general consensus that the petitioner is among the top figures in her field. Counsel asserts that the petitioner may seek further letters "from someone at the Department of Energy, Westinghouse, or other preeminent sources," but the record reflects no new evidence of this type.

Counsel states that the director "erred in mailing the notice of decision to the self-petitioner in Frankfurt, Germany. Everything else was correct except the city, which is in Munich, Germany. This caused delay in petitioner's receipt of the decision." The petitioner was, nevertheless, able to file a timely appeal. We note that Part 1 of the Form I-140 petition, prepared by counsel and signed by the petitioner, lists the petitioner's address as being in Munich. Part 3 of the same form, however, lists the same street address and postal code but identifies the city as

Frankfurt. The director was forced to make a choice between the two conflicting addresses, and evidently chose the wrong city. But the director's accurate transcription of information, exactly as it appears on the petition form, cannot reasonably be construed as "error" in the usual sense of the word. The petitioner signed the petition form under penalty of perjury, and thereby assumed legal responsibility for the accuracy of the information on that form. The director cannot be responsible for delays resulting from counsel's inclusion of incorrect information on the petition form.

The appeal includes a letter from the petitioner's collaborator Dr. Steven J. Visco, principal investigator at LBNL. The letter is dated December 18, 1998, over a year before the petition's February 2000 denial, and thus makes no mention of the stated grounds for denial. Dr. Visco states that the petitioner "was an essential scientist in the development of fuel cell technology that may play a critical role in the reduction of grenhouse gases into the earth's atmosphere." Dr. Visco does not elaborate or explain how the petitioner's contributions exceed in importance those of other skilled and well-qualified researchers. The remainder of the letter regards the importance of fuel cell technology, rather than the petitioner's contribution to that technology.

The appeal also includes a new statement from the petitioner. The petitioner discusses the history of her employment at LBNL, and asserts that the fuel cell project "had just ended, due to lack of funding," when the petitioner's unpaid research work yielded findings which resulted in renewed grant funding. The petitioner asserts that she left the laboratory only because she needed to fulfill the two-year foreign residence requirement which had been a condition of her previous J-1 nonimmigrant visa. Regardless of the reasons for her departure, there is no indication that the petitioner has conducted any significant research since leaving LBNL in 1996.

The petitioner offers no substantiation for her personal account, and even then the events she describes do not readily suggest that she is among the most highly acclaimed researchers in her field.

The petitioner states "[i]t is true that so far I have not received a high salary for my work. In fact, I did a lot of my work as a volunteer with no pay at all. . . . I do not believe that this should be held against me." The petitioner's low pay is not automatically a disqualifying factor. It is, however, extremely relevant in light of counsel's earlier claim that the record contains "evidence of a high salary or other significantly high remuneration." By making this claim, counsel either knowingly made a false statement, or at the very least offered as factual a claim which counsel had no grounds to believe was true. Either explanation necessarily raises questions of credibility, whether or

not the petitioner was aware that counsel had made this claim on her behalf.

The record indicates that the petitioner has made worthwhile contributions to the development of an important new technology. The record does not, however, establish that the petitioner has earned sustained national or international acclaim as one of the very top researchers in her field.

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 herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a materials scientist, but is not persuasive that the petitioner's achievements set her significantly above others in her 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.