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U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

File: [Redacted]

Office: Texas Service Center

Date: 08 FEB 2002

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:

[Redacted]

Public Copy

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal.¹ 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

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(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

¹ Counsel specified on the Form I-290B that he was submitting a motion to reconsider, specifically requesting that another Service Center officer review the decision. 8 C.F.R. 103.3(a)(2) permits the director to treat any appeal as a motion where he deems favorable action is warranted. The Form I-290B is the form designated for appeals, not motions. Thus, as counsel did not cross out the word "appeal" on the Form I-290B and the director, by forwarding the record to this office, presumably deemed that favorable action was not warranted, we will consider the properly filed I-290B as an appeal to this office.

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 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 submitted evidence that he received a grant from the Royal Society of London as part of his funding for a sabbatical visit at the University of Nottingham; that he was invited to participate in the [REDACTED] Visiting Professor program at the University of Ohio; and that the University of Connecticut offered him a brief visiting professor position. In addition, the Universidad Autonoma de Pueblo in Mexico issued the petitioner an honorable mention award for submitting a paper to *Physical Review Letters*. Finally, the petitioner received research grants from the Engineering and Physical Science Research Council, the National Council of Science and Technology, and the National Science Foundation. Counsel asserts that since the petitioner worked on a project jointly funded by the Mexican National Council of Science and Technology and the National Science Foundation, the "award" should be considered international.

Counsel asserts on appeal that the director simply "ignored" or "devalued" this evidence, but does not elaborate on the significance of the "awards." The director expressly considered the above evidence in his written decision, concluding that grants and fellowships are routinely awarded and are not evidence of national acclaim.

We concur with the director and further conclude that the above accomplishments cannot be classified as "awards." A visiting scholar invitation is simply a competitive job offer for a temporary position. It does not constitute an award or prize. Similarly, research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Receiving funding, even from two different countries, is not an award or prize and is not evidence of national or international acclaim.

The record contains evidence that the petitioner was nominated for the 2000 Puebla State Government Prize in Science and Technology. The petitioner submitted an untranslated document purporting to verify he won the award. Even if he did, he would have won the prize after the date of filing. Thus, the prize would not be relevant to his eligibility at the time of filing. Moreover, this award appears to be a local prize. The information in the nomination letters will be considered below.

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 is a member of the American Physical Society and the National System of Researchers in Mexico. As stated by the director, the petitioner failed to submit any information regarding the membership requirements for the American Physical Society. At the time of filing, the petitioner was a level one member of the National System of Researchers. On July 1, 2000, the petitioner became a level two member. The petitioner submitted the requirements for level one and two. As noted by the director, the document is in Spanish with only a few lines translated by an unknown individual. This translation is not complete or certified. Even if we accepted the translation, level one requires contributions to scientific research, publication of articles in prestigious journals, participation in workshops and advising undergraduate students. None of these requirements are outstanding achievements. While level two requires independent research which has made a considerable impact, the petitioner was not a level two member at the time of filing. Moreover, it is not clear that membership in an exclusive sub-group of an association which does not require outstanding achievements of its members is sufficient under the regulation.

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.

Counsel asserted initially that the citations of the petitioner's work serves to meet this criterion. First, as will be discussed below, the record contains almost no evidence of citation. Regardless, an article which cites the petitioner's work as background is primarily about the author's work. Thus, the director concluded that the articles which cite the petitioner's work cannot serve to meet this criterion as they are not primarily about the petitioner. Counsel does not address the merits of the director's concerns on appeal, but simply asserts that the director ignored or devalued the evidence for this criterion. For the reasons discussed above, we concur with the director's straightforward conclusion based on the plain language of the regulation at issue.

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 has served as a referee for *Physical Review Letters* and other publications on several occasions. The record indicates that he was personally requested to review articles for these publications based on his own reputation. As such, we concur with the director that the petitioner meets this criterion.

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

[REDACTED] professor of physics at Ohio University where the petitioner taught during his sabbatical asserts that the petitioner has made significant contributions in the area of electromagnetic response of solids and semiconductor nanostructures. [REDACTED] does not, however, elaborate on the contributions or explain their significance to the field of physics. Nor does he specify any independent researchers who are using the petitioner's results in their own projects. [REDACTED] a professor at the University of Texas at Austin writes that the petitioner specializes in electromagnetic and mechanical properties of solids and that his recent publication involved the conductivity of low-dimensional semiconductor structures and optical properties of photonic-band-gap materials, an area very important to modern optoelectronics and laser technology. [REDACTED] a professor at the University of Connecticut who has collaborated with the petitioner, writes:

These collaborations have resulted in a number of significant publications, which have contributed to seminal progress in a number of research areas. This has included electron-defect interactions which is critical to the understanding of deformation processes at low temperatures. These works have resulted in a number of publications in such prestigious journals as Physical Review Letters and Philosophical Magazine.

The above letters contain little in the way of specific evidence to show what major improvements the petitioner has wrought in his field of endeavor. While the petitioner has published useful research, it can be argued that the petitioner's field, like most science, is research-driven, and there would be little point in publishing research which did not add to the general pool of knowledge in the field.

The record contains several letters nominating the petitioner for a state prize. [REDACTED] of the National Autonomous University of Mexico, asserts that the petitioner's research is "truly relevant, diverse and productive." He notes that the petitioner has collaborated with internationally renowned researchers. Peter Halevi, a national researcher, provides more elaboration:

1. ANDERSON LOCALIZATION In SYSTEMS WITH CORRELATIVE DISORDER. With a collaborator, he presented a theory [*Phys. Rev. Lett.* 82.4062 (1999)] which demonstrates the existence of the mobility limits in said systems if the correlation in the random potential is long-range. This theory has an important technological application: the design of filters for stochastic electromagnetic signals. This application has been postulated in collaboration with experimentalist colleagues [*Appl. Phys. Lett.* 77.633 (2000)]; in fact, the experiments have confirmed all the theoretical predictions contained in the abovementioned publication.
2. CONTROL OF CHAOS In DYNAMIC SYSTEMS. [The petitioner] has proposed, along with his colleagues, a very general method for the stabilization

of unstable periodical orbits of particles in said systems [*Phys. Rev. Lett.* 82.2504 (1999)].

3. PLASTICITY AT LOW TEMPERATURES AND HIGH MAGNETIC FIELDS. With his collaborators, theorists and experimentalists alike, [the petitioner] demonstrated that an elastic field produced through dislocations in metals affects the dynamics of conductive electrons in an important manner [*Phil. Mag. A* (2000), accepted].
4. PHOTONIC CRYSTALS. [The petitioner] has developed a theory of Photonic Crystals of bi-dimensional periodicity in the low-frequency limit. This theory of "homogenization" allows for a description of these innovative materials in terms of Crystalline Optics and applications for optical components in long-distance and microwave infrared applications. Together with myself and an additional collaborator, the results were published in *Phys. Rev. Lett.* 82.719 (1999) and *Appl. Phys. Lett.* 75.2725 (1999).

In addition, the record contains the grant proposal for the petitioner's temporary project at Nottingham, which refers to the petitioner as "a world class researcher, and one of very few people worldwide to have an international reputation in semiconductor theory, quantum chaos, and photonics." Counsel also submitted numerous invitations to scientific conferences around the world, asserting that these invitations demonstrated the petitioner's contributions of major significance to his field.

The director concluded that the letters of reference failed to specify the petitioner's contributions or explain their significance. The director also noted that the petitioner failed to submit the resumes of his references. Finally, the director concluded that the numerous conference invitations were impressive, but failed to indicate the nature or significance of the petitioner's contributions.

The director unambiguously placed the petitioner and counsel on notice of the deficiencies in the record. Instead of submitting evidence which might address the director's concerns, such as new detailed letters from independent experts, counsel attacks the decision as "tainted" and lacking objectivity. Counsel asserts that the director either failed to read the reference letters submitted or was unable to comprehend them.

We find the director's review of the evidence to be comprehensive and his reasoning to be extremely objective. A review of the letters discussed and quoted above reveals that the director's concerns were justified. While the original letters assert that the petitioner has contributed to his field, they do not discuss the nature of those contributions or their significance. They fail to explain how these contributions have influenced the field. While the subsequent letter from [redacted] provides somewhat more detail, he refers to research that was published in 1999 and 2000. We cannot conclude that the petitioner's research published right around or after the date of filing had already made a major contribution to the field as of the date of filing. Moreover, as implied by the director, all of the letters, including the one from [redacted] are from the petitioner's collaborators

or employers. National acclaim, by definition, implies notoriety beyond one's immediate circle of colleagues.

Finally, we acknowledge that the numerous invitations to speak at conferences around the world are consistent with acclaim. Had the petitioner submitted letters from independent experts detailing the significance of his contributions, the invitations would have provided significant support for such letters. A review of the record as a whole, however, reveals that the director's concerns regarding the lack of evidence regarding the particulars of the petitioner's claimed contributions or their significance were justified. Neither counsel nor the petitioner has even attempted to address those concerns on appeal other than to accuse the director of bias or ignorance. As such, we must uphold the director's conclusion that the petitioner did not meet this criterion.

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

The petitioner had authored 40 published articles and three book chapters as of the date of filing. [REDACTED] asserted that the petitioner produced 24 articles in five years, whereas an acceptable rate of publication in the field is one per year. 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 claims that independent researchers have cited several of his articles. The petitioner's personally constructed list of citations indicates that the most citations any article received was 11. The record, however, contains no corroboration of this claim, such as a printout from a citation database or a photocopy from a page of a citation index. The record, however, contains numerous invitations to speak at scientific conferences and collaborate as a visiting professor. Such evidence reflects that the community has received the petitioner's articles favorably. As such, we concur with the director that the petitioner 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 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. The evidence indicates that the petitioner shows talent as a physicist, 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.