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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



File: EAC 00 025 54601 Office: Vermont Service Center Date: 30 JAN 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: Self-represented

Public Copy

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, 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.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner prior to the filing of the appeal. On appeal, the petitioner indicates that [REDACTED] no longer represents him, and he asks to be considered self-represented.

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 sought permanent employment as a scientist in the Computational Simulation and Modeling Department of the National Institute for Environmental Renewal ("NIER").¹ Prior counsel states that the petitioner "is recognized as one of the outstanding and innovative environmental researchers in the world," and he describes the petitioner's duties at NIER:

[The petitioner's] work involves utilizing computer software programs to simulate and create models of various ecosystems in the United States. Once a "virtual world" is created for a certain ecosystem, it is possible to analyze all of the endangering factors and causes of pollution in that ecosystem. The computer can then be used by [the petitioner] to determine what affirmative steps humans must take to ensure the continued preservation of the ecosystem. The computer models are created from field data presented to [the petitioner] by various environmental organizations.

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 initially claimed to have met 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.

A letter from the chairman of the Water Commission of Iran's National Scientific Research Council indicates that a manuscript by the petitioner "has been selected . . . among all evaluated manuscripts in the years of 1990 and 1991 as the best paper in the subject of 'Water Resources.'" Another letter, from the Iranian Ministry of Power, states that one of the petitioner's papers was selected "as the best paper of the National Conference on Groundwater Resources." The petitioner submits no evidence to establish the significance or prestige of these awards. The record tells us nothing about these awards except that the petitioner won them.

Another document which the petitioner claims as evidence of a prize or award is a certificate from the Utah State University College of Engineering, indicating that the petitioner's name has been "placed on the School of Graduate Studies HONOR ROLL for the past quarter." The letter indicates that "[t]his recognition is given to graduate

¹The petitioner's subsequent relocation, established by a change of address notice, suggests that he has left NIER.

students earning a 3.75 or better grade point average while carrying a full load of 9 or more credits for the quarter." Graduate study is not a field of endeavor and there is no evidence that making the honor roll or dean's list at any given university attracts any significant notice outside of that one university, or that making the honor roll at Utah State University is more prestigious than achieving similar grades at any of hundreds of other universities.

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 submits documents establishing membership in various organizations and committees, but this documentation does not establish that any of these entities require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Professor Soroosh Sorooshian at the University of Arizona states that the petitioner's "membership in the National Commission on Hydrology, National Iranian Committee of UNESCO, and Iranian Committee on Large Dams (IRCOLD) has both been by invitation open to only a few individuals who are likely to be instrumental in advancing the mission of these organizations." Prof. Sorooshian does not establish that he is a member of these organizations or is responsible for selection of members, and his statements do not represent documentary evidence of the organizations' membership requirements.

The record shows that the chairman of the Civil Engineering Department at Sharif University of Technology invited the petitioner to co-chair one session of the Fourth International Conference of Civil Engineering. While this is not insignificant, the petitioner does not explain how it constitutes membership in an association.

The petitioner submits a letter appointing him "to the position of the Research Director of the Civil Engineering Department" of K.N. Toosi University of Technology. This is not a membership in an association, but rather employment on the faculty of a university.

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 reviewed manuscripts submitted for publication in various journals and, as noted above, co-chaired a session of the Fourth International Conference of Civil Engineering. The evidence indicates that the articles were not simply passed on to the

petitioner by a superior, or that only one entity relies on the petitioner's critical input in this way. Rather, the evidence indicates that a variety of sources have relied on the petitioner's judgment of the work of others. Similarly, the petitioner's co-chairmanship of a session at an international conference appears to have involved judging the work of others in the context of selecting from among submitted papers.

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

Prior counsel states that the petitioner's "original scientific contributions of major significance are evidenced by his Masters Thesis and Ph.D. Dissertation and by . . . recommendation letters submitted by internationally renown experts in environmental research and studies, as well as leaders of institutions of higher learning."

The petitioner's graduate theses are not self-evidently original contributions of major significance. Everyone who pursues an advanced degree must prepare a thesis or a dissertation; it is no special mark of distinction that the petitioner fulfilled the basic requirements for his degrees. Even then, the petitioner did not even submit his thesis or dissertation; he has only submitted copies of his diplomas. The fact that the petitioner, like thousands of others, holds M.S. and Ph.D. degrees does not establish national or international acclaim at the top of the field.

The petitioner submits several letters in support of the petition. Many of these letters simply attest to the petitioner's training and competence, and say nothing that would suggest that the petitioner is among the most acclaimed experts in his field. For instance, Lee Nichols of Terracon Geotechnique Ltd. where the petitioner worked for two months, states that the petitioner "demonstrated a 'take charge' approach to his assigned tasks," "was able to work very easily with his peers," and "performed his tasks in a very competent, efficient and timely manner." General statements such as these do not illustrate any specific contributions of major significance. Similarly, Dr. Feridon Kaveh of Ab-Niru Consulting Engineers asserts that he "would rank [the petitioner] within [the] top 5% of university of professors and researchers" but offers no specific information to explain this rating.

Other letters are not recommendation letters at all, despite counsel's characterization of them as such. Rather, they are private communications to the petitioner regarding use of office space, conference presentations, and so on.

Some witnesses offer specific information about the petitioner's work. Professor Soroosh Sorooshian of the University of Arizona states:

In his master's thesis, [the petitioner] implemented a novel investigative approach in studying the application of an efficient irrigation system. Some of his contributions in his Ph.D. dissertation and his two journal publications in the field of artificial groundwater recharge are particularly notable for their optimization to this important water management subject. In addition, his publications dealing with Urmia Lake studies, streamflow regulation through artificial recharge (a creative idea for dealing with irregularity patterns in small streamflows and quality problems), and retention pond design considering the role of infiltration can all be considered original contributions in the field of water resources.

In 1993 and 1994, he was invited to lecture at the Third and Fourth Annual Stockholm Water Symposium in Sweden. This invitation is extended only to highly recognized experts.

We note that the witnesses offering comments specifically for this proceeding are all former employers, collaborators or mentors. Therefore, their personal knowledge of the petitioner's work does not demonstrate that the petitioner has earned national or international acclaim, and the majority of the witnesses do not even suggest that the petitioner has earned such acclaim.

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

The petitioner submits copies of several articles and conference presentations that he has written or co-written. The petitioner does not establish the reputation or circulation of the publications that have carried his work; the word "major" appears repeatedly in the regulation, indicating that the very fact of publication does not automatically suffice. Some of the documents appear to be typed manuscripts prepared principally as reports for committees or clients rather than for publication.

Prior counsel states:

[The petitioner's] publications and conference presentations have attracted attention and recognition from the international scientific community. Scientists from universities and other research centers in [ten] countries have directly contacted [the petitioner] with requests [for] reprints of his publications.

The petitioner documents that he has, in fact, received numerous requests for reprints. These requests do not demonstrate the

influence of the petitioner's published work; rather, they would appear to show that the requestors have not read the articles (otherwise it is not clear why they would need copies sent to them). The record contains little evidence to show that, once the researchers read the articles, their own work reflected the petitioner's influence. The record contains only one documented citation of the petitioner's work by another research group (including a researcher from the University of Arizona, where the petitioner had previously consulted with the faculty). A consistent pattern of heavy citation of the petitioner's work would establish that his published work is among the most influential in the field, but the one citation shown in the record does not establish such a pattern. The record does not justify the presumption that, because other researchers have asked for copies of the petitioner's work, those researchers were subsequently heavily influenced by that work.

The director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the beneficiary as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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."

In response to this letter, prior counsel has observed that the petitioner will present further findings at a conference in May 2001, and that this presentation amounts to another contribution of major significance. This event took place well after the petition's November 1999 filing date, and as of counsel's letter (dated November 2000) it was still several months in the future. Therefore, it is not clear how the significance of this work could have been manifest before it was even presented to the scientific community.

Dr. Hossein Azarmnia, Senior Water Resources Engineer with Sikand, states that the petitioner "is certainly one of the top individuals" in the field of hydrology. To support this assertion, Dr. Azarmnia cites the selection of one of the petitioner's papers as the best paper presented at a 1994 conference which Dr. Azarmnia chaired, and the petitioner's supervision of "the hydrology and water resources studies" in a water supply project which Dr. Azarmnia managed.

Steven W. Smith, president of Chas H. Sells, Inc., states that his company (an engineering consulting firm) has undertaken "a comprehensive flood control study" in Rockland County, New York, and required the services of "an engineer with the necessary qualifications to lead the technical analysis of this assignment." Mr. Smith states that the petitioner "was the only candidate who met our needs." This letter indicates that the petitioner is a

highly qualified engineer, but it does not establish that he is among the top engineers in the country or internationally.

Samuel M. D'Alessandro, president of R.K.R. Hess Associates, states that the company's officials "are convinced that the exceptional technical abilities and knowledge of [the petitioner] will be an asset" as the company sets about "establishing a department of Water Resources." Like Mr. Smith's letter, Mr. D'Alessandro's letter indicates that there is some demand for the petitioner's services, but it does not establish that the petitioner is one of the best-known figures in his field at a national or international level. Discussion of projects in which these companies would like to involve the petitioner does not amount to evidence of major contributions that had already taken place as of the petition's filing date.

The petitioner submits a two-page document describing the petitioner's current duties at NIER. There is no indication as to the authorship of this document, which appears to have been prepared specifically for submission in support of the visa petition. There is no indication that the opinions and representations expressed in the document represent the official position of NIER.

Prior counsel repeats the contention that the petitioner's involvement at the Third and Fourth Annual Stockholm Water Symposia represent membership in an association, with no explanation as to how short-term involvement in these events is comparable to membership in an association.

Prior counsel also claims the petitioner has satisfied three previously unclaimed criteria:

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

Prior counsel states:

[The petitioner] played a leading role in recent watershed studies and modeling conducted by The National Institute for Environmental Renewal ("NIER"). The main outcome of this work is a series of watershed and water quality models (developed by [the petitioner]) and a Graphical User Interface for these models comprising Decision Support Tool (developed by [the petitioner] and colleagues at NIER). These tools are instrumental for watershed and water quality management in the Wissahickon Creek Watershed in Montgomery and Philadelphia Counties, Southeastern Pennsylvania and serve as pilot project for the region.

The petitioner submits documents from the Pennsylvania Department of Environmental Protection's web site. These documents discuss

the NIER project but the petitioner's name does not appear. Thus the documentation does not support the contention that the petitioner performs in a leading or critical role.

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.

Prior counsel indicates that citations of the petitioner's published work, including a newly submitted citation, represent published materials about the petitioner's work. Citation of the beneficiary's work, however, does not establish that the articles containing the citations are "about" the beneficiary or his work. These citations are better understood as a gauge of the field's reaction to the beneficiary's own writings, covered by a separate criterion already addressed.

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

Prior counsel states that when the petitioner "received the [director's] Request for Additional Information, he sought job offers to demonstrate he commands a high salary in relation to others in the field." The petitioner submits documentation of two job offers, one with a salary of \$75,000 per year with a \$21,600 signing bonus, another paying \$72,000 per year with a \$5,000 bonus and up to \$1,200 to cover moving expenses. Prior counsel states that "[t]he Level II Mean OES Wage is \$51,418 per year" in the Northeast Pennsylvania Metropolitan Statistical Area, considerably less than the figures offered to the petitioner.

The figures cited by the petitioner are for a limited geographical area rather than national or international. Also, establishing a salary above the mean does not indicate that the salary is near the top of the overall range. Furthermore, the salary figures pertain to workers "with indirect supervision." There is no indication regarding the salaries of the top figures in the field, who themselves supervise others.

The salary figures cited are for "geologists, geophysicists, and oceanographers." One of the new letters offers the petitioner a position as a "project engineer" (the other letter does not identify the position).

Even then, the petitioner has not shown that the petitioner has ever actually earned wages at the level shown in the job offer letters. Prior counsel readily acknowledges that these letters were obtained specifically to respond to the director's request; the job offers did not exist at the time of filing. The offers are from Chas. H. Sells, Inc., and R.K.R. Hess Associates, officials of

which had provided new letters on the petitioner's behalf. Both of those letters, discussed above, describe the duties that the companies have in mind for the petitioner. There is no indication that the companies are aware that (according to prior counsel) the job offers were solicited for the sole purpose of determining what salary the petitioner could command.

The director denied the petition, stating that the record of proceeding establishes that the petitioner is a successful and respected hydrologist, but the evidence of record does not demonstrate sustained national or international acclaim.

On appeal, the petitioner argues that he meets four of the criteria set forth at 8 C.F.R. 204.5(h)(3). He notes the following passage from the director's decision: "The record shows that you . . . are a member in associations that require outstanding achievements of their members, and have a number of published articles and abstracts." The petitioner does not address the next sentence in the same paragraphs: "However, the achievements documented in the record appear to be characteristic of numerous professionals and scientists and not entirely of 'extraordinary' scientific research abilities."

With regard to the petitioner's memberships, as we have noted, the record contains nothing from any of the organizations to which the petitioner belongs that would establish that those organizations require outstanding achievement as a condition of membership. Letters from individuals with no demonstrated connection to the organizations do not constitute persuasive evidence of the organizations' membership requirements. Primary sources, such as the associations' bylaws, presumably set forth those requirements, and the petitioner has not submitted such primary evidence nor explained its absence from the record. The director's conclusion regarding the petitioner's memberships is, therefore, not supported by any direct evidence.

While the director also noted that the petitioner has published in his field, the petitioner has not shown that publication of scholarly articles is a hallmark of achievement in his field, rather than something that is routine and expected of active researchers. The petitioner has not shown that his published writings are among the most influential in the field. The requests for reprints demonstrate interest in his area of work, but cannot establish that he is among the most highly acclaimed researchers in that field.

The petitioner claims to have satisfied two other criteria, apart from the two mentioned in the director's decision. One of these, judging the work of others, we have already acknowledged. The other pertains to prizes and awards. The petitioner states that, in conjunction with two of his previously claimed awards, he received "prizes including gold coins" at award ceremonies. The record contains no evidence to support or clarify this claim, for

example by establishing the value of the prizes. There are nationally and internationally known prizes in the tens and hundreds of thousands of dollars, even without considering major awards such as the Nobel Prize which can exceed one million dollars. While cash value is certainly not the only consideration, it is the petitioner who has introduced this factor into the discussion. The unsupported assertion that the petitioner received an unspecified quantity of gold coins has no probative value. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Shortly after filing his appeal, the petitioner has submitted copies of three additional job offer letters from various U.S. engineering firms. These job offers do not demonstrate or imply that the petitioner is one of the most acclaimed hydrologists in the U.S. or internationally, and none of the job offer letters existed until after the director denied the petition.

The petitioner also submits further evidence of his activity as a judge of the work of others. We need not discuss this evidence at length because we have acknowledged that the petitioner appears to have satisfied 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, 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 hydrological 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 is accomplished in his field, 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.