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U.S. Department of Justice
Immigration and Naturalization Service

Developing data related to
present clearly warranted
Department of Personal Services

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



File: WAC 99 025 51809

Office: California Service Center

Date: JUL 18 2002

IN RE: Petitioner:
Beneficiary:



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:



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, California Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal.

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

At the time she filed the petition, the petitioner sought to "conduct research on thin-film solid oxide fuel cells" ("SOFCs") at Lawrence Berkeley National Laboratory ("LBNL"). The petitioner had worked at LBNL until 1996, but had returned to Germany by late 1998 when she filed the petition.

On appeal, counsel had asserted that a brief was forthcoming. In its dismissal notice, the AAO noted that no such brief was in the record. On motion, the petitioner demonstrates that counsel had submitted the brief, but the brief had not been incorporated into the record at the time of appellate review. We

will now review that submission, as well as the petitioner's comments pertaining to the initial appellate decision.

The petitioner's supplement, dated April 2000, consists of four new witness letters and a statement in which counsel discusses portions of these letters. All four of these letters are from individuals who had previously submitted letters accompanying the initial petition. We will address these letters further below.

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 had originally claimed to satisfy six of these criteria. The AAO addressed the initial evidence in its first decision, which we need not revisit here in great detail. On motion, the petitioner comments on the appellate decision, appearing to concede the AAO's findings regarding two of the criteria, but maintaining that she has satisfied the other four.

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.

The petitioner had initially submitted articles from *Currents* and *Berkeley Lab Research Review*. In dismissing the appeal, the AAO stated that the petitioner had failed to establish that either of these LBNL publications are major, nationally circulated publications. On motion, the petitioner states that "[a]bout 95% of [*Currents*] readers are LBNL employees or members of the University of California, Berkeley Campus (UCB). Nevertheless, *Currents* is also distributed as a press release." A press release is not, by itself, a major publication; the petitioner must show that major publications have published the information contained in those press releases. The example provided by the petitioner on motion is a newsletter, *Inside R&D*. The first article from the 1996 newsletter discusses fuel cell research then underway at LBNL. The article does not mention the petitioner's name in any of its four paragraphs, and therefore the article is plainly not published material about the alien as the regulation requires. The petitioner does not gain significant acclaim from being one of the unnamed "[r]esearchers at Lawrence Berkeley."

The petitioner asserts that *Berkeley Lab Research Review* "is stocked in the libraries of many national and international universities and research institutes." Pamela Patterson, managing editor of the publication, states that "[t]he magazine is distributed both nationally and internationally to scientific and educational institutions, libraries, Government agencies, and the U.S. Congress. . . . More than 20,000 copies were distributed of the issue containing [the petitioner's] research." This information demonstrates that *Berkeley Lab Research Review* is more than a local newsletter, although it remains that the record does not show that the petitioner has attracted any media attention in independent publications (as opposed to LBNL publications that exist in order to promote work done at that facility).

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

The AAO considered witness letters submitted with the petition, and concluded "[t]he record offers no persuasive indication that the petitioner's innovations are intrinsically more significant than those of other researchers working on fuel cell technology." On motion, the petitioner states:

While I did not invent the fuel cell, my original work and methodology of thin-film deposition represent a breakthrough in the field of SOFC research. . . . The prototype SOFCs created by me delivered a power density of about 1935 mW/cm² at 800°C for more than 700 hours of continued operation. . . . Prior to my work, SOFCs typically were able to produce a power density of around 350 mW/cm² at 800°C. . . . I did in fact overcome a very important *technical hurdle* on the way to *make SOFC technology practical on a mass-market basis*.

The petitioner cites three newly submitted exhibits to support her argument. Two of these exhibits are published articles by the petitioner. The publication of the articles does not establish the major significance of the findings described therein; otherwise, every published article would fulfill this criterion, which would be too broad an application of the criterion.

The remaining exhibit consists of new letters from witnesses who had previously submitted letters on the petitioner's behalf. As the AAO had previously observed, these witnesses, for the most part, are closely connected with the petitioner, generally through employment at LBNL and/or the University of California at Berkeley (which operates LBNL) [REDACTED] states that the petitioner's "research was a key factor in the success of the SOFC program at LBNL," and that as a result, "the research programs at LBNL in thin-film ionic devices have received worldwide recognition." Dr. Visco does not elaborate or demonstrate the nature of this "worldwide recognition," nor does he show the extent to which the laboratory's recognition has reflected on the petitioner individually.

[REDACTED] comments on the petitioner's "technical abilities" and the overall importance of developing SOFC technology. The petitioner's talents as a researcher are not in question, nor is the importance of her area of expertise. Nevertheless, eligibility as an alien of extraordinary ability requires, by law, "extensive documentation" of sustained national or international acclaim. Possessing skill in a useful endeavor does not meet this extremely restrictive threshold.

[REDACTED] manager of High Temperature Materials Technology at the Electric Power Research Institute, states that the petitioner "is a first rate researcher and her achievements are even more impressive when you consider that she started her work at . . . LBNL with absolutely no previous experience in the field." He asserts that the petitioner "almost single-handedly turned around a project that was seriously at risk of being terminated," and that "while other team members shared in the theoretical part of planning the project strategy, it was exclusively [the petitioner] who performed the research." At issue is not whether the petitioner's work at LBNL was worthwhile, but whether the petitioner has earned sustained acclaim at a national or international level as a result of that work. W.T. Bakker, as a manager at the company which funded the petitioner's research, is closely tied to that

research and his statements cannot demonstrate first-hand that the petitioner has earned national or international acclaim as one of the top researchers in her field.

██████████ a fellow at Pacific Northwest National Laboratory, watched the petitioner's research group give a presentation of its "outstanding results with thin-film solid oxide fuel cells . . . created by" the petitioner. Like the other letters, ██████████ letter focuses on the major role that the petitioner played in her research project at LBNL, without providing any specific evidence or information about how this research has shaped fuel cell research elsewhere. The petitioner, on motion, submits no evidence to show that the petitioner's work has captured significant attention in the field outside of LBNL and the entity that funded the project. For example, nothing in the record shows that other research institutions conducting fuel cell research have adopted innovations or techniques developed by the petitioner, or that potential fuel cell manufacturers have followed the petitioner's research more closely than that of others conducting research in the same area.

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

The AAO acknowledged the petitioner's articles but found that there was no evidence that the petitioner's published work has had a significant impact. For example, the petitioner had not shown heavy independent citation of her work. On motion, the petitioner states that some of her published articles "have been strongly cited in the international literature," including in the highly prestigious journal *Nature*.

The petitioner submits documentation to show that other researchers have cited her work 34 times as of early 2001. While this is a respectable number of citations, the petitioner must show eligibility as of the petition's filing date, in this case November 1998. As of that time, the petitioner had shown an aggregate total of only ten citations for all of her published work put together. By comparison, some of the articles citing her work have been cited 14, 15, even 21 times. Most of the articles have far fewer citations. This evidence does not establish that, as of the time she filed the petition in November 1998, the petitioner was one of the most heavily cited authors in her specialty. (The *Nature* citation, singled out by the petitioner, appeared in August 1999.) The subsequent increase in the number of citations suggests that the petitioner's influence could possibly be growing, although we note that the record does not contain any citations of any articles published by the petitioner since 1997.

On a related subject, the AAO had noted, in its dismissal notice, "there is no indication that the petitioner has conducted any significant research since leaving LBNL in 1996." On motion, the petitioner does not contest this assertion. Instead, she indicates that she has been unable to continue her work because "[t]here is only one research institute in Germany which performs research on a very different kind of SOFCs and it is 400 miles away from Munich, where I live." The petitioner's protracted efforts to obtain an immigrant visa would seem to demonstrate her willingness to relocate over a considerably greater distance than 400 miles from Munich. Nevertheless, it remains that the petitioner's work with fuel cells appears to have stopped in 1996, over two years before the filing of the petition and five years before the filing of the motion. W.T. Bakker has indicated that, at the time the petitioner began working at LBNL in 1994, she had "absolutely no previous experience in

the field,” and therefore the petitioner’s entire career in SOFC research amounts to two years of postdoctoral work.

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

The AAO had initially stated “[c]ounsel states that the petitioner fulfills this criterion, but does not elaborate. Certainly the LBNL 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).” On motion, the petitioner asserts “I in fact did play a critical role for the SOFC project at LBNL.” This assertion does not address the root of the AAO’s finding, specifically that playing a critical role within one of many projects at LBNL does not necessarily translate into a leading or critical role for the entire laboratory. It is LBNL as a whole, rather than one research team or project there, which has a distinguished reputation. Arguments to the effect that LBNL’s fuel cell program is, itself, a distinguished establishment, apart from LBNL’s general reputation, are vaguely expressed and unsubstantiated by independent evidence.

In dismissing the initial appeal, the AAO observed the near-total lack of evidence from sources without close connections to the petitioner and LBNL. The letters originally intended to supplement that appeal are from sources already represented in the initial record, and therefore timely consideration of those letters would not have fundamentally altered that conclusion. The newer evidence submitted on appeal indicates that other researchers have taken some notice of the petitioner’s work, citing it in their own materials. The substantial majority of these citations fall after the petition’s filing date, and therefore cannot retroactively establish the petitioner’s acclaim or reputation as of that date. The record does not show that the petitioner’s two years of postdoctoral work with fuel cells caused the petitioner to rise to the top of that field, and to remain there. The petitioner must be eligible at the time of filing, and must remain eligible at the time of adjudication.

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 herself as a fuel cell 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 is not persuasive that the petitioner’s achievements set her significantly above almost all others in her 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 these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner’s decision of May 24, 2001 is affirmed. The petition is denied.