

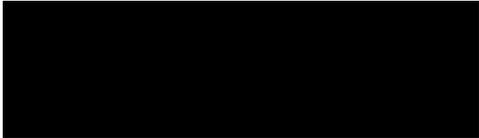


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-01-130-51529 Office: California Service Center Date: 12 JUN 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, 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that the information submitted in response to the director's request for additional documentation was not duly considered by the director and that insufficient weight was given to the petitioner's inventions, scholarships, publications and memberships in scientific associations. All of the documentation will be considered below, although it is noted that it is insufficient to merely submit evidence which addresses a particular criteria, the evidence must reflect 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

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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 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 which does not include a United States patent). 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 claims to have received a Golden Eagle for his patented chemical reactor invention. The record does not include any evidence of this award or its significance.

The petitioner submitted evidence that he received a graduate research assistantship from the University of Southern California and scholarships of \$7,200 and \$12,000 from the Los Angeles Rubber Group (TLARGI). Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in a field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with national or international experienced experts in the field, the awards cannot be considered evidence of the petitioner's national or international acclaim.

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 claims to be a member of the American Chemical Society (ACS) and the American Institute of Chemical Engineering (AIChE). The petitioner provided his membership numbers, but no other evidence of his membership. It is not clear whether the petitioner is a full or student member. Regardless, the website for ACS, center.acs.org/applications/acsmembership/join.cfm, reveals that ACS has only educational and experience requirements for membership. The website for AIChE, www.aiche.org/memberhip/joininfo.htm, reveals that this organization also requires only a certain level of education and a certain number of years of experience. Education and years of experience are not outstanding achievements.

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 claims that he meets this criterion because the University of Southern California has recorded his patented invention and the university has "published" the invention. The recording of a patent is not published material about the petitioner in major media. First, it is material about the invention recorded in the same manner as all patents managed by the university and does not single out the petitioner personally. More significantly, a university publication is not major media. The

record contains no evidence that the major media, such as national newspapers, national magazines, or major trade journals, have published articles about the petitioner and his invention. As such, the evidence does not establish that the petitioner has gained national acclaim in the media resulting from his invention.

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

At the time of filing, the petitioner had obtained a patent in an unrelated field for his chemical reactor design. The petitioner currently has another patent pending. The petitioner submitted evidence that the University of Southern California sent out marketing letters to technology companies advising that the petitioner had invented a chemical reactor which might be useful to the company and that a confidential disclosure agreement would be sent to any company that requested further information. The petitioner submitted evidence that the University of Southern California sent confidential disclosure agreements to Ube Industries, [REDACTED] BPA, and [REDACTED] presumably in response to a request to do so, and that the Senior Vice President of Johann Haltermann signed the agreement. This evidence only establishes that four companies who were solicited requested additional information on the petitioner's invention and that one of those companies agreed to sign a confidential disclosure agreement in order to view the specifics of the invention. The petitioner has not submitted evidence that any of these companies have agreed to license the right to develop the petitioner's reactor. The petitioner did not submit letters from these companies discussing the significance of the petitioner's invention. A patent is merely evidence of an original idea, not its significance. It can be argued that the petitioner's field, like most science, is research-driven, and his development of original ideas resulting in one patent and a patent pending is not automatic evidence that the petitioner has made contributions of major significance to his field.

On appeal, the petitioner asserts that he is "shocked" that the letters from researchers at the Orthopedic Hospital in Los Angeles were not considered "important" by the director. The letters, however, fail to indicate that the petitioner's work on polymers for hip replacement constitutes a contribution of major significance to his field. [REDACTED] or Research at the Orthopedic Hospital, provides general praise of the petitioner's creativity and talent but does not identify any specific contribution made by the petitioner. Similarly, [REDACTED] a research scientist who has collaborated with the petitioner at the Orthopedic Hospital provides only general praise of the petitioner's ability to "research independently." Neither of these references implies that the petitioner is one of the top researchers in his field or that he has attracted national or international acclaim. Demonstrating that the petitioner is respected by his immediate colleagues is insufficient.

[REDACTED] professor at the University of Southern California writes:

[The petitioner] is a hardworking student who has demonstrated a high degree of individual initiative and is making good progress towards his doctoral degree. He has been instrumental in acquiring and setting up research equipment and has

developed a good polymer laboratory. He has been acquiring a mastery of analytical techniques for polymer characterization. His research focuses on the preparation and study of crosslinked polymer gels and he is particularly interested in biomedical applications. As a research assistant, he has been in charge of spectroscopic characterization of polyethylene components for hip replacement. His background in wood and paper engineering has enabled him to make significant advances in cellulose chemistry.

This letter indicates that, while talented, the petitioner is only "acquiring" a mastery of the techniques in his field. The letter does not indicate that the petitioner has already reached the pinnacle of his field as compared with experienced experts in the field. Nor does the letter identify any specific significant contribution that has influenced the entire polymer field.

██████████ professor at the University of Southern California, asserts that the petitioner is working in an important area with potential biomedical applications, that his research assistant position was a good opportunity for him, that he has a patent, and that he is creative and hard working. ██████████ does not assert that the petitioner ranks with experienced experts at the top of his field or that he has made significant contributions to his field. ██████████ an associate professor at the University of Southern California, asserts that the petitioner has the capability to make a significant contribution but does not state that the petitioner has already done so. ██████████ continues with general praise of the petitioner, asserting that he was able to upgrade equipment at the Polymer Instruction Laboratory with minimum cost to the department. Oteal Palmer, MIS Manager at the Information Service Division at the University of Southern California, provides general praise of the petitioner's instructing abilities. Finally, the petitioner provided two letters from Iranian companies confirming the petitioner's collaboration with those companies and providing general praise of his abilities.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national acclaim. By definition, national acclaim requires that the petitioner is well known in the field outside of his immediate collaborators and colleagues.

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

The petitioner initially submitted two articles published in foreign journals. On appeal, the petitioner submits three new articles, although these articles don't appear to have been published. 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 record contains no evidence that independent researchers have cited the petitioner's articles.

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

In response to the director's request for additional documentation, the petitioner claimed to have served a critical role at the Los Angeles Orthopedic Hospital through his "characterization and spectroscopy of alternative polymers, which are replacing broken hips in patients." The letters from doctors and scientists at the hospital, discussed above, provide general praise of the petitioner but do not indicate that he performed a critical role for the hospital as a whole. Moreover, the record does not include any letters from senior management for the entire hospital confirming that the petitioner played a critical role while serving as a research assistant. Finally, the record contains no information that the hospital enjoys a distinguished reputation nationally.

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 polymer researcher 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 polymer researcher, 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.