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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: Vermont Service Center Date: JUN 17 2002

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)

IN BEHALF OF PETITIONER:

[redacted]

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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DISCUSSION: The approved employment-based immigrant visa petition was revoked by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal.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. In his final decision, the director determined that the petitioner did not intend to continue working in his claimed field of expertise and had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner asserts that he has a full-time teaching job which is "the first step" to continuing his research in his claimed field of expertise. He submits a copy of an article which is "ready" for publication.

The petitioner earned a Ph.D. in Physics from [redacted] 1994. He filed the instant petition on September 8, 1998. The petitioner's references discuss his research with semiconductors and insulating surfaces. The materials make no reference to the petitioner's employment at that time. After the director approved the petition, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status. At that time, the petitioner indicated he had worked as a computer specialist for MetLife since February 1994, and was currently a LAN administrator. In response to a request for additional documentation, the petitioner submitted a letter from MetLife indicating that his duties included maintaining the physical computer network, configuring desktop and laptop computers, updating software, troubleshooting computers and printers, and helping with data entry and other administrative work. The petitioner also submitted a letter from the [redacted] confirming teaching assignments as an adjunct instructor during the Fall 1999 and Summer 2000 semesters.

On October 23, 2000, the director issued a notice of intent to revoke the instant petition, concluding, among other things, that the petitioner would not continue working in the field of physics. In response, the petitioner asserts that he is unable to obtain employment in his field without first becoming a permanent resident but that he has obtained work "closer" to his field. He submits new letters from his prior references supporting this assertion. He also submitted a letter from Technology Career Institutes, Inc. (TCI) offering the petitioner a fulltime instructor position beginning in January 2001. The petitioner's courses would include circuit theory, computer networking, mathematics and physics.

In his final decision, the director stated that the petitioner had responded to the notice of intent to revoke with a letter conceding that he would not work in his alleged field of expertise. On appeal, the petitioner asserts that he will be performing research at TCI and, in fact, has already completed a research paper "ready" for publication.

The regulations only require an intent to work in one's field of expertise. Contrary to the implication in the director's final decision, the petitioner did not state that he does not intend to

work in his alleged field of expertise. Nevertheless, the petitioner obtained his Ph.D. in 1992 and, at the time of filing the petition six year later, had yet to work in his claimed field of expertise. The failure to have ever worked in one's field after graduation suggests either a lack of intention to work in the field or an inability to secure employment in the field. The petitioner asserts that it is the latter explanation. The record does not sufficiently support the petitioner's assertion that a physicist who is one of the very few at the very top of his field would have difficulty securing employment as a nonimmigrant. As such, the petitioner's admitted difficulty in securing employment in his field, while not necessarily implying that he has no intent to work in the field, is indicative of a lack of national acclaim. For the reasons discussed below, even if we conclude that the petitioner does intend to work in the field of physics, we concur with the director's other conclusion that the petition was approved in error as the record does not establish that the petitioner has sustained national or international acclaim in his field. The evidence submitted with the initial petition related to only two of the ten regulatory requirements for the classification sought by the petitioner, whereas the regulations require that a petitioner meet three of those criteria with evidence reflecting national 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). 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 physicist.

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 relates to 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.

In his final decision, the director stated that the record included "sparse" documentation relating to awards and past scientific achievements. A review of the record reveals that the petitioner has never submitted any evidence of awards. As such, the petitioner cannot meet this criterion.

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

In support of the petition, the petitioner submitted three letters of support. The first letter, from an associate professor at states in its entirety:

> [The petitioner] is one of the small percentage of researchers who has risen to the top of his field. His main area of expertise is experimental Solid State Physics. His invention in thin film might bring [about a] new era in the thin film devices. His work is extremely important for [the] development of novel metal insulated semiconductor devices. Some of the ideas are original and innovative. I was very impressed by his contribution to his field.
>
> [The petitioner] had presented two research papers to the and the of Science. He presented a new invention on thin film devices. It is extraordinary.
>
> In summary, it is fair to say that [the petitioner] has received international recognition, and his expertise is an [sic] extremely needed for the development of novel thin film devices.

does not provide his own qualifications to evaluate the petitioner or even explain how he came to know of the petitioner's work. Moreover fails to satisfactorily explain the significance of the petitioner's "invention." While the petitioner's research may be of value, it can be argued that any research must be shown to have some potential benefit if it is to receive funding and attention from the scientific community. Not every original research project can be considered a contribution of major significance. A major contribution is one which has already influenced the field, not one which "might" do so.

[redacted] an assistant professor at [redacted] at the time of his initial letter, asserts that he worked in the same laboratory as the petitioner at [redacted] and that they jointly authored a paper which was presented at a conference [redacted] ntinues:

> Because of his extraordinary work, [the petitioner] is well respected by his peers in the physics community in this region as well as internationally.
>
> [The petitioner's] work has been an important contribution to the field of solid state physics and it is fair to say that [the petitioner] has received international recognition. His expertise in this area should be utilized to further our understanding of device characteristics and semiconductor/computer technology. If [the petitioner] [is] given the opportunity to pursue his career in the United States, I feel it would be of great benefit to the country and to science in general.

Once again, [redacted] fails to identify any specific contribution made by the petitioner or explain its significance.

Finally [redacted] a professor at [redacted] who supervised the petitioner's dissertation a[redacted] writes:

> [The petitioner's] dissertation work on capacitance-voltage characteristics of organic insulating films on semiconductors is an important contribution in the field of applied solid state physics. He presented his research findings at the [redacted]
>
> The work done by [the petitioner] can and should be further expanded to understand the interfacial region between semiconductors and insulating surfaces. I believe that if [the petitioner] gets a chance to engage in further research in his field of expertise, it may have important consequences in the area of solid state physics and its applications.

[redacted] does not explain how the petitioner's work with capacitance-voltage characteristics of organic insulating films on semiconductors was significant. Specifically, he does not explain how the research was innovative or how it influenced other research projects beyond the petitioner's own work. An assertion that the petitioner's future projects might be significant in the field is not evidence that the petitioner has already made contributions of major significance to his field.

Finally, [redacted] are the petitioner's collaborators and immediate colleagues. While such letters can be important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a

whole. National acclaim, by definition, requires that the petitioner is known beyond his immediate colleagues.

As stated above, [redacted] does not explain how he came to know of the petitioner's work. Even assuming that he is not one of the petitioner's collaborators or former colleagues, a reference letter prepared in response to a request for references is not evidence of the petitioner's notoriety independent of the preparation of the petition. An alien with national acclaim should be able to produce sufficient evidence of his acclaim independent of requests for letters of support.

The record does not establish that the petitioner's work represented a groundbreaking advance in physics.

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 published articles, one published in the *1991 Annual Report for the Conference on Electrical Insulation and Dielectric Phenomena* and the other published in the *Proceedings of the North Dakota Academy of Science for the 83rd Annual Meeting* in April 1991. 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 the petitioner's articles have been cited at all, let alone widely cited by independent researchers.

In response to the director's notice of intent to revoke and on appeal, the petitioner submits a new article "ready" for publication. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katighak, 14 I&N Dec. 45, 49 (Comm. 1971). At the time of filing, the petitioner had only published two articles.

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

In his final decision, the director noted that the petitioner's salary listed on the petition was "relatively low." As the petitioner had not yet worked in his field at the time of filing, he cannot

establish that, prior to the date of filing, he had received a high salary or other significantly high remuneration in relation to others in the 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 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 potential 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.