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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: EAC-00-144-52324

Office: Vermont Service Center

Date: 6 MAR 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 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, 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. 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 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.

As noted by counsel on appeal, the director concluded that "at least three of the ten categories listed in 8 C.F.R. 204.5(h)(3) have [been] satisfied." The director then stated, however, that the petitioner had not established that he was one of the very few who have risen to the top of his field. Based on this language, counsel argues that the director determined that the evidence was sufficient to meet at least three criteria and refers to several reference letters which provide opinions as to the petitioner's position in the field.

The director's statements are admittedly very poorly worded. It would be nonsensical, however, for the director to conclude that the petitioner was eligible under the regulations but that the petition was not approvable. Thus, a more rational interpretation of the director's decision is that the petitioner submitted documentation which related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence which addresses at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim.

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 International Union of Materials Research Societies awarded the petitioner a Certificate of Outstanding Paper in 1999. The record reflects that this was a "young research award" limited to scientists 35 years old or younger. An award limited to a specific age group is not evidence that the petitioner is at the top of his field when compared with highly experienced experts in the field.

The Materials Research Society presented the petitioner with the Graduate Student Silver Medal Award in the fall of 1998. Once again, a student award does not compare the petitioner with highly experienced experts in the field.

The petitioner received the Manson Benedice Fellowship in recognition of excellence in academic performance and professional promise. A fellowship issued by a university to its students based on academic achievement is not a national award or prize. Moreover, academics is not a field of endeavor, but training for a future field of endeavor. Similarly, the petitioner's letters of commendation from his department are not national awards. In light of the above, the petitioner has not established that he meets this criterion.

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 Materials Research Society (MRS). While the petitioner submitted some materials related to MRS, the materials do not contain the membership

requirements. The materials do indicate, however, that MRS has 12,000 members, suggesting that it does not require outstanding achievements of its members.

The MIT Chapter of the Scientific Research Society elected the petitioner to associate membership in Sigma Xi. As local chapter officials elected the petitioner, his membership was not judged by recognized national or international experts in his field. In the accompanying letter, the Chapter President indicated the petitioner was nominated to membership based on his academic record and demonstrated aptitude for research. Academic success, while laudable, is not an outstanding achievement. An aptitude for research is also not an outstanding achievement. The brochure for Sigma Xi in the record reveals that it invites as associate members the country's "most promising students in science and engineering who have shown potential as researchers." Sigma Xi invites to full membership "those who have demonstrated noteworthy achievements in research." A "noteworthy" achievement is not necessarily an outstanding achievement. Moreover, the petitioner is only an associate member.

Alpha Nu Sigma Society, an honor branch of the American Nuclear Society also admitted the petitioner as a member. Once again, the local chapter admitted the petitioner to this society. In addition, the materials in the record suggest membership is based solely on academic achievement.

The evidence submitted to address this criterion does not meet the plain language requirements of the regulation and do not reflect national acclaim for achievements in the petitioner's field, as opposed to academic achievements comparative to other students at MIT. Thus, the record does not reflect that the petitioner meets this criterion.

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 record reflects that the petitioner's student awards and fellowships were reported in an MIT school publication and a department newsletter. First, a university's student or faculty publication is simply not major national media. Moreover, the articles simply report several recipients of honors, one of whom is the petitioner. They do not constitute articles primarily about the petitioner. The evidence submitted to address this criterion falls far short of the regulatory requirements. As such, the petitioner has not established that he meets this criterion.

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

The petitioner asserts:

Since 1994 I have successfully modeled four materials which include: ice (in a one-year project supported by the Petroleum Research Fund administered by the American Chemical Society); silicon carbide (in a three-year project sponsored by the Air Force Office of Scientific Research and in a two-year project sponsored by

the Knolls Atomic Power Laboratory); zirconium carbide (now sponsored by the Knolls Atomic Power Laboratory; and argon (in collaboration with the Japan Atomic Energy Research Institute). I have also proposed and implemented an innovative simulation strategy for continuum/atomistic coupling (in a two-year project sponsored by the Sandia National Laboratory), for which I won the prestigious MRS Award in 1998, and the IUM RS-ICAM Award in 1999.

Dr. Sidney Yip, the petitioner's advisor at the Massachusetts Institute of Technology (MIT), concludes that the petitioner "will make important scientific contributions." Dr. Yip bases his conclusion on the petitioner's work on three projects "of National Interest" in Dr. Yip's laboratory. Specifically, the petitioner led the research group's efforts "to determine the strength of ceramic materials for structural applications at very high temperatures" aimed at improving the operation of aircraft engines. Dr. Yip also asserts that the petitioner has "contributed significantly" to two other projects. The first is an effort "to determine how certain metals deform under shock wave conditions." Dr. Yip asserts that this research is important for modeling tests of our nuclear weapons since the U.S. no longer performs tests of the weapons themselves. The final project is an effort "to develop a nuclear waste form that will encapsulate radioactive ions" aimed at developing a solution to the disposal of high-level nuclear waste. While Dr. Yip discusses the petitioner's projects and their importance, he does not specify in detail any contribution to these projects which is viewed in the field as having major significance. Dr. Yip does not assert that the petitioner has sustained national acclaim due to his research in Dr. Yip's laboratory.

Dr. Yip's collaborator at MIT, Dr. Ali Argon, asserts only that the petitioner's contributions "commensurate with the up-and-coming junior faculty in a principal research university," and that he has "great potential" to become one of the leaders in computational simulations. Dr. Argon recommends that the petitioner be approved in the national interest, a less exclusive category than that sought by the petitioner.

Dr. Hideo Kaburaki, who met the petitioner through a collaboration with Dr. Yip, asserts that the petitioner has a "rare talent" in theory and computation, but fails to specify any contribution which has had a major influence on the petitioner's field. Dr. Lisa Porter, a physicist who collaborated with the petitioner while she was a post-doctoral researcher at MIT provides general praise of the petitioner, predicts that he will make great contributions in his field, but fails to identify any contributions that he has already made. Dr. Vasily Bulatov, a former professor at MIT, provides general praise and asserts that the petitioner is one of the best Ph.D. students he has observed. In order to be eligible for the classification which the petitioner seeks, however, he must be one of the best physicists even when compared with others who have extensive experience in the field. More specific to this criterion, Dr. Bulatov fails to identify any specific contributions already made by the petitioner. Dr. João Francisco Justo Filho asserts, "I am pretty sure that [the petitioner] will be a leading scientist of his field very soon."

Dr. Cai-Zhuang Wang, the petitioner's collaborator during his summer projects at Ames Laboratory and Dr. Maurice de Koning, who collaborated with Dr. Yip as a visiting professor, provide general praise with no discussion of how the petitioner's work had already influenced his field.

Sow-Hsin Chen, a professor at MIT, provides some discussion of the significance of the petitioner's work:

For example, a new algorithm he introduced in a 1997 Physical Review B paper titled "Order-N method to calculate the local density of states" enables several research groups in the U.S. and Germany to calculate materials properties for much bigger aperiodic systems than before; and a paper he published in Physical Review E in 1998 titled "Coupling continuum to molecular dynamics simulation" broke the ground in this area, and has won him an international reputation.

Dr. Jeffrey Freidberg, Chairman of the Department Committee on Graduate Studies at MIT, reiterates Dr. Chen's assertions.

Yoshiya Fujiwara, assistant chief engineer for Honda who collaborated closely with Dr. Yip's laboratory, provides more details regarding the petitioner's work. He states:

[The petitioner's] publications, including four papers in our area of collaboration, are of the best quality: lucid and bold – they are works of major significance to the field of materials modeling. . . .

. . . Our project was mainly focused on thermal conductivity calculations, especially for carbon compounds. [The petitioner] had already done significant amount of research at that time, with two papers published on the topic, so he was recommended to be my partner. He provided me with his own source codes and documentation (his work since 1995), so I was able to get into the research immediately. . . .

One problem that arose during our collaboration was the so-called low temperature error, a long-standing unsolved problem in the field, where molecular dynamics simulation fails to provide the correct thermal conductivity at low-, or even room-temperatures. By an impressive work of theoretical physics, [the petitioner] was able to solve it in 1998, coming up with a completely novel algorithm called the Quasi-Momentum Relaxation (QMR) method, which greatly improves the accuracy of low-temperature simulation results. With this new algorithm, I obtained curves of thermal conductivity for crystalline Si from 200K to 2,000K using classical molecular dynamics – the first such attempt ever, and we are reporting these results in a joint paper this year. It is just one example of his many important contributions to the field, which collectively are making a big impact.

The above letters are all from the petitioner's collaborators, mentors, and immediate colleagues. While such letters can be useful in detailing the petitioner's role in various projects, they cannot by themselves demonstrate national acclaim. In order to demonstrate national or international acclaim, a petitioner must demonstrate notoriety beyond his immediate colleagues.

The petitioner did initially submit one letter from an independent expert. Dr. Genrich Krasko, a retired physicist from the U.S. Army Research Laboratory, Aberdeen Proving Ground, indicates that he became familiar with the petitioner's work through one of his published articles. While Dr. Krasko asserts that one of the petitioner's articles published after the date of filing won him "instant fame" and that his ideas are "pioneering," he fails to specifically discuss the significance of the petitioner's contributions or how they have changed or influenced the field.

In response to the director's request for additional documentation, the petitioner submitted numerous brief letters, several of which are from independent researchers who only know of the petitioner through his reputation. Many of these letters use identical language when discussing the petitioner. While some assert that the petitioner ranks high in the field despite his age, many simply assert that the petitioner is highly regarded in the field or one of the top "young" investigators. While these letters fail to identify any specific contribution or explain how it has influenced the field or the author's own project, they do suggest that the petitioner has gained recognition for his work. Considering all the evidence in the light most favorable to the petitioner, he minimally meets this criterion.

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

As of the date of filing, the petitioner had authored 10 published articles. 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.

Independent researchers have cited four of the petitioner's articles, one of which received 10 independent citations in the four years since its publication. A maximum of 10 citations of one article simply does not demonstrate that the petitioner is widely cited as claimed.

The petitioner also submitted several e-mail messages between the petitioner and other researchers in his field. While they reflect interest in his work, the discussions appear to reflect professional dialogue about issues of mutual interest as opposed to recognition that the petitioner's work represents a major contribution to the field.

As stated above, in response to the director's request for additional documentation, the petitioner submitted several letters from independent researchers. Some of these researchers indicate that they

became aware of the petitioner's work through his articles. While not as impressive as a large number of citations, it is certainly indicative of an interest in the petitioner's work beyond his immediate colleagues. Once again, considering all of the evidence in the record in the most favorable light, the petitioner minimally meets this criterion.

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

Initially, counsel asserted that the petitioner played an important role for MIT. While MIT certainly has a distinguished reputation, it is not clear that every graduate student performing in a research laboratory plays a leading or critical role for the university as a whole. Students remain for only a few years, and the reputation of MIT does not rest on any particular student. Dr. Yip asserts that his laboratory is preeminent nationally and internationally and that the petitioner has played an important role in several of the laboratory's projects. Assuming the laboratory is preeminent, it maintains this reputation through Dr. Yip's leadership and the contributions of all of the high quality researchers whom MIT attracts. In general, research laboratories at universities are staffed by professors, research associates, postdoctoral researchers, and students. Students graduate and even postdoctoral researchers tend to move on after they complete their time. While the record indicates that the petitioner contributed original ideas to some of the projects ongoing in the laboratory and appeared as first author on some of the articles reporting results obtained in the laboratory, it does not follow that he, as a student, played a leading or critical role for the laboratory as a whole.

The record demonstrates that the petitioner has an extremely impressive academic history which predicts a successful career. The record does not contain evidence, however, which establishes that at this stage in his career, the petitioner has attained national acclaim. As discussed above, at best the petitioner minimally meets two criteria. As discussed above, much of the evidence submitted in support of the remaining criteria does not even comply with the plain language requirements of the pertinent regulation, let alone reflect national acclaim. As such, even when considering the record as a whole in the most favorable light, the petitioner falls far short of establishing a third criteria.

On appeal, counsel argues:

It is not easy to carry out a straight-forward objective "comparison" between two leading researchers at the top of a field in the fashion of comparing two numbers, for each researcher may work in several slightly different sub-areas. Therefore the type of "comparison" the Service Center requests is carried out in the scientific community based on opinions from a number of peer referees.

Section 203(b)(1)(A) of the Act, however, requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce

unsolicited materials reflecting that acclaim. In addition, the regulations provide 10 objective criteria for use in evaluating claims of extraordinary ability. A petitioner cannot rely instead on the opinions of his peers.

Finally, on appeal counsel argues that the petitioner's age and the stage of his career does not preclude him from establishing eligibility for this classification. Counsel notes that the director describes the petitioner a "very capable young scientist," concluding that the director presumptively denied the petition based on the petitioner's age.

The director's description of the petitioner's abilities comes straight from the petitioner's own references. While some of the references with less independence from the petitioner rate him at the top of his field despite his age, many of the references compare the petitioner only within his own age group. Dr. Farid Abraham states that the petitioner "is among the top, if not the top, young investigator in the fields of materials and nuclear engineering." Dr. John S. King states that the petitioner "must be ranked among the very few exceptional young scientists in nuclear materials research anywhere." Dr. Shi-Yu Wu states that the petitioner "is one of a small group of young scientists who are doing cutting edge pioneering work in the field of computational materials science." Dr. Nasr M. Ghoniem uses nearly identical language. Dr. Chakram Jayanthi states that the petitioner is "one of a small group of young scientists who can cross disciplines with ease." In light of these statements, the director was certainly justified in concluding that the petitioner was a talented young scientist who had yet to reach the pinnacle of his field. While the law does not specify any amount of experience necessary for this classification, a petitioner who is just completing his studies has a heavy burden. He must demonstrate that he compares with highly experienced experts in his 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 impressive 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.