

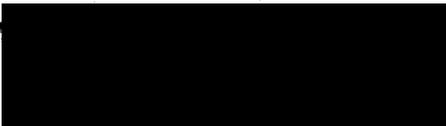


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: [Redacted] Office: Nebraska Service Center Date: 11 MAR 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, Nebraska 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 --

(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.

The petitioner seeks classification as an alien with extraordinary ability as a senior contact engineer at General Motors Corporation. 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, 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 submits documentation showing that a Young Researcher Fellowship "will be awarded" to the petitioner. The record does not establish the size or significance of the prize, but a message to the petitioner from conference organizers states that the petitioner "will" receive "the Young Researcher Fellowship to attend the Conference." This wording suggests that the fellowship amounts to little more than a grant to cover the petitioner's expenses.

In 1992, the petitioner was one of 11 undergraduate students at Dalian University of Technology to receive a Ju-Ying Fellowship of 800 yuan. There is no evidence that this scholarship is recognized nationally or internationally, and because it is available only to undergraduate students at selected universities, it excludes from consideration all students at other universities, as well as every scientist who has progressed beyond the undergraduate level.

The Guang-Hua Fellowship, which the petitioner received in 1994, is similarly restricted in its pool of potential recipients. It appears to be available only to students at Tsinghua University. University study represents training rather than a field of endeavor in its own right, and to qualify for this highly restrictive visa classification, the petitioner must establish that he stands at the top of his entire field, as opposed to students or individuals in his age group.

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 American Society of Mechanical Engineers ("ASME") and the North American Deep Drawing Research Group ("NADDRG"). A NADDRG communication in the record states "[t]he requirement of active membership is at least one technical presentation per year in our Spring/Fall meetings." The record does not show that one presentation per year is an outstanding achievement.

ASME documentation in the record indicates that the association has "over 125,000 members," a substantial size which does not suggest strict membership requirements. Other documentation indicates that full member status in ASME depends on "attainments equal to 12 years of experience in the engineering profession or teaching, five years of which have been in 'responsible charge.'" Even then, "a baccalaureate degree in an approved engineering technology curriculum shall be accepted as equivalent to eight years of active practice," which explains how the petitioner could have become a member at the age of 29, before he could have attained 12 years of work experience. Work experience and baccalaureate degrees are not outstanding achievements. None of the above membership requirements appear to involve judging by recognized national or international experts.

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 Dalian University of Technology News announced the 11 winners of the aforementioned Ju-Ying Fellowship. From its name, this publication appears to be a university newsletter rather than major media with national or international distribution.

The Linhai Evening News published an article in 1996, discussing the petitioner's educational credentials and high academic performance. This story appears to be from a local publication; its principal focus is not on any research accomplishments made by the petitioner, but rather the "exciting news" that the petitioner "is going to study abroad," which appears to be a topic of local interest, unlikely to garner the attention of major national media.

The petitioner submits evidence that other scientists have cited the beneficiary's research in their publications. Citation of the beneficiary's work, however, does not establish that the articles containing the citations are "about" the beneficiary or his work. Rather, the articles are about a common area of interest shared by the authors and by the petitioner, and the petitioner's work (like the work of others) is mentioned in passing and credited in bibliographic endnotes. These citations are better understood as a gauge of the field's reaction to the beneficiary's own writings, covered by a separate criterion further below.

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 sat on two Transactions Selection Committees, selecting papers to be presented at a conference presented by the Society of Automotive Engineers ("SAE"). The record, however, does not show that service on these committees is a mark of acclaim or extraordinary ability. A letter from the coordinator of SAE's Technical Paper/Presentation Program indicates "we are in desperate need of additional reviewers." References to "volunteers" and the petitioner's "interest in becoming a reviewer" suggest SAE did not invite or select the petitioner to serve as a reviewer; rather, the petitioner appears to have answered an open call for such reviewers. The coordinator's letter also indicates that the SAE accepted the petitioner as a reviewer before the organization was fully acquainted with the petitioner's credentials; the coordinator has instructed the petitioner to submit "a brief resume . . . to enable the Chair to better assign the papers based on your areas of expertise." The judging guidelines instruct committee members to defer to colleagues if a given paper is outside the member's area of expertise.

The petitioner also reviewed two papers submitted to the ASME 2000 International Congress and Exposition. The letter accompanying the manuscripts instructs the petitioner to "pass the manuscripts on to one of your colleagues" if the petitioner himself is "unable to review the papers at this time." This provision indicates that the reviewers are not limited to the top figures in their field; a substitute reviewer, potentially unknown to the organizers, may be chosen. Regarding one paper reviewed by the petitioner for the ASME event, two of the authors have written letters of reference on the petitioner's behalf.

For the above reasons, we find that while the petitioner has been in a position to evaluate the work of others in his field, he has not done so in a capacity that reflects or causes national or international acclaim.

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

The petitioner submits 17 letters from various witnesses, discussing the petitioner's work. We will discuss examples of these letters here. Professor June K. Lee of Ohio State University (where the petitioner earned his doctorate) states that the petitioner conducted research regarding practical problems of stamping sheet metal for automobile parts. Prof. Lee states that the petitioner's "successful findings are now in use by [the] automotive industry and researchers worldwide," and that the petitioner's "contributions to the automotive industry . . . are truly remarkable and regarded as major breakthroughs."

Dr. Z. Cedric Xia, technical specialist at Ford Motor Company, states that the petitioner "presented a totally new approach to the problem" of springback, which causes unwanted deformation of parts stamped from lightweight metals such as aluminum. Dr. Xia states that the petitioner's "approach is not only theoretically pioneering, but also of engineering significance, as it opened the door for accurate springback modeling."

Dr. Michael L. Wenner, principal research engineer at General Motors Corporation, states that the petitioner "invented an ingenious method for determining parameters for a highly advanced model of metal deformation. . . . This method is utterly unique." Dr. Yang Hu, a stamping specialist at Daimler Chrysler Co., was "deeply impressed by [the petitioner's] pioneering research work on the material properties for springback prediction."

Dr. Sheng-Dong Liu, manager of Advanced Forming and Structural Modeling at National Steel Corporation, credits the petitioner with "remarkable accomplishments in sheet metal forming." Dr. Ming F. Shi, technical manager of Advanced Applications Technology at U.S. Steel Automotive Center, states that the petitioner's achievements in modeling various properties of sheet metal "place him at the top of this very important field of tailored blank applications."

Professor Michel Brunet of the National Institute of Applied Sciences, Lyon, France, states that the petitioner, through "pioneering research . . . has made outstanding contributions to the better understanding and more robust prediction of springback," which could ultimately save the automotive industry millions of dollars "as his techniques are widely adopted."

As shown in the above letters, officials from several automobile manufacturers, steel companies, and academic institutions regard the petitioner's work to be a major advance in his field of endeavor. Therefore, we find that the petitioner has satisfied this criterion. Nevertheless, assertions to the effect that the petitioner is well-known, or that his ideas are widely used, cannot substitute for direct documentary evidence that the petitioner is widely acclaimed as one of the top figures in his field. Satisfaction of one regulatory criterion cannot infer extraordinary ability when the petitioner has not satisfied at least two other criteria.

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

The petitioner states that he has written "7 journal articles, 9 conference papers, 3 theses, 18 project reports, and 11 presentations." Several witnesses assert that the petitioner's

published output is impressive, although many of those same witnesses claim a considerably greater output for themselves.

The petitioner claims that his work is referenced in "10 citations in professional publications and 3 citations in technical presentations by others." The petitioner lists seven works containing the citations; some of these works contain multiple citations of the petitioner's work. The petitioner submits documentation from the three presentations. The petitioner also submits copies of two published articles and two unpublished manuscripts which had been submitted for publication. Because the manuscripts had not yet been published, the citations therein do not constitute "citations in professional publications."

Of the above seven works citing the petitioner's publications, two of them are by the petitioner's collaborators; the citations are self-citations by those collaborators. Four of the remaining five are by individuals who have written letters on the petitioner's behalf. The remaining piece is an unpublished manuscript submitted to the ASME Journal of Engineering Materials and Technology, along with a copy of the cover letter submitted with it. It is not clear who provided these materials to the petitioner. In any event, the citation rate established by the petitioner does not indicate that the petitioner's published work is among the most influential or heavily-cited in the field.

The director denied the petition, acknowledging the evidence submitted but finding that this evidence, as a whole, does not establish the requisite national or international acclaim which an alien must establish in order to qualify for this highly restrictive immigrant visa classification.

On appeal, the petitioner argues at length that he has met his burden of proof. The petitioner also submits two additional witness letters. One of the newly-submitted letters is from Wendy Song, a senior project engineer at General Motors where the petitioner seeks employment. Ms. Song states that the petitioner was instrumental in improving metal stamping technology and modeling springback deformation, a proposition which this office has not disputed. Most of the witnesses have focused on the petitioner's work relating to springback. The other witness is Dr. Sijun He, a graduate research associate at the University of Michigan and one of the authors of the unpublished manuscript discussed above in the context of the initial filing. Dr. He states that "successful application of [the petitioner's modeling] technology would reduce or eliminate the physical prototyping, thus saving multi-million dollars on the vehicle platform." While this contribution may eventually result in significant cost savings for U.S. automobile manufacturers (no manufacturer claims to have already realized such savings), the structure of the regulations does not equate a single well-received achievement with a pattern

of sustained national or international acclaim, unless that achievement has resulted in a major international prize (which is not the case here).

The petitioner discusses various technical aspects of sheet metal forming, and states that the creation of physical prototypes "is becoming prohibitively expensive," and thus the industry benefits from modeling technology such as that developed by the petitioner. The petitioner's assessment of the importance of his own work is not evidence of sustained acclaim. The petitioner then quotes passages from witness letters which we have already discussed above, and argues that he has satisfied several of the criteria previously claimed. As with the witness letters, we have already addressed the petitioner's evidence. Much of the evidence limits comparison to graduate students or researchers at very early stages in their careers.

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 an 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 shows talent as an engineer, and has wrought at least one significant advance 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, including the most established and experienced researchers as well as students and recent graduates. 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.