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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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:

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

for 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 is a postdoctoral research associate at Iowa State University ("ISU"), seeking a position as an assistant professor or biosystems engineer. The petitioner states "I believe that I have contributed significantly to improve agricultural production through high quality research, not only in my country, but also in the U.S. through research in improving water quality and developing sustainable agricultural production systems."

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.

[redacted] former president of the Crop Science Society of the Philippines, states that the petitioner co-authored "one of the 10 Best Papers at the 5th Annual Scientific Meeting of the Federation of Crop Science Societies of the Philippines." The record does not establish the significance of this award, or that the award is recognized outside of the professional society that presented it.

The petitioner has received travel grants, research grants, academic awards and fellowships. These awards appear to exclude the top researchers in the field from consideration, because they are intended for students and postdoctoral trainees. Also, awards limited to students or researchers at one particular university are not national or international in scope. ISU documentation shows that the petitioner was one of 22 graduate students and postdoctoral fellows to receive "International Research Grants" from ISU's College of Agriculture.

Furthermore, research grants do not recognize excellence in past achievements, but rather provide funding for future work. One claimed prize was in fact a "workshop . . . to train participants in farmer participatory methodologies, landscape ecology, and gender analysis." The University of Georgia funded the petitioner's "trip and training expenses." Another claimed prize is actually a grant proposal, indicating that the grant itself had not yet even been awarded. An application for a grant to fund a project which apparently has not yet begun is not a prize for excellence in the field.

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 documents his membership in the American Society of Agricultural Engineers and the Crop Science Society of the Philippines, but he submits no evidence to show that either organization requires outstanding achievements of its members.

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 was the co-author of a section of a report submitted to the Iowa State Legislature. The Des Moines Register devoted a number of articles in its "Local News" section to the report. The articles do not mention the petitioner and thus the articles are not "about the alien" as the regulation requires. Iowa State Daily, apparently an ISU campus publication, also discussed one of these reports, again without mentioning the petitioner. There is no indication that the petitioner's work has attracted coverage in nationally- or internationally-circulated media, rather than local newspapers or campus publications.

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

The petitioner submits partial copies of his master's theses, doctoral dissertation, and technical papers submitted to international conferences in 1998 and 2000. The above evidence shows that the petitioner wrote theses and dissertations as part of his graduate study, but because such papers are generally an integral and essential requirement for advanced degrees, the fact that the petitioner wrote them does not establish scientific contributions of major significance in the field. Similarly, not every published or presented work of research constitutes a major contribution to the field.

Dr. Sadiqul I. Bhuiyan, water scientist and International Rice Research Institute ("IRRI") representative for Bangladesh, states that the petitioner's research pertaining to rainfall and rice growing is "applicable in about 126 million hectares of rice lands in Asia of which 36% is affected by excess water problems." Dr. Bhuiyan states that the petitioner found that "proper timing of planting and harvest" can dramatically reduce crop loss caused by flooding.

ISU professors who have supervised the petitioner state that the petitioner has "excellent qualifications" as a researcher, and they describe the petitioner's duties in specific projects, but they do not explain how the petitioner's accomplishments and findings are more significant than those of other researchers, nor do they establish that the petitioner is one of the nation's best known researchers in his field.

The witness letters do not establish that the petitioner's work has earned special attention outside of the institutions sponsoring that research, or that the petitioner's research has had actual results (rather than potential future results) far exceeding those

achieved by almost all other researchers working in his area of expertise. The assertion that the petitioner's research could conceivably benefit thousands of farmers does not establish that the petitioner's work actually has had such an effect, or that the farmers are likely to implement, or know about, the petitioner's findings.

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

The petitioner submits a bibliography from the IRRI Library, indicating that the petitioner is the author or co-author of 14 items. Some of these items appear to be reports or internal seminar presentations. One of the petitioner's articles appeared in Hydrology, an international journal, and the petitioner wrote an article in Resource, a publication of the American Society of Agricultural Engineers. International audiences have also been exposed to some of the petitioner's work through international conference presentations.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner asserts that his presentations at scientific conferences fulfill this criterion. Scientific conferences, however, are not artistic exhibitions or showcases; presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience.

The petitioner has shown that he has published and presented his work, but at the same time we cannot ignore the enormous volume of such work generated by the research community each year. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, stated that every postdoctoral researcher "has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." If a committee of representatives from the top U.S. universities consider publication to be "expected," even at the postdoctoral level, then we cannot reasonably hold that publication of scholarly articles is automatically evidence of sustained acclaim. We must consider the research community's reaction to those articles. In this instance, the petitioner has not established any significant reaction (such as heavy citation) to that work.

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

The petitioner claims to have performed in such roles for IRRI, ISU, and the Southeast Asia project of the University of Georgia's

Sustainable Agriculture and Natural Resource Management Collaborative Research Support Program ("SANREM CRSP").

IRRI documents show that the petitioner served on IRRI's Irrigation Water Management staff, as a research aide (1976), research assistant (1977-1986), senior research assistant (1987-1995), and finally as an assistant scientist (1995-1997). the petitioner's supervisor throughout the petitioner's time at IRRI, states that the petitioner "wrote several IRRI Seminar papers which became part of the IRRI Annual Reports and were also reported in national and international scientific meetings." Given that the IRRI is primarily a research institution, conducting and disseminating such research would not inherently distinguish the petitioner from other researchers at the same institution. states that the petitioner "took a leadership role" on specific projects, but a project is not a self-contained organization or establishment; there is no indication that the petitioner was a key official for the 975-employee organization as a whole, as is the case with (for instance) the IRRI's 15-member board of trustees who set the institute's policies.

SANREM CRSP-Southeast Asia program director Dr. Ian Coxhead describes the overall goals of the program, and states that the petitioner's "research work contributed to the global and regional goals of SANREM CRSP." does not indicate that the petitioner had a leading or critical role within the organization. He indicates only that the organization funded the petitioner's research. As above, to assert that a researcher performs in a leading or critical role by virtue of performing research assumes an unacceptably broad application of the term "leading or critical." SANREM documents in the record identify the petitioner's project among several "student theses."

Professor head of ISU's Agricultural and Biosystems Engineering Department, states that he was principal investigator of a project in which the petitioner "was instrumental in setting-up and laboratory/field testing of a system to directly measure small changes in liquid levels over time" and "was in-charge of field installation of instruments and data management for the project." Professor James L. Baker, also of ISU, states that he is "currently working with [the petitioner] on the water quality monitoring project in the Upper Maquoketa River watershed in northeast Iowa." Prof. Baker states that the petitioner "is responsible for programming ISCO flowmeters and automatic water samplers" as well as "the field maintenance of these instruments and data analyses."

Individual projects, out of countless projects at hundreds of universities, are not themselves distinguished organizations or establishments. While the petitioner carried out important tasks as part of these particular projects, there is no evidence that such tasks are unusual for graduate students or postdoctoral

researchers. We cannot conclude that the petitioner fulfilled a leading or critical role for ISU; rather, he performed in a subordinate role for projects undertaken by some of its professors.

Beyond the above criteria, the petitioner cites additional evidence such as documentation of his graduate degrees and a letter from IRRI's Human Resource Department, indicating that the petitioner's "performance evaluation rating from 1990-1991 and 1991-1992 was Very Good and Exceptional, respectively." The letter is silent regarding the petitioner's ratings from 1976 to 1989 and from 1993 to 1997. The petitioner does not explain how any of these documents establish that he has earned national or international acclaim as one of the top researchers in his field.

The director informed the petitioner that the documentation submitted with the petition was not sufficient to establish extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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."

In response to this letter, the petitioner has submitted four additional witness letters. The petitioner submits copies of these same letters on appeal, and we will address them in that context.

The director denied the petition, stating that while the record indicates that the petitioner is a respected researcher, "the evidence does not show that the petitioner enjoys the sustained national or international acclaim necessary for this classification."

On appeal, the petitioner requests that his petition be considered under section 203(b)(2) of the Act, and states that his "advanced degrees and membership [in] the American Society of Agricultural Engineering" qualify him for classification under that section. There is, however, no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Consequently, discussion in this matter may relate only to the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act. If the petitioner desires consideration under a second classification, he must file a new petition with the appropriate fee and any necessary evidence and documentation.

The petitioner asserts that he "exhibited **extraordinary *academic* ability in the sciences compared with other students and professionals in Asia, Africa and Europe**" (emphasis in original). That the petitioner may have outperformed other students is not dispositive in this case, because graduate study is not a field of endeavor, but rather preparation and training for future entry into such a field (or further training for a field that one has already

entered). "Academic ability" does not inherently cause or establish acclaim in one's post-academic career.

The petitioner cites the four letters which he had submitted in response to the director's request for further evidence, as well as a new letter from Prof. The petitioner states that the individuals who wrote these letters are the most familiar with his work and therefore the best qualified to comment on it.

Prof. states that ISU hired the petitioner as a post-doctoral research associate "on the basis of his exceptional qualifications . . . and of the highly favorable recommendations of other well-respected engineers and scientists." Prof. Melvin states that the petitioner "has demonstrated extraordinary ability" in his work at ISU. Prof. Melvin does not explain why, if the petitioner is one of the top figures in his field, ISU employs him in a temporary, low-paying postdoctoral researcher position rather than in a tenured faculty position.

Professor of the University of the Philippines at Los Banos, states that the petitioner "was my student in Advanced Soil Physics. He belonged to the top ten (10) percent of my class." Prof. states:

> [The petitioner's] research . . . could be considered as a pioneering work or first of its kind here in the Philippines. The methodology that he followed and the empirical erosion models that he developed listed him as one of the rare few Scientists who were able to successfully and meaningfully combine the fields of soil science and hydrology. As a Soil Scientist myself, I consider his achievement and expertise to be one among the leaders (of Scientists and Consultants) in our field.

in a new letter on the petitioner's behalf, states that the petitioner's work has "raised his level of expertise to the upper echelon in the field of soil and water engineering," and that the petitioner's "achievements and potentials are at part with the upper 10% of the professionals in the field."

deputy administrator of the National Irrigation Administration ("NIA") in the Philippines, states that the petitioner's "achievements have placed [the petitioner] among top-rated Water Management Engineers in the country through high quality research." does not elaborate on the meaning of the term "top-rated." Some witnesses have stated that the petitioner is at the top of his field in terms of the quality of his professional training and credentials, which does not necessarily signify national acclaim (i.e. recognition throughout the field at a national level, rather than being known only to a few in that field).

Dr. [redacted] science advisor to the Consultative Group on International Agricultural Research, states that the group "supports a network of sixteen international agricultural research centers" including IRRI, where the petitioner worked for over 20 years. Dr. Lantan states "[t]he quality of [the petitioner's] researches and their impacts on-site and on international agriculture have been excellently rated and widely received for adoption and application." Dr. Lantin adds that the petitioner "has distinguished himself through high quality researches. I consider him as one of the top-rated researchers in the fields of sustainable agricultural production systems and of soil-water engineering."

These letters, while highly complimentary of the petitioner's training and ability as a researcher, cannot suffice to establish that the petitioner is nationally or internationally recognized as being at the very top of his field. The regulations at 8 C.F.R. 204.5(h)(3) set forth objective criteria to help establish the level of acclaim that an alien seeking this classification enjoys. These regulations reflect the demand for "extensive documentation" in the underlying statute. The petitioner cannot overcome the lack of objective documentation, which would exist whether or not the petitioner had sought immigration benefits, by submitting subjective witness statements prepared after the fact with the specific aim of assisting the petitioner.

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 a biosystems 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 in his field, and has earned the respect of some important officials, 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 or that he has earned national or international acclaim. 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.