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U.S. Department of Justice

Immigration and Naturalization Service

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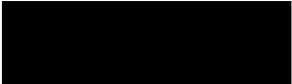


File: WAC 00 052 53139

Office: California Service Center

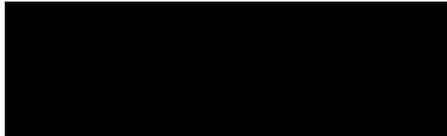
Date: 28 MAR 2002

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 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.

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.

Counsel asserts that the petitioner's "contribution to the computer technology is evidenced by [a] wealth of publications that present his original findings." Elsewhere, counsel asserts that the petitioner has written over 20 such published papers. While one of the ten regulatory criteria pertains to scholarly publications, such publications cannot by themselves constitute the totality of a successful claim of extraordinary ability. Counsel states that the petitioner's published articles establish his "original scientific research on lead-free soldering" and "low cost flip chip technology." Publication may help to establish the originality of the petitioner's contributions, but to establish the significance of the petitioner's work, it cannot suffice for the petitioner to offer his own or counsel's assessment of its importance. By statute and regulation, the petitioner must establish national or international acclaim; therefore, there must be evidence that the petitioner's contributions are

recognized nationally or internationally. At the time he filed the petition, the petitioner had just completed a postdoctoral assignment at the University of California, Los Angeles ("UCLA"). By definition, a postdoctoral researcher is essentially an advanced trainee who has yet to secure permanent employment. The burden is on the petitioner to demonstrate that, even at this very early stage in his career, he already ranks among the best-known figures in his field.

Much of the initial submission concerns the petitioner's educational background. While this documentation amply establishes that the petitioner is well qualified to work in his field, one does not earn national or international acclaim simply by graduating from prestigious universities.

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.

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

The petitioner submits one witness letter discussing his work. Professor King-Ning Tu, chair of the Department of Materials Science and Engineering at UCLA, describes the petitioner's postdoctoral work. Prof. Tu observes that many electronic components include lead-based solder, but pollution from lead is a growing environmental concern and, therefore, "The industry in [the] United States is forced to develop the lead free solder and this is very demanding." Prof. Tu states that the petitioner's other "project is on 'low cost flip chip technology' for the consumer products, such as smart card[s]. This technology becomes more and more important because electronic devices tend to be miniaturized and need many Input/Output connections in supplying the electrical power to the devices." Prof. Tu praises the petitioner's "very versatile background in materials science" and asserts that the petitioner "is a promising materials scientist," but does not specify how the petitioner has contributed to research in these areas, nor how the petitioner's work is among the most significant of its kind. The most detail Prof. Tu offers is the assertion that the petitioner "has prepared technical reports" for several corporations, "and also published several scientifically important articles on those areas."

*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 copies of several articles, some from top journals in the field, and abstracts from conference presentations. As noted above, publications cannot form the totality, or the majority, of a successful claim of extraordinary ability. The record is silent as to the reaction of independent experts to the petitioner's published work.

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

The petitioner submits a job offer letter from Motorola, offering the petitioner \$80,000 per year as a senior engineer/scientist, plus "a one-time employment incentive of \$7,500." The record shows that the petitioner accepted the offer and began working for Motorola shortly after he filed the petition. The petitioner does not demonstrate that \$80,000 per year is on the very high end of the salary range for scientists in his field.

The director requested further information to establish that the petitioner meets the high standards of this extremely restrictive visa classification. In response, counsel states that the petitioner "has become one of the most sought out individuals by employers involved in the [petitioner's] field of endeavor," stating that "Motorola, SEMATECH, and Fujitsu" seek to employ him. Counsel does not cite any source for this claim. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The fact that corporations are attempting to recruit the petitioner does not necessarily prove that the petitioner is "one of the most sought out individuals" in his field; it could, for instance, simply reflect growing demand in the face of a worker shortage.

Counsel states that "many acknowledged scientists . . . believe that [the petitioner] could contribute significantly to the electronics industry," but counsel does not even identify the "acknowledged scientists," let alone submit statements from them. The only named witness is Prof. Tu, the petitioner's former supervisor, whose familiarity with the petitioner's work is not evidence of wider acclaim. Even Prof. Tu has not described the petitioner as one of the most highly acclaimed figures in the field, or explained how (if at all) the petitioner has influenced the rest of his field. The assertion that the petitioner is "promising" and "could contribute" does not establish that the petitioner has already earned national or international acclaim for his past contributions.

Counsel notes that the petitioner trained under Prof. King-Ning Tu, who "is the world's leading electrical engineer and materials scientist." Even if counsel had produced independent evidence to support this claim, the petitioner does not achieve his own acclaim simply by virtue of studying under Prof. Tu. Counsel notes that Prof. Tu earns "measurably less" than the \$80,000 annual salary offered to the petitioner by Motorola. Given that the Motorola offer was for a job in private industry, rather than as a college professor, we cannot determine the significance of the difference in the salaries. Counsel asserts that "[m]ost researchers in [the petitioner's] field . . . receive considerably less than" \$80,000 per year, but again counsel offers no evidentiary support for this claim. Simply presenting evidence, and declaring it to be indicative of extraordinary ability or sustained acclaim, cannot suffice in this proceeding. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The director denied the petition, acknowledging the petitioner's "impressive career as a researcher" but finding that the petitioner's evidence falls short of the extremely high standard of the visa classification. For instance, the director noted that, in fields where publication is the norm, then the very act of publication cannot be automatically demonstrative of acclaim. On appeal, counsel states that he will submit a brief within 30 days. To date, a year later, the record contains no further submission and we will render a decision based on the record as it now stands.

On appeal, the petitioner observes that the director referred to UCLA as the petitioner's "current employer," when in fact the petitioner had already begun working at Motorola before the decision was rendered. The petitioner discusses his work at Motorola, and describes various projects and achievements there. Even if this work were demonstrative of sustained acclaim (which it does not appear to be), it cannot establish eligibility in this case. The petition was filed on December 13, 1999.

The petitioner began working for Motorola two days later, on December 15, 1999. Thus, anything he accomplished at Motorola took place after the petition's filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

For further information about the significance of his work, the petitioner offers several names, telephone numbers, and electronic mail addresses, with the suggestion that the Service contact those individuals. We adjudicate the petition based on the record as it stands. The burden is on the petitioner to provide any information that he believes will support his petition; he cannot meet this burden simply by recommending outside sources of information.

The petitioner makes several additional claims, regarding his activities and their significance, but these claims are either uncorroborated, or else clearly refer to activities that took place well after the December 13, 1999 filing date. For reasons already explained, the petitioner's discussion of his activities during 2000 and early 2001 cannot establish that the petitioner was eligible when he filed his petition in late 1999.

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 materials scientist 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.