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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.
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Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: 28 MAY 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:

[Redacted]

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. At the time he filed the petition, the petitioner was a postdoctoral associate at the University of Minnesota. 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 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.

Counsel asserts that the petitioner satisfies this criterion through having earned two scholarships from the National Scholarship Foundation of Greece in the 1988-1989 and 1989-1990 academic years. During that time, the petitioner was a 19-21 year old undergraduate student with no professional credentials. The record contains no information about the scholarships except that the petitioner received them.

Counsel also observes that the petitioner was among "Teachers Ranked as Excellent by their Students, Fall, 1995, in the *Daily Illini*." The full title of the piece is "An Incomplete List of Teachers Ranked as Excellent by Their Students, Fall 1995." This list includes hundreds of names. Under "Chemistry," the petitioner's department, 65 names appear, almost all of them teacher's assistants (including the petitioner). Counsel offers no explanation at all as to how this ranking is a nationally recognized award. The award is presented not by any body of recognized experts, but by the students at one university, and consideration is limited to individuals teaching those students. The sheer number of individuals named, all at one single university, does not tend to suggest that the individuals so named are among the small percentage at the very top of their field of endeavor.

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.

Counsel asserts that the petitioner is a member of an association "requiring nomination by existing members," as well as two "other organizations in the field." The plain wording of the criterion clearly indicates that, to qualify, the associations must require outstanding achievements of their members. Associations with no such requirement cannot, under any circumstances, fulfill this regulatory criterion, regardless of whether or not they require nomination by existing members. Securing such a nomination is not an outstanding achievement.

We note that the association that requires nomination is the American Chemical Society ("ACS"). According to ACS documents submitted with the petition, the ACS is "the world's largest scientific organization," the membership of which consists of "more than 152,000 . . . chemists, chemical engineers, and scientists in allied fields." The regulatory criteria at 8 C.F.R. 204.5(h)(3) have been designed with the purpose of distinguishing the top individuals from others in their respective fields. We cannot reasonably conclude that the ACS' tens of thousands of members all rank among the small percentage at the very top of the field of endeavor.

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 submits a letter dated December 11, 1997, requesting his assistance in evaluating a manuscript submitted for publication in the International Journal of Multiphase Flow. The petitioner has not shown that a single instance of peer review is evidence of acclaim rather than a somewhat routine duty in academia. Also, we note that the letter is from the journal's associate editor, [REDACTED] of the University of Illinois. At the time the letter was written, [REDACTED] was supervising the petitioner's doctoral studies at that institution. Therefore, this request from the petitioner's own supervising professor is not persuasive evidence that the petitioner is acclaimed throughout his field of endeavor, or that his work as a judge has been sought by anyone other than his own professors.

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

Counsel cites nine witness letters in an effort to meet this criterion. [REDACTED] the petitioner's supervisor at the University of Minnesota, states:

[The petitioner's] present responsibilities include exploratory experimental research and theoretical modeling of wear mechanisms and changes in tip shape of doctor blades. These are key elements of many high-speed, high-volume coating processes. . . . The performance of doctor blades is not understood. [The petitioner's] results will lead to improvements and perhaps innovations, not only in the target processes but others where blades are employed to apply liquid or to remove it, as in the ubiquitous process of squeegeeing. . . . [The petitioner's] other major responsibility is in facilitating throughout the Program the shift of computer-aided theoretical modeling of coating processes from serial supercomputers to the state-of-the-technology massively parallel supercomputing system that the University of Minnesota acquired last summer.

[REDACTED] asserts that he holds his postdoctoral associates to "the highest standards," but he does not specify any past work by the petitioner that has had major significance in the field. The assertion that the petitioner's current "exploratory" work "will lead to improvements and perhaps innovations" is speculative and does not show that the petitioner is responsible for existing contributions of major significance.

As noted above, [REDACTED] supervised the petitioner's doctoral studies at the University of Illinois at Urbana-Champaign. He states:

Multiphase flows are ubiquitous in industrial and environmental systems. Yet, this area is in a primitive state of development. . . .

One of the principal problems in this area is the understanding of how droplets distribute in a turbulent gas flow and how they deposit on boundaries. The work of [the petitioner] has taken us a long way in providing a solution.

The goal of his Ph.D. thesis was to explore general methods to describe the behavior of dispersing fluid particles in single phase flows or droplets in two-phase flows. The outcome[s] are two breakthroughs. His work on single phase flows opens the possibility of developing new ways of looking at turbulent heat and mass transfer. His work on two-phase flows will greatly enhance our ability to analyze gas-liquid annular flows, sediment transport and aerosol impaction on solid walls. . . .

His work at my laboratory and the laboratory [redacted] has enabled [the petitioner] to develop a unique set of skills that will enable him to be at the forefront in applying supercomputers.

Like [redacted] appears to emphasize what might someday result from the petitioner's work, rather than the findings that the petitioner has already made. The assertion that the petitioner "will . . . be at the forefront" does not place him there now, or otherwise establish that the petitioner had already become one of the best-known figures in his field while still a postdoctoral associate. The professional credentials [redacted] and [redacted] as well as those of other witnesses, appear to dwarf the petitioner's own accomplishments.

The other witnesses, who offer similar comments, are mostly the petitioner's current and former instructors, collaborators, and classmates. The lone exception appears to be [redacted] Brodkey of the Ohio State University, who states that his knowledge of the petitioner's work derives from reading the petitioner's published work and from conversations at professional gatherings. [redacted] asserts that the petitioner "has a proven record of achievement" and that "his approach to research will . . . be a major contribution to our understanding of turbulence," but he cites no specific contribution of major importance. Like the other witnesses, [redacted] essentially states that the petitioner is well qualified to work in his field and that major contributions are likely forthcoming at some future date.

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

At the time of the petition's filing, the petitioner indicated that two of his articles had been accepted for publication, with another two articles submitted for consideration. As of the filing date, these articles remained unpublished and thus were not scholarly articles in major publications. The petitioner had made presentations at three conferences, which is comparable to publication. We note that some of the petitioner's witnesses have published 200 articles throughout the course of their careers. The petitioner has not shown that the very act of publication or presentation is a rare achievement that sets him apart from most others in his field.

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

Counsel asserts that the beneficiary's poster presentations at two scientific conferences satisfy 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 director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director observed that witness letters carry greater weight if the witnesses are outside of the petitioner's immediate circle of superiors and collaborators. In response, the petitioner has submitted two new witness letters, information about his National Scholarship Foundation awards, and documentation of the petitioner's presentations and publications.

Some of the material submitted concerns the petitioner's activities after the petition's April 1999 filing date, such as a November 1999 professional conference. Even if this material demonstrated sustained acclaim (which it does not appear to do), it cannot retroactively establish that the petitioner was already eligible before that evidence even existed. See 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.

The petitioner submits Scientific Citation Index journal reports, indicating that the petitioner's work has appeared in highly-cited journals. Leaving aside the fact that these journals had not yet published any of the petitioner's work as of the filing date, the figures provided are averages. The figures do not show that the petitioner's articles have been heavily cited, nor do they imply in any way that an article's appearance in one of those journals is guaranteed heavy citation. We note that, while the Scientific Citation Index tracks citations of individual articles as well as calculating average by journal, the petitioner has submitted nothing from the Scientific Citation Index to establish that his particular articles have been the subjects of frequent citation.

For similar reasons, general evidence establishing that the petitioner has worked and studied at prestigious universities does not establish or imply that he, as an individual, is nationally acclaimed as someone at the top of his field. Eligibility must rest ultimately on the reputation of the alien himself, rather than that of the school where he works or the journals that publish his papers.

Counsel discusses various other evidentiary criteria but offers no persuasive arguments. For instance, counsel asserts that membership in the American Chemical Society is "restrictive," but fails to explain how an organization that boasts the largest membership of any scientific society can be credibly considered "restrictive." The requirement that prospective members must have two sponsors does not rise to the level of outstanding achievement, and ACS documents in the record indicate that ACS will assist prospective members to locate sponsors.

In response to the director's request for further information about the National Scholarship Federation of Greece and "[d]ocumentation from the organization granting the award," the petitioner submits a one-paragraph statement, signed by himself, indicating that a scholarship from the foundation "is very prestigious and it is offered only to a limited number of extremely

high ranking students. The number of students in each department that receive this award cannot exceed 4% of the undergraduate students in that department." The petitioner's own statement is not documentation from the organization granting the award. 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). It remains that the award is an undergraduate scholarship rather than an award presented to fully-trained professionals who actually work in a given field. Undergraduate study is not a field of endeavor, and the petitioner has not shown that the individual recipients of these scholarships receive national attention.

Counsel notes the director's request for letters from independent witnesses. Naming four initial witnesses and the various corporations that employ them, counsel states that the petitioner "has never been employed by any of these respective institutions," and therefore the letters are "independent letters of recognition." While the petitioner has not worked for the corporations, three of the four individuals that wrote the letters have clear and immediate connections to the petitioner.

██████████ writes of a "collaborative effort" between his company and the laboratory where the petitioner works. ██████████ states "I have known [the petitioner] for more than five years" ██████████ was a postdoctoral researcher at the ██████████ Champaign while the petitioner was a graduate student there.

██████████ likewise states "I know [the petitioner] since he was a graduate student at the University of Illinois at Urbana-Champaign . . . I worked in the same research group with [the petitioner]." Given that the witnesses themselves readily admit to close ties with the petitioner, counsel cannot credibly assert that their subsequent employment makes them independent witnesses.

The two new letters do nothing to refute the finding that the petitioner's reputation is largely restricted to his current and former associates and supervisors. One of the new letters is from ██████████ at ██████████ had been a professor at the University of Minnesota when the petitioner began his postdoctoral work there. The other new letter is from ██████████ already identified as the petitioner's doctoral supervisor. ██████████ asserts that the journal for which he had invited the petitioner to review an article is highly selective about its reviewers, but it remains that ██████████ was the petitioner's direct superior at the time of the request. The record does not indicate that anyone other than the petitioner's own professor has asked the petitioner to judge the work of others.

The director denied the petition, noting several of the aforementioned weaknesses in the record. On appeal, the petitioner contests various elements of the decision. There is no indication that counsel participated in the preparation or filing of the appeal.

The director had noted an absence of citations or published material about the petitioner's work. On appeal, the petitioner argues that, because of the processing time involved in preparing scientific articles, there had not yet been time for such articles to appear when the petitioner filed

his petition. The petitioner observes that his own articles had not yet been published as of the filing date. The fact that the petitioner's own work was still unpublished as of the filing date lends weight to a denial rather than an approval of the petition, for reasons already discussed. The petitioner states "citations on my work are expected no earlier than the Fall of 2000," several months after the February 2000 filing of the appeal. The petitioner's uncorroborated assertion that he expects such citations to appear in the future cannot reasonably establish eligibility. The anticipation that qualifying evidence will one day come into existence is no substitute for actual evidence.

The petitioner asserts "the number of the ACS members is kept low," and he claims that "150,000 [ACS] members is indeed a small number" when compared to the number of people who graduate with chemistry-related degrees every year. The petitioner revisits counsel's prior argument that the sponsorship requirement is a restriction on membership, but he never addresses the overriding and fundamental question of whether the ACS requires outstanding achievements, as judged by recognized national or international experts, as a condition of membership. Elsewhere on appeal, the petitioner observes that [REDACTED] is a member of the National Academy of Sciences." The National Academy of Sciences ("NAS") does require outstanding achievement, and it admits on the order of a few dozen new members each year. The petitioner evidently understands the significance of NAS membership, as he notes this membership as a means of establishing [REDACTED] credentials. The petitioner has not demonstrated that ACS membership has anywhere near as much prestige or recognition as NAS membership. [REDACTED]'s NAS membership may be strong evidence that [REDACTED] is at the top of his field, but it does not confer any acclaim on the petitioner. The petitioner states that, as an NAS member, [REDACTED] "opinion carries a lot of weight in the scientific community." The petitioner has not shown that other NAS members, with no ties to him, share similar opinions about him, or that the NAS as a whole has extended an invitation for the petitioner himself to join in his own right. While the opinions of NAS members carry weight, it remains that the visa classification is a highly restrictive one, more appropriate for NAS members than for former students of NAS members.

The petitioner mentions [REDACTED] in the context of the earlier letter in which [REDACTED] solicited the petitioner's review of a journal article manuscript. The petitioner asserts that the director has called [REDACTED] integrity into question. We do not question his integrity, or that of any witness in this matter. It remains, nevertheless, that the petitioner cannot establish acclaim at a national or international level (as the law plainly requires) by demonstrating that his own professor asked him to review a manuscript. This holds true whatever the professor's reputation or integrity. It shows only that the petitioner's professor believed the petitioner to be competent to review a manuscript; it does not demonstrate that anyone outside of the petitioner's circle shared this opinion.

The petitioner states:

[In the director's decision,] extraordinary ability is defined 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.” Notice that there is no mention for young researchers or small percentage of young researchers. Interestingly enough, . . . [elsewhere in the decision, the director] comes up with the argument that “the petitioner is not being compared to other young researchers . . . but rather against all those conducting research in the field.” Suddenly the definition is not enough, and the person has to be compared not only to the very top, but to the young very top!

The petitioner’s logic is not clear; the cited excerpts from the director’s decision appear to state the opposite of what the petitioner claims. The director’s intent appears to have been to state evidence that compares the petitioner only to others in his narrow age group (such as the petitioner’s undergraduate scholarships) cannot suffice because the petitioner must stand at the top of his entire field, rather than his age bracket within that field.

The petitioner, on appeal, does not succeed in refuting the director’s findings. Instead, he argues that the limited recognition he has received from his professors, collaborators, and students should suffice to establish his extraordinary ability. The petitioner has not shown that this recognition has extended to a national or international level, and therefore the petitioner has not met the threshold set forth in the regulations and the underlying statute.

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 researcher 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.