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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: CALIFORNIA SERVICE CENTER Date: 04 NOV 2002

IN RE: Petitioner:
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, 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 achieved sustained national or international acclaim at the very top level.

Counsel describes the petitioner's field as "research, design and development of electric[al] and mechanic[al] explosion prevention apparatus/equipment/instruments/devices." The petitioner expresses his intent to establish a research laboratory and "a company to manufacture and sell the industry explosion prevention products" developed in that laboratory.

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 statute and regulations both emphasize that any acclaim must be sustained; past acclaim which has not continued to the present cannot suffice to establish eligibility. We note that the petitioner entered the United States in September 1998, nearly three years before he filed the petition in June 2001. Given this significant interval between his arrival and the filing date, it is reasonable to expect evidence of the petitioner's acclaim in the United States if he has, in fact, sustained any acclaim that he initially earned in China. The petitioner has submitted evidence which, counsel 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 states that the petitioner has won 20 "significant awards and honors," 15 of them individually, the remaining five as a team member. One of the "honors" cited by counsel is not a prize or award. The petitioner's inclusion in the *Collection of Contemporary Chinese Men of Science and Technology* is more properly considered in the context of another criterion, relating to published materials about the alien.

Of the petitioner's 14 individual awards, 13 are not national. One is from his employer, two are provincial-level awards, and the remaining ten are all from municipal authorities. The only award at a national level is a Silver Award that the petitioner won at the 9th China National Invention Show in 1995. The five "team awards" mentioned by counsel were all presented not to specific research teams, but to corporations that employed the petitioner. The extent of the petitioner's responsibility for the companies' receiving the awards is not clear from the record. Only two of these awards qualify as national, the other three plainly having been awarded by provincial or municipal entities, with no indication that entities outside of Liaoning Province or the city of Shenyang were eligible for consideration.

The director, in denying the petition, stated that the petitioner had not established the significance of his awards. On appeal, the petitioner submits a letter from Yanhui Du, a director of the China Science and Technology Association, who states:

> In the 1995 9th National Invention Exhibition, as a judge of the Judging Panel, I was in charge of evaluating outstanding invention projects. In this exhibition, gold, silver and bronze medals were awarded to projects. . . . The Judging Panel consisted of national experts from different industries, including distinguished professors, researchers and senior engineers. . . .
>
> This exhibition was . . . the most significant event in the science and technology field. . . .
>
> [T]hree gold medals, five silver medals and twenty bronze medals were awarded to the best of the over 900 excellent projects.

The appellate submission establishes the national significance of the petitioner's 1995 silver medal. The petitioner has not claimed or demonstrated any national or international prizes since his 1998 departure from China.

> *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.*

A letter in the record informs the petitioner of his selection "on the first listing of the 'Hundreds-of-Millions of Experts Project' of Shenyang Municipality." Counsel states petitioner was one of only six individuals so chosen, and that the selectees "are considered as the most outstanding and important people in industry in the whole City of Shenyang." This project is clearly a local one, undertaken by municipal officials in Shenyang, or at best a local manifestation of a larger program. Also apparently local in nature is the petitioner's membership in the Shenyang Municipal Labor Protection Science and Technical Association.

A membership card reproduced in the record identifies the petitioner as a council member of the China Science and Technology Association. The record does not reveal the membership requirement of any of the associations named above. It cannot suffice for the petitioner simply to document his membership in a professional association.

The director, in denying the petition, noted the lack of evidence to establish the membership requirements of the associations to which the petitioner belongs. To show that the petitioner is a member of associations requiring outstanding achievement, counsel cites a letter from Professor Xufan Deng of Northeastern University, Shenyang. Prof. Deng states:

> [The petitioner] was also a director of China Science and Technology Association Electro-Mechanical Integration Division. China Science and Technology Association is a national organization for scientific and technical personnel. It manages 55 national academic societies and associations and has nearly one million members from different industries nationwide. . . . In 1983, while our country was still at the early stage of reform and opening, a person [had to] be truly outstanding to achieve such attainments. As a result, [the petitioner] was elected a director for the Electro-Mechanical Integration Division.

It does not appear that an association with "nearly one million members" requires outstanding achievement as a condition for admission into membership. Election to office within that association does not constitute membership in a more exclusive "association" within the association. Furthermore, it is not clear whether the Electro-Mechanical Integration Division is one of the 55 "societies and associations" within the China Science and Technology Association, or a division of one of them. If each of the 55 smaller societies has multiple directors (hence the petitioner is "a director" rather than "the director"), then there are hundreds of such directors within the larger association. If, on the other hand, each of the 55 societies is partitioned into divisions, each of those having multiple directors, then the number of directors could reach into the thousands. It remains that the record contains no primary evidence to establish the means by

which directors were selected in the early 1980s, or at any other time for that matter. A letter from a professor in the petitioner's "home town" of Shenyang, who does not even claim to be an official of the association in question, cannot suffice to establish that outstanding achievement was ever a requirement for one to be one of the association's numerous directors. The petitioner has not submitted a copy of the association's bylaws or constitution, or any other direct, first-hand documentary evidence to establish the requirements that one must fulfill to be eligible for the offices the petitioner has held.

Counsel asserts that the petitioner has served as the vice chairman of the Explosion-Proof Electrical Equipment Division of the China Electrical Equipment Industry Association. Counsel states "[t]his outstanding membership was not submitted to INS before," but does not explain why the petitioner had previously withheld this claim. Shaochun Li, senior engineer and chief secretary of the China Electrical Equipment Industry Association, Explosion-Proof Electrical Apparatus Division (which is based in Shenyang), states that the petitioner "is invited to be the vice president" of the division. There is no evidence that the petitioner ever accepted this invitation or actually held the office.

> *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.*

As noted above, the record contains a letter informing the petitioner that he is listed in the *Collection of Contemporary Chinese Men of Science and Technology*. The record contains no further information about this publication, and the petitioner has not submitted a copy of the actual published material itself. The regulation calls for the submission of published materials, rather than secondary evidence suggesting the existence of such materials. Inclusion of a capsule biography in a professional directory does not demonstrate that the petitioner has attracted a degree of national or international media attention almost unmatched in his field.

Counsel states that the petitioner's achievements "were often reported by national media in China," but the petitioner did not save copies of these articles and therefore only two are available for submission with the petition. The two articles submitted are both from Liaoning provincial publications, the *Liaoning Daily News* and *Liaoning Workers' News*. The petitioner did not initially submit complete translations of either article; he offered only single-sentence summaries of them. According to these capsule translations, one of the two articles specifically limits its focus to "significant achievements in Liaoning Province."

On appeal, the petitioner submits a translation of the second article. The article, "Shenyang Zhongxing Explosion-Proof Electrical Apparatus Corporation Is Marching Forward," discusses the work undertaken at the factory. The petitioner is mentioned only in the second half of the final paragraph of the seven-paragraph article, so the article as a whole does not constitute published material about the petitioner. The translation (with a sworn attestation of its accuracy) contains a reference to "[o]ur business motto," which is consistent with the piece being a press release or advertisement written by the corporation, rather than an independently-written article

about it. An alien cannot satisfy this criterion by submitting press releases from the company he manages.

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 appears to satisfy this criterion as a judging member of the 3rd National Standard Technical Committee on Explosion-Proof Electrical Equipment, as well as serving as an editor of a nationally-published book issued by the China Science and Technology Press. (The petitioner served on the editorial board of a second book published by authorities in Liaoning Province, where the petitioner was working. The invitation to serve on this board does not reflect recognition outside of the petitioner's own province.) We note, at the same time, Yanhui Du's assertion that the judging panel at the National Invention Exhibition "consisted of national experts from different industries, including distinguished professors, researchers and senior engineers." There is no indication that the petitioner has ever served on a judging panel of this magnitude. The record is, likewise, devoid of evidence that the petitioner has served as a judge since his 1998 arrival in the United States.

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

The record ties the petitioner's inventions to several prizes, including one described above which appears to be of considerable national significance. Witnesses have also discussed the importance of the petitioner's work in his field. We consider, therefore, that the petitioner's work in China satisfies this criterion, but once again we note the absence of evidence that the petitioner has made any comparable contributions while in the United States. The evidence of the petitioner's activities in the U.S. is limited to photographs of the petitioner visiting industrial sites and conferences.

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

Counsel states that the petitioner "has authored, edited and consulted 3 scholarly books published and used as bibles in the field of industry explosion-proof [sic] in China." There is no indication that the petitioner actually wrote any of the materials in the three books named in the initial submission. The regulation specifically calls for evidence of authorship. For one book, the petitioner is among 25 listed "consultants." For another book, the petitioner is one of 45 editors, and the petitioner is one of six editors on the third book. Materials on appeal contain some vague mention of a book written by the petitioner, but the record does not even provide a title for this book, let alone actual evidence of authorship and publication.

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

Counsel states that the petitioner has held "important professional positions." Documents in the record show that the petitioner was assigned the position of chief engineer (in 1994) and later senior

engineer (in 1996) at Shenyang Zhongxing Explosion-Proof Electrical Apparatus General Factory. Additional materials identify the petitioner as general manager of the facility but it is not clear when he began in that role. The certificate naming the petitioner as senior engineer was issued not by any national authority, but by the Liaoning Province Human Resources Department. The record does not reflect the reputation of the factory or the duties and responsibilities of chief engineers or senior engineers. The information is not sufficient to support a conclusion that the petitioner has satisfied this criterion.

In summary, we find that the petitioner has nominally satisfied three of the ten criteria at 8 C.F.R. 204.5(h)(3), but the bulk of this recognition dates from 1995 or earlier, and none of it comes after the petitioner's departure from China in 1998, despite the petitioner's having had several years to establish a professional reputation in the United States before filing his petition in 2001. Whatever recognition the petitioner may have earned in his native country up to 1998, there is no indication that he has sustained such recognition after his arrival in the United States. We also note the absence of evidence that the petitioner, in his several years in the U.S., has made any progress toward his stated goal of establishing a research laboratory and manufacturing company to provide explosion-prevention equipment. The petitioner has not shown that U.S. industry regards him as a noteworthy expert in his field, or has otherwise expressed appreciable interest in his work. Given this lack of evidence, the petitioner's unsubstantiated assertions regarding his future plans are speculative at best.

The language of the statute indicates that the purpose of the immigrant classification is to ensure the future benefit of the United States, rather than simply to reward an alien for past acclaim which has not survived that alien's relocation. The age of a given piece of evidence is not inherently a disqualifying factor, provided that the documentary evidence in the record establishes an overall pattern of continued acclaim. In this regard, subjective letters from witnesses chosen by the petitioner, written specifically to support the petition, necessarily carry less weight than objective documentation that exists independently of the petitioner's efforts to obtain immigration benefits.

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 remains one of the small percentage who has risen to the very top of the field of endeavor and sustained that status. Review of the record, however, does not establish that the petitioner is now nationally or internationally acclaimed and considered to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements currently 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.