

U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

BZ

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[REDACTED]

DEC 3 - 2003

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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 Citizenship and Immigration Services (CIS) 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 
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 Administrative Appeals Office 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 pertinent regulations 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 she has sustained national or international acclaim at the very top level.

The petitioner's area of endeavor is integrated circuit design and applications. The petitioner holds a doctorate from Stanford University and works as a senior design engineer at Big Bear Networks.

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, 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 satisfies this criterion because the petitioner is the “[w]inner of 1998-1999 . . . [and] 1999-2000 *Center for Integrated Systems* Fellowship[s],” and because she was invited to make presentations and write a book chapter. Counsel does not explain how these invitations amount to prizes or awards. Several of what counsel calls “invitations” are in fact acceptance letters of previous submissions, rather than solicitations to submit new material.

The record shows that the petitioner was one of several FMA (Fellow/Mentor/Advisor) fellows at the Center for Integrated Systems during the years claimed. Such fellowships are not nationally recognized prizes or awards. Rather, they are research opportunities limited to graduate students at Stanford University (home of the Center for Integrated Systems). The petitioner’s documentation describes the process by which fellows are chosen: “[a] CIS industrial partner chooses a faculty member involved in a research area important to the company. The faculty member identifies a fellow and the industrial partner identifies a mentor.” Thus, selection as a fellow is contingent on the recommendation of a single faculty member. The materials do not identify the fellowships as a prize or award. Rather, they are identified as providing “on-going, in-depth Stanford connections with our partner companies.”

The director requested evidence to show that the petitioner has won national or international awards. In response, counsel states that the “Service appears to understand . . . that for scientists such as [the petitioner], invitations to address the international community of scientists through lectures and publications are equivalent to awards in the field.” This argument is not persuasive; the sheer number of professional conferences and publications means that thousands of articles and presentations appear every year. One conference alone, cited by counsel as an example, featured 188 presentations. Counsel has not shown that a given invitation attracts the same degree of national or international attention as an actual prize or award, or that such invitations are relatively rare events.

Furthermore, while 8 C.F.R. § 204.5(h)(4) permits the submission of comparable evidence, this clause applies only when the regulations do not apply to a given occupation. Because real awards exist in the petitioner’s field, we need not accept counsel’s claim that something other than an award is equivalent to an award.

Counsel also argues that the petitioner’s fellowships at Stanford University are internationally recognized when one takes Stanford’s reputation into account. This argument is not persuasive, because it remains that the fellowships are available only to students in one department at one university. This excludes from consideration all students at every other university, as well as every scientist in the world who has already graduated. The awarding of a fellowship establishes, at best,

the petitioner's standing in relation to other graduate students at Stanford. By law, the petitioner must show that she is at the top of her field, not a very narrowly circumscribed group of trainees in that field. Counsel, in discussing Stanford's engineering program, notes that "the faculty currently includes 17 Nobel prize winners, and 21 recipients of the National Medal of Science." These examples merely highlight the gulf between the petitioner, at this very early stage of her career, and the established faculty members who have earned the above honors.

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 cites the petitioner's membership in the Institute of Electrical and Electronics Engineers (IEEE) and the petitioner's diplomas from Stanford University and the University of Science and Technology, China. Attendance at a university, however prestigious, is not membership in an association. Admission to such a university, however competitive, simply emphasizes that one's professional training is not yet complete and thus further education is necessary. University study is not a field of endeavor. Graduation from such a university is not a rare or acclaimed achievement, but rather the expected result of education at the institution.

The director instructed the petitioner to "[p]rovide the minimum requirements and criteria used to apply for membership in" IEEE, as well as evidence to show the petitioner's "rank compared to other members in the association." In response, counsel states that ranking information is not available. Counsel does not address or acknowledge the director's request for information about IEEE's membership requirements, even though membership requirements are central to the wording of the regulation.

Counsel had earlier noted the petitioner's submission of "[i]nformation about IEEE from its website," which is <http://www.ieee.org>. The printouts submitted by the petitioner show a link labeled "membership," but the petitioner did not submit printouts to support counsel's claim that IEEE requires outstanding achievements of its members. A page on IEEE's web site, entitled "Understanding Membership," lists several membership grades. IEEE's site indicates "[t]he grade of Fellow recognizes unusual distinction in the profession," but the petitioner is not a fellow. Rather, she is a "member." To qualify for the grade of "member," one must only have a bachelor's degree or six years of "professional work experience" in a relevant field. Degrees and experience are not outstanding achievements. IEEE's membership base of several hundred thousand members is another indication that membership is not a rare distinction accorded only to those at the top of the field.

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.

Counsel lists "23 recent articles and media citing [the petitioner's] work." The petitioner actually submits copies of only 14 of these articles. The regulation requires the submission of the published materials themselves; simply claiming that additional materials exist cannot fulfill this criterion.

More importantly, the petitioner is not the primary subject of these articles, and therefore we cannot reasonably conclude that the articles are "about the alien" as the regulation requires. The petitioner's own published articles contain dozens of such citations, and yet her articles are clearly not "about" R.A. Rutenbar, M. Nishisaka, M. Declercq or any of the hundreds of other cited authors.

These citations are of greater value when gauging the field's reaction to the petitioner's own scholarly writings, covered by a separate criterion:

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 ten articles, presentation abstracts, and manuscripts. Some of the manuscripts were not yet published at the time of submission. Counsel's list of "publications" includes the petitioner's Ph.D. thesis, but there is no evidence that this thesis has actually been published. Its availability in Stanford's archives does not amount to publication. Seven of the articles and abstracts had actually been published as of the petition's filing date. In *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), CIS held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. If the petitioner was not already eligible at the time of filing, subsequent developments cannot retroactively overcome this ineligibility. The very act of publication does not, by itself, establish or guarantee acclaim. The phrase "publish or perish," often heard in academia, demonstrates that publication is expected of researchers.

Because simply writing published articles does not establish acclaim, we must consider the field's reaction to the published articles. One relatively objective means of measuring this reaction is by considering the citation history of those articles. As noted above, the petitioner has submitted copies of 14 articles that contain citations of the petitioner's work. Some of the articles cite two of the petitioner's articles, and thus the 14 articles contain a total of 16 citations. Twelve of these 16 citations refer to the same article, "A 115-Mw, 0.5 μ M CMOS GPS Receiver with Wide Dynamic-Range Active Filters," which appeared in the *IEEE Journal of Solid-State Circuits*, vol. 33, pp. 2219-2231. Two other articles were cited twice each. The record does not document any citations of the petitioner's remaining publications.

With regard to the most-cited article, the petitioner was the seventh-listed author out of a total of ten; the authors are not listed alphabetically. Some of the citations refer to the article with a partial list of authors followed by "*et al.*," meaning that the petitioner's name does not appear in these articles at all.

While twelve citations appears to be above the average number of citations for a journal article, this level of citation for one of the petitioner's articles does not appear sufficient to establish a pattern of sustained acclaim. The petitioner has not established that only those at the top of the field can point to a publication record of seven articles, one of which was cited 12 times.

The petitioner has subsequently submitted background information regarding the *IEEE Journal of Solid-State Circuits* (JSSC), where the petitioner's most-cited article appeared. This information states "[t]he 2000 Journal Citation Reports ranks JSSC as 17th out of 203 of all electrical and electronics journals ranked. 239 articles published in 2000 were cited 4045 times." On average, each of these 239 articles was cited about 17 times. The petitioner's most-cited article, which is two years older and thus has had more time to amass citations, showed only twelve citations as of the filing date (a thirteenth citation is documented in a later submission). Another of the petitioner's articles, in the same issue of the same journal, was cited only twice. If the number of citations is, as the materials indicate, a measure of an article's prestige, then the petitioner's low overall citation rate is a factor worthy of consideration.

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 evidence that she has peer-reviewed two manuscripts submitted for publication in IEEE journals. The materials submitted by the petitioner do not discuss how the petitioner came to be selected.

In response to a request for further evidence regarding the petitioner's peer review work, counsel discusses the reputation of IEEE's journals and contends "the leading international technical journal of solid state circuit design would not ask mediocre or even 'above-average' scientists to review its submissions." Counsel cites no direct evidence to support this proposition; it is merely inferred from the assumption that a prestigious journal would only seek peer reviewers who are at the top of the field.

According to <http://ieeexplore.ieee.org/xpl/Peerreview.jsp>, a page on IEEE's web site (which, again, was demonstrably known to counsel), "all scientific papers and communications published in regular IEEE periodicals shall be reviewed by at least two referees who are competent and have experience in the area of the subject matter of the paper." This first-hand evidence from IEEE itself indicates that IEEE's primary criteria for peer review are competence and experience. Therefore, we cannot conclude that peer review of two IEEE journal articles demonstrates sustained national or international acclaim.

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

Counsel states:

[The petitioner] is currently employed as the Senior Design Engineer for Big Bear Networks, a Silicon Valley optical component manufacturer largely leading the race to design and manufacture the world's fastest communications system.

In her doctorate research at Stanford University's Electrical Engineering Department, [the petitioner] pioneered new research with tremendous impact on semiconductors and every device they power.

To demonstrate the importance of the petitioner's contributions, counsel cites seven witness letters. If the petitioner's contributions are recognized nationally or internationally as having major significance, then evidence of this recognition ought to be available from a broad variety of sources.

Of the seven witnesses, four teach at Stanford University, one was a graduate student at Stanford while the petitioner was also studying there, and the remaining two are officials of companies where the petitioner has conducted research. Thus, the letters cannot constitute first-hand evidence that the petitioner's work is considered highly significant outside of her circle of collaborators and mentors. We also cannot ignore that several of the witnesses claim accomplishments which appear to dwarf the petitioner's own achievements. Counsel has since referred to "the impressive C.V.'s" that accompanied the original witness letters. These achievements demonstrate the witnesses' expertise in their fields, but they also demonstrate that they themselves are considerably closer to the top of the field than the petitioner.

Professor [redacted] chairman of Stanford's Department of Electrical Engineering and the petitioner's Ph.D. advisor, describes the petitioner's doctoral research but does not indicate that this work has yielded contributions of major significance to the field. Instead, he indicates his "firm belief that [the petitioner] will continue to contribute significantly to the United States' ability to maintain its leadership in important areas of technology."

Professor Robert [redacted] states that the petitioner "made a remarkable breakthrough in the substrate noise study employing a novel frequency domain approach. Her research results not only unveiled the functional relationships between the source of substrate noise and its effects but also revealed the fundamental limitations of some commonly accepted time domain substrate noise reduction techniques." Prof. Dutton's assessment is surely sincere, but the petitioner has not shown that this opinion is shared nationally or internationally. Prof. Dutton states that the significance of the petitioner's work is evident from her invitations to speak at conferences, publish papers, and so on, but the significance of Prof. Dutton's own work is evident from his election as a fellow of IEEE, his election to the National Academy of Engineering, numerous prizes, and so on. Given these credentials, Prof. Dutton himself has a far stronger claim than the petitioner with regard to being at the top of the field.

The director requested further evidence to establish that the petitioner is responsible for original contributions of major significance, commensurate with national or international acclaim. In response, counsel cites "information about the Defense Advanced Research Projects Agency (DARPA) which sheds light on the significance and use of [the petitioner's] research." The

materials from DARPA show that DARPA is interested in the type of research that the petitioner is now pursuing, but these materials do not mention the petitioner at all, much less establish that her contributions are more significant than those of other researchers in the same specialty.

Counsel cites an article from the February 21, 2003 issue of *The Semiconductor Reporter*, an online publication available at <http://www.semireporter.com>. This article, "Little Bear paints picture of SiGe reality at 40 gigabits/s," begins "[a] company less than three years old stole a big piece of the limelight falling on high-speed (40 Gbit/s) networking semiconductor technology at the International Solid-State Circuits conference today." Counsel states that this article highlights the importance of her contributions. The article does not mention the petitioner by name; a reader who did not already know who the petitioner was would, upon completing the article, still never have heard of her. Furthermore, the petitioner's February 2003 presentation came several months after the November 2002 filing date of the petition. If the petitioner was not already eligible at the time of filing, subsequent developments cannot retroactively overcome this ineligibility. See *Matter of Katigbak, supra*.

The petitioner's response to the director's request for additional evidence includes several new witness letters and background documents. The new witnesses assert that the petitioner is a skilled and accomplished researcher, and they assert that, in their opinion, the petitioner qualifies for the classification. The regulatory standards, nevertheless, are based for the most part on objective, measurable criteria. If the petitioner cannot meet these criteria, the opinions of witnesses whom the petitioner has selected cannot entirely compensate for this deficiency.

The director denied the petition, citing various shortcomings in the petitioner's evidence (some of which have been discussed above). On appeal, counsel argues that the director "ignores [the] opinions of world class scientists in the field." The petitioner has sought an extremely restrictive immigrant classification, intended for "world class scientists" themselves, rather than aliens who submit recommendations from such scientists. When we consider the heights that several of the petitioner's witnesses have reached, we cannot look at the petitioner's own professional standing and consider it to be nearly equal with that of her mentors.

Counsel argues that the director's denial raised new concerns that did not appear in the earlier request for evidence. It remains that the petitioner has not satisfactorily addressed the concerns expressed in the original notice. With regard to the new points raised in the denial notice, the petition has at this point already been denied. Counsel's arguments on appeal have been reviewed and considered.

Counsel states that the director failed to follow "the criteria for extraordinary ability as laid out in the regulations." The regulations pertaining to extraordinary ability include the regulatory definition, already quoted above, indicating that 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. Any evidence that purports to show extraordinary ability must, therefore, be consistent with a finding that the petitioner has risen to the very top of the field of endeavor.

Counsel repeats and expands upon several prior arguments, such as the claim that a fellowship that is available only to graduate students at Stanford University is a qualifying national or international award. While we are aware of Stanford's prestige, we cannot ignore the extremely limited pool from which fellows are chosen. Also, the fellowships are, by nature, educational exercises for the benefit of students whom Stanford University does not consider to have been completely trained. The Nobel laureates on Stanford's own faculty cannot receive these fellowships, nor can the valedictorian of the electrical engineering department at the Massachusetts Institute of Technology. The petitioner has not shown that the annual awarding of these fellowships attracts significant attention outside of Stanford and the corporations that participate in the fellowship program.

Regarding the petitioner's membership in IEEE, counsel acknowledges that this membership does not constitute evidence of acclaim. Counsel argues, nevertheless, that the petitioner's "failure to fit evidence into this particular category in no way lessens the balance of evidence" in the petitioner's favor. In the cover letter accompanying the original petition, counsel plainly stated that the petitioner's IEEE membership constitutes "[d]ocumentation of the alien's membership on [sic] associations in the academic field which require outstanding achievements of their members." The director requested "the minimum requirements and criteria used to apply for membership in the association." Counsel's lengthy response to that notice made no mention of these requirements, despite the plainly worded earlier claim that IEEE "require[s] outstanding achievements." Counsel clearly was aware of IEEE's web site, where a definitive list of membership requirements, proving that IEEE does not require outstanding achievements of its members, can be easily located on that same site. Given counsel's misleading and easily-refuted claim, we disagree with the contention that the information regarding IEEE has no wider relevance. It is, indeed, a documented instance of a claim which is not true. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

Given the above, counsel's representations regarding the importance of the evidence cannot be accepted at face value. In any event, 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).

Counsel's brief consists of 23 pages of discussion of previously submitted evidence and arguments. Counsel highlights the achievements of several of the petitioner's witnesses without addressing the petitioner's own lack of comparable achievements. Counsel discusses the prestigious National Academy of Engineering (NAE), which is an authentic example of an association in the field that requires outstanding achievements of its members. The petitioner has submitted letters from members of NAE, but there is no indication that these individuals regard the petitioner so highly that they would recommend her for membership.

While the petitioner has clearly impressed some members of her profession, when we review the evidence as a whole, we cannot conclude that the petitioner is nationally or internationally acclaimed as one of the top figures in her field. The petitioner appears to have received a first-rate education and is poised at the beginning of a promising career, but to assert that the petitioner has already exhibited extraordinary ability and earned sustained national and international acclaim is premature at best.

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 herself as a researcher in her field to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.