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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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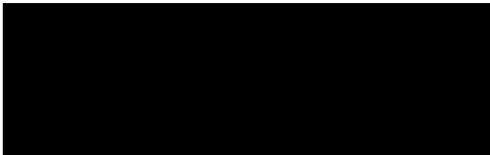
DEC 05 2003

File: [Redacted] Office: NEBRASKA 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:



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 *Mari Johnson*
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 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 he has sustained national or international acclaim at the very top level.

Counsel describes the petitioner's work:

[The petitioner] clearly qualifies as an alien of extraordinary ability by the virtue of his achievements and abilities in the areas of advanced next generation materials (ANG), energy storage, and environmental protection. . . . [The petitioner's] abilities in this field are highly in demand, and in particular, his unique talents in material science and environmental remediation process[es], are all essential to the future progress of research on advanced next generation materials (energy and environmental related).

The petitioner describes his efforts:

My research areas are broad and are primarily focused on the development of ceramic materials for energy-related applications and environmental remediation technologies. .

[E]nergy related materials . . . can lead to reduced energy consumption and to improved global economic prospects. Of these materials, dielectric ceramics are widely used for the energy storage applications, and scientists are trying to synthesize new materials and devices of this kind to achieve improved electrical properties and device performance. I am currently developing high-energy storage materials with unique properties that no materials currently possess. . . .

I have synthesized the ceramic materials, which withstand very high voltages, and therefore they find use in energy storage applications. In addition, I have developed supercritical fluid processing of these materials and the results are very significant as we could now reduce the processing time for the green state ceramic-based energy materials by several orders of magnitude over the conventional thermal binder removal process and therefore, we can expect a large product throughput and productivity on [an] industrial scale. In addition, I have pioneered a controlled depressurization step after supercritical extraction of the binder from the green bodies in order to prevent possible defects that might occur due to sudden release of supercritical pressures. . . .

As environmental remediation technologies, advanced oxidation techniques are foreseen to be among the best candidate technologies for the management of toxic and hazardous wastewater effluents. . . . I have discovered thorough fundamental knowledge about the synergistic and inhibition effects among toxic organic compounds present concomitantly in a given wastewater stream during oxidation. I have also pioneered a lumping approach, which enables the clustering of multi-component effluents for the development of appropriate intrinsic kinetic models to be used in flow-reaction models for prediction of reactor performance.

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.

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 received postdoctoral research fellowships from Slovenia's National Institute of Chemistry and the University of Missouri-Columbia, as well as "His Holiness the Pope Scholarship" from the University of Bombay.

All of the above claimed awards are, by nature, given only to graduate students and postdoctoral trainees, rather than to tenured professors and other established researchers. Graduate study is not a field of endeavor, but rather preparation for future entry into such a field. Similarly, postdoctoral researchers do not occupy a distinct field from other researchers who have already completed their training. Also, the above claimed awards are limited to students or postdoctoral fellows at the respective universities, and thus are not national or international in scope. The petitioner has not shown that any of the above claimed awards attract significant attention outside their respective universities.

Most significantly, the petitioner has not shown that any of the above fellowships or scholarships are awards for excellence in the field of endeavor. The postdoctoral fellowships amount to temporary employment, with the petitioner receiving a salary for continuing work. The "His Holiness the Pope Scholarship" amounts to financial aid for continuing studies, which is common at many universities. None of the documentation from the universities themselves indicates that the scholarships or fellowships are contingent on nationally or internationally recognized excellence in the field of endeavor.

In response to a request for further evidence, counsel discusses the reputations of the universities offering the above scholarships and fellowships. The reputations of the universities, however, were not in question.

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 states that the petitioner's membership in Sigma Xi, the Scientific Research Society, and the American Chemical Society (ACS) satisfies this criterion. Counsel observes that "[m]embership in Sigma Xi is by invitation only." Counsel does not discuss the ACS' membership requirements.¹

The petitioner submits printouts from Sigma Xi's web site, <http://www.sigmaxi.org>. This information indicates that Sigma Xi has "nearly 75,000" members "who were elected to the Society because of their research achievements *or potential*" (emphasis added). Other materials from Sigma Xi place the

¹ Bylaw I, section 3a of the ACS' Bylaws states "[t]he Admissions Committee may approve for MEMBER a person who meets any of the following requirements for formal training and experience in a chemical science or in a science closely related to chemistry." The requirements include "[a] bachelor's degree in a chemical science certified to the SOCIETY by a department approved by the SOCIETY" and "[a]n associate degree or equivalent in a chemical science or chemical technology and five years of employment in a chemical science." A bachelor's degree in Chemistry is not an outstanding achievement, but rather the expected result of undergraduate education with a major in Chemistry. Similarly, an associate's degree plus five years of experience is not an outstanding achievement reflecting sustained national or international acclaim. The published membership standards appear to indicate that virtually anyone qualified to work in the field of chemistry also qualifies for ACS membership.

membership total at "about 95,000." The documentation differentiates between associate members and full members, and states "[f]ull membership is conferred upon those who have demonstrated noteworthy achievement." Counsel claims that the petitioner is a full member. Sigma Xi documentation confirms only the petitioner's membership; it does not specify the category.

The submission of the above materials proves the petitioner's and counsel's awareness of the existence of Sigma Xi's web site. Another page on that site, <http://sigmaxi.org/member/join/qualification.shtml>, defines "noteworthy achievement" as "evidenced by publication, patents, written reports or a thesis or dissertation." The available information indicates that Sigma Xi members are selected not by national or international experts, as the regulation requires, but rather at the chapter level at individual universities. Sigma Xi's very substantial membership size, including thousands of students who have yet to begin professional careers in earnest, is not indicative of highly restrictive membership requirements.

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 states that citations of the petitioner's published work satisfy this criterion. If a published article is "about" the petitioner simply by virtue of citing the petitioner's work, then virtually every scientific journal article is "about" dozens or hundreds of researchers. By the same logic, the petitioner's articles are "about" G.Y. Stangle, J. Chrastill, S.D. Crammer and very many others, because the petitioner has cited the work of these researchers in his own articles. While not every scholarly article is cited, it is plain that citation is not such a rare occurrence that the very act of citation is *prima facie* evidence of sustained acclaim.

For our purposes, the petitioner's citation record carries greater weight as an indication of the scientific community's reaction to the petitioner's own published work, which falls under 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 has documented his authorship of sixteen articles; counsel claims the total is 28. All of them have been cited at least once, with one article from 1994 garnering a significant 34 citations. The aggregate total at the time of filing was 84 citations, including several self-citations by the petitioner and his co-authors. Even taking self-citations into account, this quantity of citations demonstrates a degree of impact and influence in the field, sufficient to satisfy this criterion. A subsequent submission shows a total of 94 citations, 38 of which apply to the petitioner's most-cited article.

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.

Counsel states that the petitioner “was invited to review manuscripts for two outstanding journals,” demonstrating that the petitioner “is indeed considered an expert in his field.” The petitioner submits guidelines from the publishers of the journals. One of these documents, “Ethical Guidelines to Publication of Chemical Research,” prepared by the ACS, states “[i]nasmuch as the reviewing of manuscripts is an essential step in the publication process, and therefore in the operation of the scientific method, *every scientist has an obligation to do a fair share of reviewing*” (emphasis added). This statement, from an association that counsel calls “the primary professional membership organization for chemistry and chemical engineering professionals in North America,” indicates that occasional peer review is an “obligation,” roughly analogous to jury duty, rather than a special honor or privilege accorded to the acclaimed elite in the field.

Another document submitted by the petitioner, the “Scope and Editorial Policy” of *Industrial and Engineering Chemistry Research*, instructs authors to “include with the cover letter a list of qualified individuals . . . that the Editors may consider for the peer review. These recommendations *should go beyond the well-known names in the field that would be obvious to the Editors*” (emphasis added). This document, like the ACS document, contradicts, on its face, the proposition that peer review is limited to acclaimed experts (or “well-known names in the field”). If a researcher constantly receives review requests from a broad variety of sources, then it may be possible to infer significant demand for that researcher’s opinions and judgment, but in the present instance, the record reflects only two invitations, both from entities that specifically state that they do not consider peer review to be the exclusive purview of top researchers.

In response to the director’s request for further evidence, counsel states:

In regards to the selection process for scientific reviewers, we would ask that you consider the views of the Office of Scientific Quality Review of the Agricultural Research Service (ARS), which is the principal in-house research agency of the U.S. Department of Agriculture (USDA) for an example of the selection process. They state that, ‘peer reviewers are individual scientists and technical experts who possess relevant and extensive knowledge and experience in a field of science, and can use that expertise to critically evaluate specific scientific research project plans for scientific and technical quality. . . . Generally, to be considered an expert in a field of science, a peer reviewer must be accomplished in his/her field, and be nationally and/or internationally recognized as an authority in the field.’”

The passage quoted by counsel refers specifically to peer reviewers commissioned by ARS for ARS projects; the peer reviewers to which ARS refers review project proposals rather than manuscripts submitted for publication. It remains that the entities that, unlike ARS, have actually commissioned peer reviews by the petitioner state that “every scientist has an obligation to do a fair share of reviewing” and that “recommendations [for reviewers] should go beyond the well-known names in the field.”

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

Counsel lists the petitioner's various achievements, but a list is not self-evident proof of the significance of the items listed. Counsel also cites witness letters "from eminent and distinguished international scholars and engineers." To qualify for this highly restrictive classification, the petitioner must himself be "eminent and distinguished;" it cannot suffice to show that such individuals think highly of the petitioner. The letters are from the petitioner's mentors, professors and collaborators, most of whom co-authored many of the petitioner's research papers. The witnesses praise the petitioner's skills but they do not show that his work has had major impact on the field as a whole. The assessment of the petitioner's own superiors and collaborators cannot show that the petitioner has earned national or international acclaim, because these witnesses cannot attest first-hand to the petitioner's reputation outside of the groups where he has worked.

The only witness who does not appear to have personally collaborated with the petitioner or supervised his work is Professor Faiçal Larachi of Université Laval, Quebec, Canada, who states "I have personally known [the petitioner] since 1998 when he . . . expressed an interest in my work on wet oxidation and environmental catalysis. He had already established his reputation as an outstanding researcher at [the National Chemistry Institute of Slovenia] and had made key contributions to the area of non-catalytic wet oxidation of refractory organics-containing wastewater." Prof. Larachi then lists some of the projects described further above in the petitioner's words. Prof. Larachi states that the petitioner "has . . . contributed to my research group," but he does not clearly indicate that he was aware of the petitioner's work before the petitioner took the initiative of contacting him in 1998. As with several other witnesses, the contributions listed on Prof. Larachi's own *curriculum vitae* appear to dwarf those of the petitioner.

The director informed the petitioner that the initial submission did not persuasively satisfy this criterion. In response, counsel argues "the publication of [the petitioner's] work in high level scientific journals and the dissemination of his research at top quality scientific conferences and exhibitions should be construed as convincing evidence of the significance of his original contribution to this field." This is not persuasive, as the petitioner's scholarly articles are already covered by a separate criterion. While a major scientific contribution would probably be the subject of a published article, not every published article reports a major contribution, and therefore we cannot accept the contention that publication is evidence of significance.

To assert that fulfilling one criterion automatically satisfies a second criterion defeats the purpose of requiring the petitioner to satisfy several different criteria. The provision for multiple criteria requires the petitioner to demonstrate that evidence from several different categories converges toward a conclusion of eligibility. It is not simply a question of taking lesser evidence and attempting to define or describe it in such a way as to conform to as many criteria as possible.

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

Counsel states that the petitioner's presentations at scientific conferences satisfy this criterion. Such conferences, however, are not artistic exhibitions or showcases. Scientific presentations represent the dissemination of highly technical information to a specialized audience, and as such they are more akin to scholarly articles than to artistic exhibitions. The petitioner's scholarly writings are already covered under a separate criterion.

Counsel states that "former INS Commissioner Lawrence J. Weinig stated that for scholarly research, this category may be fulfilled by 'peer-reviews [sic] presentation at academic symposia.'" As a source for this quotation, counsel cites no official government publication, but rather a privately published immigration law bulletin from 1992. Mr. Weinig was never the Commissioner of the Immigration and Naturalization Service. In 1992, he was the Acting Assistant Commissioner for Examinations. Regardless of his exact title, his statements on this subject do not represent binding policy. We maintain that scientific presentations have considerably more in common with scholarly articles than with artistic exhibitions.

Beyond the above criteria, in response to the director's request for further evidence, counsel notes that the petitioner "has recently been considered for inclusion in the next edition of '*Who's Who in America*,' which is scheduled for publication in November 2003. . . . It is stated that individuals are contacted for inclusion due to having achievements which are of significant reference value." The notification letter from the publisher of *Who's Who in America* is dated December 2002, several months after the petition's May 2002 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. Subsequent developments cannot retroactively render the petition approvable, if the petition was not already amenable to approval as of the filing date. Even then, the letter shows only that the petitioner has been "considered for inclusion." Accompanying materials indicate that not everyone considered for inclusion is, in fact, included in the subsequent publication.

More importantly, the petitioner has not established the significance of the inclusion of his name in a directory containing several thousand entries. The publisher's letter is a "form" letter that does not identify any specific reason for the petitioner's selection. An accompanying information sheet indicates that "[o]ften individuals are selected on the basis of their professional positions alone." It appears that the book is sold primarily to those individuals listed therein, and "reference value" does not imply sustained acclaim. The book is more of a professional directory than a spotlight on the elite in the field.

The director denied the petition, citing several deficiencies in the petitioner's evidence. The director concluded that the petitioner had satisfied the criteria pertaining to scholarly articles and published materials about the petitioner. On appeal, counsel states "[a]pparently the officer reviewing the information presented felt that two out of three of the above criteria were satisfied, and as such felt that [the petitioner] fell just short of satisfying the necessary three criteria to qualify as an alien of extraordinary ability." The tone of the director's decision, taken as a whole, does not indicate that the petitioner "fell just short" of establishing eligibility.

We disagree with the director's finding that the articles containing citations of the petitioner's work amount to published materials about the alien. At most, the articles in question contain the petitioner's name in relation to a particular finding. It does not follow that the articles are "about the alien" as the regulation requires; the same articles similarly identify other researchers, and thus by this logic any given article is "about" several different researchers. The principal support for counsel's arguments, and thus the director's findings, is an internal CIS memorandum which did not set forth official binding policy, but rather expressed the opinion of one CIS official. We have given due weight to the numerous citations of the petitioner's published articles, but the nature of the brief comments about the petitioner accompanying these citations do not place him at the top of the field or demonstrate sustained acclaim. We note also that the heavy citation is concentrated in a very small number of the petitioner's articles. Most of the petitioner's articles have been cited only once, only four have been cited more than five times, and 58 of the 94 citations relate to two of the articles. Clearly, the scientific community recognizes the importance of those two articles, but there is not a pattern of heavy citation overall that would be consistent with sustained acclaim.

Counsel repeats the argument that the petitioner's published articles, and the citations thereof, serve to demonstrate that the petitioner has made contributions of major significance. Counsel also asks that the director reconsider the witness letters. As noted above, the letters are preponderantly from the petitioner's professors, mentors, collaborators and employers, and do not demonstrate that the petitioner's work is particularly well-known outside of the universities and laboratories where the petitioner has personally worked. Some degree of outside recognition is not necessarily sustained acclaim at the top of the field.

Counsel cites passages from documents submitted regarding the petitioner's claimed work as a judge, but as noted above, the petitioner's own evidence proves that the entities that have solicited the petitioner's participation as a peer reviewer do not consider peer review to be a mark of acclaim limited to the top experts in the field. The petitioner repeats several other prior arguments in a similar fashion.

The regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii) calls for evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner did not initially claim to have satisfied this criterion. On appeal, counsel states "[g]iven the recognition of his work, and the importance of the field in which he is involved, it is evident that [the petitioner] has participated in both a leading and critical role in the institutions in which he has held high level positions." The importance of the field is irrelevant to the significance of the petitioner's role within that field, and the petitioner has shown minimal recognition outside of the sites where he has worked.

With regard to counsel's contention that the petitioner "has held high level positions," the petitioner has never held a position higher than postdoctoral research fellow, which is generally the first professional position held by researchers immediately after completion of the doctoral degree. Counsel asserts "[t]he job title itself is not the deciding factor," but this does not explain how a postdoctoral researcher holds a "high level position." Counsel notes that the petitioner's supervisors have attested to the petitioner's leadership of specific projects. A given project,

however, is not an establishment or organization. The petitioner has not shown that his role has been leading or critical to the university as a whole. It is impermissibly broad to hold that every researcher who exercises some degree of supervision over other laboratory workers performs in a leading or critical role.

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. The record demonstrates that the petitioner is a productive researcher, who is respected by his superiors and whose work has had some degree of impact on the field overall. The evidence, however, is not sufficient to 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.