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

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

[REDACTED]

File: [REDACTED]

Office: Nebraska Service Center

Date: **DEC 24 2003**

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.

  
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 CIS 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability in mathematical physics. 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 that, he claims, meets the following criteria.

*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.*

The petitioner submitted evidence of membership in Znanie of Minsk. In response to the director's request for additional documentation, counsel asserted that the society required outstanding achievements of its members as "a scientist must have given many lectures to personnel of government enterprises on scientific topics in his or her field." Counsel further asserts that members are selected by national experts. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted no evidence to support these claims. The director concluded that the petitioner had not established that Znanie requires outstanding achievements. The petitioner does not contest this conclusion on appeal and we concur with the director.

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

Counsel asserted that the petitioner is "widely recognized as the pioneer in the development of the mathematic theory of light propagation through anisotropic amplifying dye solution" and "widely recognized as the creator of the fundamental theory of dye laser light polarization." Counsel further stated that the petitioner "predicted dye laser polarization diagrams which have proven to be correct in experiments," and "explained the fact of linear polarization of dye laser light even for solutions of very low viscosity." As evidence to support these assertions, counsel references the publication of the petitioner's articles in leading scientific journals and presentations at several of the most important scientific conferences held in the former Soviet Union. The petitioner submitted his articles and evidence of his presentations in addition to letters from his colleagues. In response to the director's request for additional documentation, the petitioner submitted letters from more colleagues and a professor at the National Academy of Sciences of Belarus. The director did not contest that the petitioner meets this criterion.

We cannot concur with the director's conclusion on this criterion. The publication of scholarly articles is a separate criterion. We cannot conclude that mere publication of the petitioner's work is sufficient to meet two criteria, especially in light of the fact that it is inherent to the field of science to publish one's research. Not every original result published in a peer-reviewed journal is a contribution of major significance. At issue is whether, through objective evidence, the petitioner can demonstrate the impact his work has had on the field, nationally or internationally.

The record contains no evidence that the petitioner's articles or conference presentations have been cited by other scientists, much less widely cited. The record contains no evidence that review articles have singled out the petitioner's results as particularly significant to the field. Rather, the petitioner submitted the following letters as evidence that his contributions are of major significance.

The petitioner submitted a letter from Ivan Iosifovich Zholnerevich, Head of the Physics Department of the Belarusan State University. While counsel asserts in response to the director's request for additional documentation that Dr. Zholnerevich is not a past colleague of the petitioner's, the petitioner taught mathematics at the same university from 1996 through 1997. Dr. Zholnerevich states:

[The petitioner] made a major contribution to the modern theory of dye laser light polarization, also demonstrating exceptional abilities in such areas as development of mathematical algorithms, computational modeling and programming. His practical input to this theory is based on his solving the system of non-linear equations for molecular populations, which take into account molecu[ar] orientation.

Dr. Zholnerevich continues that the petitioner was recognized as one of the leading Soviet scientists in the field after publishing the results of the above complex work. Mr. Zholnerevich concludes: "The laser polarization diagrams predicted by [the petitioner] and later confirmed experimentally are of the same caliber in their scientific value as the classical polarization diagrams of luminescence discovered in the first half of the last century."

The petitioner also submitted a letter from Konstantin Ivanovich Rudik, an associate professor at Belarus State Technology University. Mr. Rudik indicates that he collaborated with the petitioner for fourteen years at that university. Mr. Rudik asserts that the petitioner's work with dye laser light polarization, published and successfully presented at conferences, "is being used and cited in modern publications." Mr. Rudik provides no examples to support this statement. Mr. Rudik continues:

In dye laser theory [the petitioner] has got undoubtedly valuable results, which are not exceeded till [sic] present time. In particular, he has obtained polarizational laser diagrams, and has calculated the kinetics of laser light polarization with account of Brownian rotational diffusion. His theory is based on the infinite system of non-linear integral-differential equations, taking into account an anisotropy of a dye molecule, an anisotropy of generated light, as well as induced order in orientation of excited molecules. [The petitioner] has demonstrated exceptional abilities in the area of computational mathematics by developing algorithms of solving of [sic] this system of equations, developing software, and numerically solving these equations. He has solved a static task, as well as mathematically more complex non-static task, and also even more complex task with account of Brownian rotation of molecules.

The results of [the petitioner's] theoretical calculations have found their incontrovertible proof in experimental research accomplished by myself as well as other researchers in Belarus and abroad. His theory has stimulated new experimental and theoretical studies in the area of dye lasers, and in a broad area of induced anisotropy, where, in particular, I have discovered a new physical

phenomenon of change in light polarization due to processes of stimulated emission.

Tony Belkin, MicroLite Controller Development Group Manager for Motorola, states:

[The petitioner] played the distinctive role in the creation of database import and export algorithms and procedures under real-time OS QNX as part of [a] telecommunication MicroLite Controller, presenting valuable input to the project and [a] high level of mathematical and algorithmic expertise.

Mr. Belkin does not explain how these algorithms have impacted the field such that they can be considered a contribution of major significance. The IT field is constantly expanding, and we cannot conclude that every incremental improvement is a contribution of major significance.

Dr. Jerzy M. Nogiec, under whose supervision the petitioner worked as a consultant for the Fermi National Accelerator Laboratory, asserts that the petitioner "participated" in the Extensible Measurement System (EMS) project, by developing, debugging and documenting a graphical component of the system. Dr. Nogiec praises the petitioner's knowledge and ability to learn, resulting in his making "visible contributions to our project." Dr. Nogiec further asserts that the petitioner's C++ programming book is a "valuable contribution to the computer science education."

Counsel asserts that the letter from Dr. Isaac Kantorovich is a reference from someone who is not a former colleague of the petitioner's. Dr. Kantorovich, however, asserts that he was a fellow student of the petitioner's at Belarus State University. He provides similar information to that discussed and quoted above. Dr. Kantorovich also asserts that the petitioner authored one of the best-selling books on programming with C++ language. Other former fellow students, Vitaly A. Zlotnik, currently a professor of Geosciences at the University of Nebraska, and Vladimir Landres, currently Assistant Vice President of a reinsurance company, also provide similar information. Mr. Landres cites two positive reviews of the petitioner's C++ programming book allegedly taken from Amazon.com.

In response to the director's request for more independent reference letters, the petitioner submitted a letter from Dr. L. Pikulik, a professor at the Institute of Molecular and Atomic Physics of the National Academy of Sciences of Belarus. While Dr. Pikulik does not indicate that he has collaborated with the petitioner, the record reveals that Dr. Pikulik is a co-author of seven of the petitioner's articles. Dr. Pikulik reiterates the information discussed above, asserting:

Other authors in their theoretical research on dye lasers with account of molecule's anisotropy, including those from the Lawrence Livermore National Laboratory, which is the major center of laser research in the U.S., have managed to solve only simplified tasks for an initial amplification regime, or for a quasi-steady-state regime. . . .

[The petitioner], utilizing his innovative mathematical algorithms and computational methods of solving integral-differential equations, has surpassed all other researchers by performing calculations for the whole process of laser generation, what made him [sic] possible to calculate dye laser polarization diagrams. These results were confirmed experimentally in Belarus, Russia, United States and other countries.

The record contains no independent confirmation from laboratories in Belarus with which the petitioner was not affiliated or laboratories in Russia and the United States confirming that they have verified the petitioner's algorithms and explaining any impact these algorithms have had on laser research as a whole.

The petitioner also provided a letter from V.P. Rasputny, a senior scientist at Electronic Instruments and Systems in Minsk. Mr. Rasputny and the petitioner both worked at the Scientific Research Institute of Automation Facilities (SRIAF) in the late 1980's and early 1990's. Mr. Rasputny is one of the petitioner's co-inventors for his innovation patented in 1990 in Belarus. Mr. Rasputny asserts that the petitioner was the scientific manager of a project involving the development of fast algorithms to calculate microwave propagation in anisotropy medium for new air traffic control radar modernization.

Finally, Dr. A. Silenko, Chief Scientist at the Institute of Nuclear Problems at Belarus State University, reiterates many of the assertions discussed above. Dr. Silenko's employment history overlaps with the petitioner's.

Despite counsel's assertions to the contrary, the above letters are all from the petitioner's collaborators and immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim.

Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. The record contains no evidence to support the assertions made by the petitioner's colleagues, such as letters from the independent international laboratories that allegedly confirmed and utilized the petitioner's results, independent reports of the petitioner's results in the general or scientific media, evidence that the petitioner has been widely cited, or evidence that the petitioner's patented innovation has been licensed and widely used.

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

The petitioner submitted evidence that he has authored 30 published articles and a book entitled *The Beginner's Guide to C++*. The director concluded that the petitioner met this criterion.

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

Irene Zakon, Chief Executive Officer for BIR Training Center, asserts that the petitioner has worked at that center in Chicago since 1999, during which time he has taught part-time and developed curriculum and materials for two “innovative” advanced Java courses. In a second letter, Ms. Zakon asserts that the petitioner “plays a critical role at BIR Training Center by providing outstanding courses.”

As stated above, Mr. Belkin asserts that the petitioner played a “distinguished role” in the creation of database import and export algorithms while a consultant for Motorola. As also stated above, Mr. Rasputny asserts that the petitioner was the scientific manager at SRIAF on an air traffic control contract with a Russian company that was critical for SRIAF financially. Mr. Rasputny indicates that SRIAF employed at least 200 scientists and engineers, but does not indicate how many of them worked under the petitioner on the air traffic control project or how many other projects SRIAF had ongoing at the same time.

Oleg Kontchaev, Vice President of Comtek, discusses the petitioner’s consulting work for other companies as an employee of Comtek, focusing on the work for Fermi National Accelerator Laboratory where he developed a graphical component of EMS. Mr. Kontchaev further asserts that EMS was presented at a conference one month after the petitioner finished his assignment. Counsel asserted that the omission of the petitioner’s name as an author for the presentation was based on his departure one month earlier. The petitioner did not submit evidence to support the implication that author credit for the publication of scientific findings is based on who is left when the project ends rather than who sufficiently contributed to the project. Dr. Nogiec of Fermi National Accelerator Laboratory does claim that the petitioner made “visible contributions to our project,” but does not assert that the omission of credit to the petitioner for his work was due to his departure one month before the results were presented. Finally, Mr. Kontchaev asserts that the petitioner worked as a consultant for Abbott Laboratories, Motorola, and Lucent Technologies, but does not specify the role he played for those companies.

The director concluded that the letter from Dr. Nogiec did not specifically state that the petitioner had played a leading or critical role, that the general claims made by Ms. Zakon could be made about any effective teacher, and that while the petitioner played an important role in various projects in Belarus, he had not established that he played a leading or critical role for an organization.

On appeal, the petitioner analyses the director’s sentences separately and concludes that the director’s determinations are not logical or based on the evidence of record. The petitioner submits information regarding the reputations of Fermi National Accelerator Laboratory, the Belarus National Academy of Sciences, and the Institute of Physics.

We have already evaluated the petitioner’s claims to have made contributions of major significance while employed in various positions. The issue in evaluating the evidence relating to this criterion is the nature of the positions the petitioner was hired to fill. It is not enough for the petitioner’s employers to

simply make general statements that the petitioner's work was "critical" to the employer. Such claims must be supported by less subjective evidence, such as the petitioner's job title, recognition from high-level officials at the company or institution or official credit afforded the petitioner.

While Irene Zakon is a high-level official at BIR Training Center, the Chief Executive Officer, we concur with the director that not every innovative teacher who provides outstanding courses plays a critical or leading role for the institution above and beyond the teaching staff as a whole. Regardless, the record contains no evidence that BIR Training Center enjoys a distinguished reputation nationally.

Mr. Belkin's assertion that the petitioner played a "distinguished role" in the creation of database import and export algorithms while a consultant for Motorola is insufficient. We are not convinced that a consultant who is not employed by the company itself can play a leading or critical role for that company. Moreover, the record contains no evidence that high-level officers at Motorola recognize the petitioner for his role at that company.

As stated above, Mr. Rasputny did not indicate how many of the over 200 scientists and engineers worked under the petitioner on the air traffic control project or how many other projects SRIAF had ongoing at the same time. Thus, we cannot evaluate the petitioner's position at SRIAF. Moreover, the record contains no evidence regarding SRIAF's reputation nationally.

We agree with the director that Dr. Nogiec's claim that the petitioner made "visible contributions to our project," at Fermi National Accelerator Laboratory is insufficient. The lack of credit afforded the petitioner by the researchers on this project when presenting the work does not support the petitioner's claim to have played a leading or critical role. Nor does the record contain letters from high-level officials at the laboratory expressing their recognition of a critical role played by the petitioner.

We also agree with the director that playing an important role on a specific project for a large distinguished institute is not evidence that the petitioner played a leading or critical role for the institute itself. The record does not establish that laser research was a project to which either the Institute of Physics or the National Academy of Sciences of Belarus attached special importance above and beyond its other projects.

Finally, the record contains insufficient information regarding the petitioner's roles for Abbott Laboratories, Motorola, and Lucent Technologies.

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 mathematical physicist 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 indicates that the petitioner shows talent as a mathematical physicist, but is not persuasive that the

petitioner's achievements set him significantly above almost all others in his field. 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.