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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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[redacted]

FEB 28 2003

File: WAC 01 230 53255 Office: CALIFORNIA SERVICE CENTER Date:

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: SELF-REPRESENTED

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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.

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 Service regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner states:

> The results of my research and its implementation in the field of Technical Sciences and Electron Probe X-ray Microanalysis have been recognized internationally. . . . I have developed a new Method of Microanalysis, proved by a registered patent. My achievements in the field of Technical Sciences and Electron Probe X-ray Microanalysis have been recognized in many ways.

The petitioner asserts that he will seek employment with an as-yet-undetermined company, possibly in California, or else establish his own company, guided by the book *How to Form Your*

Own Corporation Without a Lawyer For Under $75.00. The petitioner submits job announcements from various U.S. employers seeking electron microscopists.

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). The petitioner did not originally claim eligibility via a one-time achievement. Subsequent to a Service request for additional evidence, however, the petitioner has stated that his patented method of microanalysis "has proved itself to be an effective analytical instrumental method in giving the information about the chemical composition of minerals," and that he gathered data that led to the identification of a new mineral, bismutocolumbite, which has been approved by the International Mineralogical Association ("IMA"). The petitioner states "[t]he discovery of a new mineral type approved by IMA is considered to be evidence of a major internationally-recognized achievement in science." The petitioner asserts that his method facilitated, in all, the discovery of nine new minerals from 1987 to 2001.

The petitioner evokes the one-time achievement clause of 8 C.F.R. § 204.5(h)(3), stating that his discovery (along with four co-discoverers) of bismutocolumbite amounts to such an achievement. The regulation, however, defines a one-time achievement as "a major, international recognized award." A discovery may earn its discoverer an award, but the discovery itself is not an award, nor is registration of that discovery with an international regulatory body. An example of a qualifying major, international recognized award in the sciences would be the Nobel Prize, presented in various scientific areas. The one-time achievement clause must be used exceedingly sparingly, because to approve a broad range of petitions based on a single award would run counter to the statutory demand for "extensive documentation" of sustained acclaim. Very few awards reach the one-time achievement standard, and not every field of endeavor will have a prize that qualifies under that standard.

The petitioner submits a copy of a 1994 journal article from *American Mineralogist*, announcing new mineral names. The four-and-a-half page article lists bismutocolumbite among 14 other newly named or newly discovered minerals, mostly reported in 1993 except for the petitioner's mineral, reported in 1992. A much longer list appeared in *Mineralogical Magazine*; the June 1996 issue carried a fifteen-page piece, "Thirty-seventh list of new mineral names. Part 1: A-L," indicating that another list, presumably of roughly equal length, was forthcoming. Bismutocolumbite appears in this alphabetized listing, with no indication that this discovery was any more significant than that of any other mineral listed.

The petitioner submits letters from two officials of the International Mineralogical Association, one of whom states "the discovery of the new mineral type approved by IMA is considered to be an evidence of a major internationally-recognized achievement in science." The other witness offers the nearly identical statement that "the discovery of the new mineral type approved by IMA is considered as an evidence of a major internationally-recognized achievement in science." The two letters contain many other similarities in wording and format. The highly similar wording, even including the same grammatical irregularities, is consistent with common authorship of the two letters. We do not dispute the IMA's designation of bismutocolumbite, but two nearly identical witness letters do not amount to persuasive evidence that the designation is of such magnitude that it is *prima facie* evidence of sustained acclaim or extraordinary ability.

In denying the petition, the director noted that the documentation regarding the IMA acceptance of bismutocolumbite names four co-discoverers in addition to the petitioner. The director stated that this sharing of credit diminished its significance. While we agree with the director that IMA recognition of the discovery of bismutocolumbite is not a major, internationally recognized award, the director's reasoning is flawed. Even the Nobel Prize, arguably the most famous and prestigious award in the world (and indisputably a major internationally recognized prize), is often split and shared between two or more recipients. While sharing of the prize diminishes the very substantial sum paid to each laureate, the prestige of the award is unaffected.

Barring the alien's receipt of a major, international recognized award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner states that he "received a number of prizes" relating to his research. The petitioner submits a translation of his *trudovaya knizhka*, an official employment record issued by Soviet authorities. This document indicates that the petitioner received one honorable mention and ten cash awards between 1980 and 1990. Most of the cash awards ranged between 40 and 100 rubles and recognize "successful fulfillment" of research projects, attendance at conferences, and so on.

Three awards exceeded 100 rubles, with the largest prize being 480 rubles "for the implementation of invention 'X-ray Method of Substance Microanalysis' on patent #1485085, that has been used for analysis of minerals." From the above wording, it appears that the sum of 480 rubles amounts to a "bonus" for having created a patented invention. The petitioner's patented invention also resulted in his receipt of an "Inventor of the USSR" medal. The petitioner has not established the significance of this medal. If, for instance, it was presented to every USSR patent holder, the medal is less significant than a medal presented to only one inventor per year. Despite statements by the petitioner, the patent itself cannot be considered a prize or award. A patent recognizes the originality of an invention or process, and affords commercial protection to the inventor, but it is not a prize for excellence in the field.

The other two prizes that exceeded 100 rubles were associated with "contests" among "young scientists." These contests would seem to exclude from consideration the most experienced and established scientists. Because "young scientists" do not constitute a distinct field, separate from older scientists doing the same work, an award that excludes the most experienced scientists cannot reflect the petitioner's standing in the entire field.

In response to the director's request for further evidence, the petitioner submits a document from [redacted] of the Human Resources Department of the A.P. Vinogradov Institute of Geochemistry [redacted] states that the "Inventor of the USSR" medal "is to be awarded to the inventor with the first Authorship Certificate registered in the State Registry of the Inventions of the USSR." The bulk of the letter discusses procedures regarding the awarding of the medal, but there is no indication as to what proportion of patented inventions yield the medal for their principal inventors. Nothing in the letter is inconsistent with the finding that the principal

inventor of every patented invention receives such a medal. We note that the petitioner has worked and studied at the Vinogradov Institute, and thus this letter comes from the petitioner's own employer and institution of learning rather than from any official of Russia's patent authority (Rospatent).

The petitioner appears to claim his *Kandidat Nauk* degree (analogous to a Ph.D. from a U.S. university) as a prize or award. An academic degree is not a prize or award for excellence, but rather the expected outcome of a course of study. Furthermore, in Russia, the degree of *Kandidat* is not even the highest available degree; there is a higher degree, *Doktor*, which has no U.S. equivalent. (This is not to say that we consider a *Doktor* degree to be a prize or award.)

> *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 asserts that he meets this criterion through membership in the New York Academy of Sciences ("NYAS") and the Microbeam Analysis Society ("MAS"). The petitioner submits a printout from MAS' web site, www.microanalysis.org, which indicates that membership is "[o]pen to all individuals having an interest in microbeam instrumentation and its applications." NYAS has a similar open membership policy. The petitioner submits a copy of a "form" letter welcoming him to NYAS. The letter states that NYAS' membership consists of "30,000 people in 150 countries around the world." The very size of this association demonstrates that it is not an exclusive association, limited to the elite 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.*

The petitioner submits copies of three articles containing citations of the petitioner's published work. Citation of the petitioner's work, however, does not establish that the articles containing the citations are "about" the petitioner or his work. Rather, the citations demonstrate that the petitioner's work served as a resource for another article that addressed the same general area of interest. Citations of this kind are most useful when measuring the impact of the petitioner's own work, covered by a separate criterion further below.

Furthermore, two of the three articles citing the petitioner's work were co-authored by the petitioner's collaborators [redacted] The remaining article was co-authored by [redacted] on one of the other two articles. Thus, every documented citation of the petitioner's work derives from an interconnected group of researchers that includes the petitioner's own collaborators. This citation history does not establish widespread acclaim, recognition, or independent reliance on the petitioner's work.

In response to the director's request for additional evidence, the petitioner cites the above-discussed journal articles listing newly discovered minerals. As already noted, bismutocolumbite is not

singled out among the minerals listed, and the petitioner is not singled out among the mineral's five codiscoverers. The petitioner's name appears once in each of these articles. We cannot conclude that these articles, essentially catalogs, are "about the alien" as the regulation requires.

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

As noted above, the petitioner holds a USSR patent for one of his inventions. The granting of a patent is not *prima facie* evidence of an original contribution of major significance. Beyond the patent documentation, the petitioner submits a letter from [redacted] director of the A.P. Vinogradov Institute of Geochemistry, Siberian Branch, Russian Academy of Sciences, who states:

> [The petitioner] developed a new method of X-ray microanalysis, proved by a registered patent #1485085, and implemented it in the form of a software ZEBRA (ZAP ELECTRON BEAM X-RAY ANALYSIS) for an automated microanalyzer "Superprobe-733." This method provided technical support for a large number of researches of minerals.

[redacted] asserts that the petitioner's ZEBRA software is in use at several "leading research organizations" in the field of geology in the former Soviet republics, and has significantly increased the production capacity of "Superprobe-733" equipment. [redacted] does not elaborate on the specific functions of ZEBRA or Superprobe-733 ("an Automated Electron Probe Microanalyzer"), or explain how the petitioner's work has been more significant than that of most other researchers working in the same field.

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

The petitioner claims to have written 30 articles in Russian journals. The petitioner submits copies of some of these articles, both in the original Russian and in translated English editions. The petitioner states "[t]he fact that my articles were translated and published in the United States by the U.S. Editor confirms that the results of my work ha[ve] been recognized internationally."

The very existence of such published articles is not *prima facie* evidence of sustained acclaim. Rather, scholarly articles are an avenue through which a scholar or researcher can achieve sustained acclaim, contingent on the field's reception and reaction to those articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. As noted above, documented citation of the petitioner's work has been minimal and restricted to collaborators.

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

The petitioner states:

> My outstanding leadership role was also recognized by the United States Government. In 1995 I received a fellowship award from the United States Government. I was selected to the [redacted] Fellowship Program with the goal of my professional development in the United States. . . .
>
> During the [redacted] Fellowship Program I completed International Students of English Program and the one-year-course of Master's-level study in the United States and received a Certificate of Graduate Business Studies and Certificate of Achievement. . . . I am confident that Professional Graduate Business Studies have increased my extraordinary abilities in sciences in terms of management of the process of implementation of the results of my research to the needs of Industry.

The petitioner submits background evidence showing that the [redacted] Fellowship Program "is designed to foster democratization and the transition to market economies in the NIS and Baltic countries through intensive academic and professional training." On average, 110 fellowships are awarded annually "to qualified young and mid-career individuals" in the former Soviet republics. Given that the focus of this fellowship program is on business and economics rather than on the sciences, the petitioner's participation in the program has little discernible bearing on his acclaim as a researcher specializing in electron probe x-ray microanalysis.

Furthermore, the fellowships represent master's degree-level training in business administration. As such, the petitioner was essentially a graduate student during the period of his fellowship. Being a student does not constitute a leading or critical role for a university or for a fellowship program.

[redacted] in the letter discussed above, indicates that the petitioner "carried out a number of valuable researches, playing a leading role in the field of Automated Electron Probe X-ray Microanalysis" from March 1980 to November 1992, while working "as an engineer and a research scientist" at the A.P. Vinogradov Institute of Geochemistry. [redacted] as the director of that institute, plays a leading role. [redacted] letter does not explain how the petitioner's role was more significant than that of other engineers and research scientists at the institute, and we cannot conclude that every researcher employed at a research facility plays a leading or critical role. Subsequent submissions by the petitioner add little of substance to this discussion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner did not initially claim to have satisfied this criterion, but he has since asserted that he "has commanded a salary that was higher than [the] average salary" in his field, in addition to the various monetary incentives discussed further above. The petitioner submits another copy of his

official work record, but he submits nothing to establish the average salary in his field or to establish that he has ever been among the highest-paid workers in that field.

The director denied the petition, stating that the evidence in the record establishes that the petitioner has been a successful and productive researcher, but that there is nothing in the record that credibly establishes that the petitioner is nationally or internationally acclaimed as one of the very top researchers in his field.

On appeal, the petitioner states that the outcome of his position should be decided by "an Officer [with] basic knowledge in the field of Electron Probe Microanalysis." By law, the burden of proof is on the petitioner to establish eligibility, and thus to provide whatever evidence and explanatory materials are necessary to reach such a conclusion. The petitioner's argument suggests that the Service should have hired an officer with "basic knowledge in the field of Electron Probe Microanalysis" in anticipation of this petition. Given the sheer number of specialties in the sciences, the arts, business, athletics, and so on, it would be logistically untenable to employ adjudicators with a working knowledge of every one of those fields.

The petitioner argues that the director accorded insufficient weight to the petitioner's evidence regarding the discovery of bismutocolumbite. Again, the burden is on the petitioner to establish the significance of this discovery, not on the director to rebut the petitioner's claims. A significant proportion of the petitioner's evidence derives from the Vinogradov Institute where the petitioner worked and studied. Whatever the opinions of the faculty at that institute, those opinions are not first-hand evidence of wider acclaim in the field.

The petitioner submits copies of previously submitted documents, but the only new submission on appeal is a letter from [redacted] co-inventor of the petitioner's patented method discussed above. [redacted] herself, has discovered several new minerals using that process. Her statement amounts to yet another in a string of endorsements from researchers at the Vinogradov Institute in Irkutsk. The statute requires "extensive documentation" of sustained acclaim, and objective evidence from a variety of sources carries much greater weight than letters from witnesses whom the petitioner himself has chosen from among his co-workers and mentors.

On the I-290B appeal form, the petitioner did not indicate that he required any additional time to submit further evidence. Over two months after the filing of the appeal, the petitioner submitted new materials. There is no regulation which allows the petitioner an open-ended or indefinite period in which to supplement the appeal. Indeed, the existence of 8 C.F.R. 103.3(a)(2)(vii), which requires a petitioner to request, in writing, additional time to submit a brief, demonstrates that the late submission of supplements to the appeal is a privilege rather than a right. Any consideration at all given to such untimely submissions, which are not preceded by timely requests for an extension, is discretionary.

In this instance, the new documentation consists of letters from Marquis' Who's Who, indicating that the petitioner had been selected for inclusion in the 20th edition of *Who's Who in the World*. This selection did not take place until after the petition's filing date, and thus cannot retroactively establish eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Even then, the

petitioner has not shown that inclusion in a *Who's Who* directory is a widely recognized honor that accurately identifies the top figures in a given field. The materials submitted by the petitioner appear to be consistent with materials from various "vanity" presses, which publish biographical directories primarily for sale to the persons listed in the books. In this case, the publisher has offered the book to the petitioner at the discounted price of $315.00, indicating that any benefits accruing from inclusion in the book do not include a complimentary copy. There is no evidence that the publishers have any particular knowledge of the petitioner or his activities. The letters are "form" letters with no specific reference to the petitioner's achievements or even his area of expertise. One letter indicates that biographees are chosen, in part, on the basis of "educational attainments," through names gathered from "alumni rosters from universities."

The record, seen as a whole, demonstrates that the petitioner has had a productive and successful career, earning him the respect of colleagues and collaborators while leaving an impression in the form of a patented invention and the subsequent discovery of a new mineral. The petitioner has not, however, shown that his achievements elevate him above almost everyone else in his field at a national or international level. With regard to the petitioner's repeated assertions that he is internationally renowned in his field, we note that he sent letters to several U.S. universities and research facilities inquiring about employment in their electron microscope laboratories. The responses to these letters, ranging from generic statements that the petitioner's name will be considered, to polite rejections, do not offer any indication that the authors are familiar with the petitioner or his accomplishments.

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 in his field 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.