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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 03 2003

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)

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 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.

The petitioner is the manager of the Circuit and System Group at OptoIC Technology, Inc. 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 by virtue of being named Distinguished Inventor of the Year five times by the Taiwan Semiconductor Manufacturing Company (TSMC), where the petitioner worked for several years before joining OptoIC Technology. Counsel states "TSMC, as a means of maintaining its global leading edge in this industry, recognizes major contributors, within its company, to the development of advanced technology with this award." The award, as described, is limited to TSMC employees and is therefore not available on a national or international scale. At best, the award compares the petitioner to other inventors at TSMC.

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 Tau Beta Pi. Counsel observes that IEEE is "the world's largest engineering society," but does not explain how it could grow to such size if it is highly selective in its admission policy. The record documents the petitioner's IEEE membership, but not the membership requirements of that association.

With regard to Tau Beta Pi, the record contains a letter from the Texas Alpha Chapter of Tau Beta Pi, dated September 21, 1992, stating in part "your outstanding academic record allows our chapter to have the honor of considering you for membership in Tau Beta Pi National Engineering Honor Society. Our two membership requirements are distinguished scholarship and exemplary character. You have demonstrated the distinguished scholarship through your excellent academic performance." This letter does not state that the petitioner is a member; only that he is under consideration for membership. The record contains no subsequent documentation to reflect his admission. Furthermore, "excellent academic performance" at the graduate school level is not an outstanding achievement in the field. As a graduate student, the petitioner was still in training to enter his profession. Graduate study is not a field of endeavor. Finally, the letter indicates that "our chapter," i.e. the chapter at the University of Texas, is considering the petitioner for membership. This indicates that the membership decision is made at the local chapter level rather than by national or international experts as the regulation requires.

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

Counsel states:

> [The petitioner] holds an extraordinary number of patents both here in the US and in Taiwan. [The petitioner] has been named inventor and awarded 30 patents in the US

> and 31 patents awarded by the Republic of China. This is clear evidence of [the petitioner's] extraordinary significance and original contributions to the advancement of semiconductor technology.

Patents, by themselves, establish the originality but not the significance of the inventions to which they pertain. Similarly, a patented invention does not become more important when the same inventor obtains more patents. It is incumbent upon the petitioner to establish not only that he is a successful inventor, but also that his inventions are of major significance in the field. According to statistics available from the U.S. Patent and Trademark Office (USPTO) web site, http://www.uspto.gov, the USPTO accepted 288,811 patent applications in 1999 and approved 169,086 the same year. Statistics indicate that the USPTO approves more than half of all patent applications submitted. Given these figures, we cannot conclude that a patent is *prima facie* evidence of the major significance of the patented invention.

The petitioner submits five letters from individuals whom counsel deems "independent and highly recognized authorities in [the petitioner's] field." The witnesses consist of one of the petitioner's former professors; two researchers who, along with the petitioner, studied at the University of Texas at Austin; and two top executives of companies that have employed the petitioner. While we do not question the witnesses' knowledge of their collective field, counsel does not explain how these individuals are "independent" of the petitioner despite their immediately obvious ties to him.

Professor [redacted] supervised the petitioner's doctoral research at the University of Texas at Austin and co-authored several papers with the petitioner. Prof [redacted] states that the petitioner's "most important contribution during his Ph.D. research was his work on the luminescence properties of porous silicon. . . . [The petitioner] was one of the first to begin working in this area and in a period of two years he had become internationally recognized for his work." Prof. [redacted] recognition, however, appears to outweigh significantly the petitioner's own. Half of Prof [redacted] letter is devoted to Prof. [redacted] own credentials, including admission to the National Academy of Engineering and Fellow membership in several associations. Prof. [redacted] describes several of the petitioner's contributions and innovations but does not explain why these are of major significance when compared to the original work of other researchers in the field of optoelectronics.

As another example, [redacted] senior vice president of Research and Development at TSMC, states that the petitioner "was one of the most outstanding members of the R&D team engaged in the development of mixed signal and RF integrated circuits technology," but the letter contains no more specific information. Whatever these individuals and the other witnesses sincerely believe regarding the petitioner's recognition and reputation, their letters are not first-hand evidence that the petitioner is widely acclaimed outside of groups with which he has been deeply involved.

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

Counsel lists 38 articles by the petitioner, and asserts that the articles were accepted for publication "[i]n recognition of [the petitioner's] status as a researcher of extraordinary ability." The implication is

that identical manuscripts, from researchers without extraordinary ability, would have been rejected. The petitioner submits nothing to show that any of the journals' publishers demand extraordinary ability as a condition for publication, as counsel has implied.

Given that publication is routinely expected of researchers, in some cases even at the student level, the mere existence of scholarly articles by the petitioner does not automatically satisfy this criterion. Rather, an alien can satisfy this criterion through scholarly articles provided those articles have earned the alien national or international acclaim. We note that, in terms of sheer quantity of output, the petitioner is not at the top of his field. Prof. [redacted] who supervised the petitioner's doctoral training, has published over 260 articles and given over 160 conference presentations.

Counsel asserts that the petitioner's published work "has been cited in leading journals by other researchers." The initial submission contains documentation of only three citations, one of those being a self-citation by one of the petitioner's collaborators. One of the remaining two citations is in the record in manuscript form; there is no evidence that this manuscript was published at all, let alone "in leading journals."

Counsel adds that the petitioner "was a contributing editor of a book entitled Porous Silicon," which counsel claims is "one of the authoritative publications in porous silicon and is used widely by engineers and researchers in the industry and as a reference book by universities." Counsel cites no evidence upon which to base the conclusion that the book is "used widely" or viewed as "authoritative."

Counsel also observes that the petitioner has presented his findings at several professional conferences. Such conference presentations are essentially akin to published articles, in that they involve the presentation of highly specialized information to a specific audience. Counsel emphasizes that the petitioner was an "invited keynote speaker . . . at the 1996 VLSI Technology Symposium held in Hsin-Chu, Taiwan. Only recognized authoritative figures at the top of the field were invited to speak at the conference." The petitioner submits a translated letter from Dr. [redacted] chairman of the Electronic Engineering Department at Meng-Shin Technology Institute, dated November 14, 1996. The body of the letter reads, in pertinent part:

> 1996 VLSI Technology Symposium will be held on November 23, 1996 at the Electronic Department building. Since you are well known as one of the most outstanding people in the area of the Very Large Scale Integrated circuits due to your extraordinary achievement, it is our honor to invite you to give a talk [at] this meeting. We also appreciate it very much that you can give us the presentation when you are so busy.

The record contains no independent evidence regarding this symposium. Dr. [redacted] does not identify the petitioner's "extraordinary achievement" or specify what kind of "talk" the petitioner was expected to prepare with nine days' notice despite being "so busy."

The director requested further evidence to meet the regulatory criteria. In response, counsel repeats the claim that TSMC's Distinguished Inventor of the Year award is internationally

recognized as a significant award. To support this assertion, the petitioner submits a letter from D.C. Lin, deputy technical director of TSMC's Intellectual Property Division, who states "[t]he awards [the petitioner] received at TSMC are highly prestigious in the semiconductor industry throughout the world." The record contains no corroboration of this claim from anyone outside of TSMC, such as substantial articles in trade publications announcing the names of the winners.

Counsel repeats the claim that the sheer number of the petitioner's patents is *prima facie* evidence that he has made original contributions of major significance, but the petitioner submits no independent evidence to support this assertion.

Discussing the previously submitted witness letters, counsel notes that Prof. [redacted] is "a member of the National Academy of Engineering. Admittance to this highly prestigious organization is one of the highest honors a researcher can achieve." Counsel also notes Prof. [redacted] election as a Fellow of IEEE, and states "[t]he grade of Fellow recognizes unusual distinction in the profession and is conferred only by invitation of the IEEE Board of Directors." We do not dispute these assertions, but it remains that these honors were bestowed upon Prof. [redacted] and not on the petitioner. As such, they merely illustrate the gulf between Prof. [redacted] and his former student. Counsel places great significance on "[t]he fact that such distinguished researchers in the field have attested to the extraordinary nature of [the petitioner's] contributions to this field." It remains that the burden of proof is on the petitioner to produce objective documentation that he, himself, is at the top of the field; it cannot suffice to show that someone else at the top of the field views the petitioner's work as important. Arguably, if Prof. [redacted] opinion were shared at the national or international level, then the petitioner would have accrued the same honors and distinctions as Prof [redacted]

The petitioner submits a letter from Professor [redacted] who studied at the same universities as the petitioner. This letter is largely identical to a letter from Prof. [redacted] submitted with the initial petition.

The petitioner submits a copy of *Porous Silicon*, which counsel states is "a major reference for researchers worldwide." Different chapters of the book are in visibly different typefaces, consistent with compiling photocopied manuscripts from different sources. It is not immediately evident that major textbooks are routinely prepared in this manner, rather than professionally typeset with a uniform appearance throughout the book. Counsel states "[a]n invitation to contribute to this work is representative of the high caliber of research being conducted by" the petitioner. In this regard, it is significant that one of the petitioner's three co-authors is Prof. [redacted] whose reputation counsel has gone to some lengths to emphasize. It appears highly likely that Prof. [redacted] was the one invited to contribute the chapter, and he then in turn invited the petitioner and two others to assist him. Consistent with this conclusion is the fact that the other two co-authors were at the University of Texas, which is where Prof. [redacted] works and where he instructed the petitioner. The petitioner has submitted no first-hand evidence to show that the publisher directly invited him to contribute the chapter.

The director denied the petition, stating that the petitioner has failed to establish the impact of his work beyond his circle of professors and employers. On appeal, the petitioner submits copies of previously submitted materials, as well as new letters and background material regarding the *Journal of Applied Physics* and *Applied Physics Letters*. The reputation of these journals was not cited as grounds for denial, and these background materials do not show that the petitioner's articles in those journals have had a significant impact at a national or international level.

The petitioner also submits what counsel describes as "[a] computer printout from Yahoo! showing the recent industrial application of the petitioner's patents in industry." The computer printout actually is from http://www.cerbonics.net. The petitioner conducted a "Yahoo!" search of that site, yielding information about four of his patents. Other materials from the Cerbonics web site are partly in Chinese, with no translations, and are of undetermined significance. Counsel asserts that Cerbonics purchased the four aforementioned patents from TSMC "for industrial application." An invention does not possess major significance simply because it is useful or has industrial applications that make it economically viable; by this unacceptably loose standard, every product now in production is a contribution of major significance.

Counsel states that TSMC, "the largest industrial power house in Taiwan . . . would not spend a tremendous amount of money to invest in [the petitioner's] research and patenting his inventions if they are not original and with significant application in the industry." Here again counsel relies on a general assumption rather than specific evidence. Counsel presumes that, because TSMC is a major corporation, any project in which it invests time and resources must be, on its face, an original contribution of major significance. The record does not justify this generalization.

In a similar vein, the petitioner still has not substantiated the claim, repeated on appeal, that internal awards limited only to TSMC employees qualify as national or international awards. Much of counsel's brief consists of repetition of previous arguments in this manner.

The three letters submitted on appeal are, counsel states, "from those who have no personal relations with" the petitioner. One of these three letters is from Dr. [redacted] former president of TSMC and now that company's vice president of Marketing. The petitioner had already established that the executives of TSMC, his former employer, hold him in high regard. An additional letter from another executive of that company does not widen the petitioner's demonstrated acclaim.

The other two letters are from [redacted] chair of the Board of Directors of the Photonic Society of Chinese-Americans, based in Palos Verdes Estates, California, and Dr. [redacted] chairman of the South California Monte Jade Science and Technology Association, "established by a group of high-tech Chinese American executives in Silicon Valley in 1989." These letters show that the petitioner is known among Chinese-American engineers in Silicon Valley (where he now works). The three witnesses on appeal do not deny having had contact with the petitioner; they merely assert that this contact was "professional" rather than personal. The letters continue the pattern already established, in which witnesses in proximity to the petitioner assert that the petitioner has earned global recognition. They attest to the "profound and far-reaching impact" of

the petitioner's work within the semiconductor industry, but the record does not show how the petitioner's work has affected that industry more than countless other productive and well-trained researchers.

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 an optoelectronics 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.