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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 01 218 52241 Office: CALIFORNIA SERVICE CENTER Date: MAR 12 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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]

PUBLIC COPY

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.

Elizabeth Hayward

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be withdrawn and the appeal will be dismissed on its merits. The petition will be denied.

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. The AAO summarily dismissed the appeal because, at that time, the record contained no substantive material on appeal. The petitioner has established that a timely appellate brief was submitted, but not incorporated into the record. On motion, the petitioner has submitted a copy of the missing brief and accompanying exhibits.

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 the petitioner has sustained national or international acclaim at the very top level.

The petitioner is currently employed as a design engineer by Rechem International, Inc., although the record contains nothing from Rechem to specify the nature of the petitioner's duties there.

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, 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.*

Counsel cites letters from two of the petitioner's mentors. These letters, to be discussed further below, contain praise for the petitioner's academic achievements but no mention of any specific prizes or awards.

The petitioner submits copies of two "Certificates of Honor" that counsel identifies as national awards from the National Ministry of Mechanical Electronics Industry of the People's Republic of China. The certificates identify the petitioner as the "Main Winner" of, respectively, the "Third Prize" in 1992 and the "Second Prize" in 1993.

Because the petitioner did not submit independent evidence to establish the significance of the above awards, the director instructed the petitioner to submit further materials. In response, the petitioner submits documentation regarding the 2001 Science and Technology Award of China Machinery Industry. The petitioner has not shown that this award is the same as the award he received in 1992 and 1993, the certificates for which do not contain the phrase "Science and Technology Award" and which were awarded by the National Ministry of Mechanical Electronics Industry rather than the China Machinery Industry. Documentation regarding the 2001 award implies the award is a newly created one, and makes no reference to winners in past years. This same documentation suggests that the award represents a consolidation of several "previous award[s]" into "one complete technological award system." Assuming that the 2001 documentation refers to the same kind of prize that the petitioner won in 1992 and 1993, or a successor to that prize, the record does not support counsel's characterization of the award, as shall be explained below.

The documentation indicates that 97 third prizes were awarded in 2001, compared to 56 second prizes and 17 first prizes, for a total of 170 prizes. The lowest registration number assigned to a third prize winning project is 0101002; the highest number is 0111007. Counsel assumes, by subtracting the smaller number from the larger, that "there are at least 10,005 projects that were considered for the award program in the year 2001." Counsel's assumption that the registration numbers represent an unbroken sequence is unsupported and inconsistent with the documentation provided.

The record shows the registration numbers of all 170 prizewinning projects. Below are the registration numbers of all 17 first prize winners:

0101015	0103012	0105002	0106028	0109001
0102007	0103023	0105014	0106040	
0102008	0104006	0105017	0108004	
0102015	0104007	0106027	0108014	

The distribution of the above numbers is more or less typical of that of the second and third prize winners. When these numbers are examined as a group, it appears highly unlikely that the registration numbers represent an unbroken numerical sequence. Instead, sections of the registration number appear to represent codes. Of the 170 listed registration numbers, only 43 end with a sequence of numbers higher than 030; the highest is 075. The third-to-last digit is always, without exception, a zero. Dividing the registration numbers into eleven groups, designated by the first four digits (and set apart here by hyphens), the highest registration number in each of the eleven groups is:

0101-019	0104-036	0107-015	0110-009
0102-054	0105-019	0108-018	0111-007
0103-023	0106-075	0109-055	

The groups with higher final numbers are represented more heavily in the list than groups with lower final numbers. This is what one would expect if numbering were sequential within separate groups, rather than one single sequence. Thus, there is nothing to suggest that there were over ten thousand applicants for the prize, who were assigned sequential registration numbers from 0101002 through 0111007. The evidence is more consistent with a total of a few hundred applicants, with a substantial percentage winning a prize of some kind. Adding the highest number from each of the eleven groups yields a total of 330. More than half that number (170) won prizes. Even if we raise the number of applicants to one thousand, a claim not warranted by the evidence, one applicant in six won a prize. We use the term "applicants" because the documentation shows that the recipients applied for the award, rather than being nominated by an objective third party.

> *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 Accreditation Commission of Professional Rank of the Ministry of Mechanical, Electronic Industry accredited [the petitioner] as a Senior Engineer." The petitioner has not shown that accreditation or ranking constitutes membership in an association. The record also does not establish the requirements for accreditation as a senior engineer. Furthermore, the documentation of the petitioner's rank is a "Senior Professional Rank Certificate" issued by the Tianjin Municipal Personnel Bureau. If the petitioner received his rank from a municipal bureau, then the membership decision was not made at the national or international level.

Counsel also states that the petitioner "was elected a Director of the 'Specialized Commission of Vibration & Noise Control, Chinese Vibration Engineering Institute.'" Again, the petitioner has not shown that membership on a commission equates to membership in an association in the field. Documentation in the record indicates that the petitioner was "appointed" rather than "elected" to the position. Material from the institute's web site indicates that the petitioner is one of 71 members of the Specialized Commission's board of directors. The web site itself is in the Chinese language. An accompanying translation indicates that "[e]ach one of the directors is a leader in his/her field." We will take this notation into consideration, but it cannot form a major pillar to support the petitioner's claim of eligibility.

> *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, as a director of the Chinese Vibration Engineering Institute's Specialized Commission of Vibration and Noise Control, the petitioner had "the responsibility to judge the work of others in the same or allied fields." While the petitioner has documented his membership on the Institute's 71-member board of directors, the record contains no evidence to indicate that the petitioner acted as a judge of the work of others. The petitioner was appointed to a four-year term beginning in 1995, but he left China in 1996 and there is no evidence that the petitioner remained active with the commission through the end of his term in 1999.

> *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 submits two letters from former mentors. [redacted] president of Huazhong University of Science and Technology, refers to the petitioner as "a former graduate student of mine." Prof. Yang states:

> [The petitioner] developed a predicting theory for noise – a Band-limited Asymptotic Modal Analysis for structural-acoustic coupled systems. The new technique has a wide range of applications in automotive, aerospace and underwater acoustic industries. The new technique also provides the powerful tools for engineers, designers, and researchers striving to reduce noise radiated by vibrating structures and to predict structural-acoustic performance of commercial and industrial products.

[redacted] does not indicate that the petitioner's work has won him national or international acclaim. [redacted] states only that the petitioner "will be an asset to any company" that employs him. The petitioner has subsequently submitted background evidence about [redacted] which, counsel admits, places [redacted] on a level above the petitioner. This evidence does not change the content of [redacted] letter.

[redacted] who supervised the petitioner's work as a research engineer at Tianjin Research Institute of Construction Machinery, states:

> In the early 1990s, [the petitioner] was in charge of a research team [that] conducted a study of a structural-acoustic coupled system, a national research project. [The petitioner] developed a prediction method of structural noise – a Band-Limited Asymptotic Modal Analysis. The new technique can help engineers accurately to estimate noise radiated by structure systems and modify parameters in design state with wide application for design products, such as off-road vehicle, automobile, aircraft, and vessels. Also, in the mid-1990s, he completed a complex dynamic analysis of a wave simulator of vessels with six degrees of freedom and virtual dynamic design on computers.

Like [redacted] offers no details about how widely the petitioner's system has actually been implemented or recognized as a significant contribution. The petitioner does not establish the significance of his work simply by describing it and listing hypothetical uses for his findings. Letters from the petitioner's former professor and former employer do not show that the beneficiary's work is considered significant at a national or international level.

Counsel states that the writers of the above letters "omitted the term defense and military applications" and states that the petitioner's work has applications in weapons development. The record contains no actual evidence, however, to show that the petitioner's work has actually resulted in significant military developments. Counsel's speculation about potential future uses of the petitioner's work carries no weight in this proceeding.

The petitioner has subsequently submitted a letter from [redacted] of Duke University, who states "I had the opportunity to review the work of [the petitioner] in the investigation of interior noise when many acoustical modes are participating in the noise field. His work is original and important. . . . Based upon this work I have developed a high regard for his mathematical skills and physical insight into the behavior of complex engineering systems." The work [redacted] reviewed is an article that the petitioner wrote in 1990. In a letter dated September 11, 1990, [redacted] praised the petitioner's article as "a very good paper" and offered "questions and comments" for consideration "in preparing it for final publication." As discussed further below, this article was never published.

We also note that the regulatory language requires evidence that the alien's work is of "major significance." [redacted] assertion that the petitioner's work is "important" is helpful in this regard, but his letter contains only general assertions about possible applications for the petitioner's work. As with the other letters, this letter contains no indication regarding the extent to which the petitioner's work has actually been applied and implemented. [redacted] observes that interior noise, the subject of much of the petitioner's research, "is a critical issue for many transportation vehicles," but he does not indicate that the petitioner's work has, thus far, had a highly significant impact on vehicle design, beyond the influence that every mechanical engineer has on every design with which he or she comes into contact.

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

The petitioner submits copies of five Chinese-language articles, about which the record contains little evidence except to show that they were published between 1986 and 1991. The petitioner also prepared one English-language paper in 1990. The petitioner submitted the paper for publication in the *Journal of Sound and Vibration*. The publisher returned the manuscript to the petitioner in January 1992, in order for the petitioner to "make appropriate revisions" pursuant to a reviewer's comments. Counsel states the piece was never published because the petitioner was too busy to make the required revisions. The very existence of published material does not demonstrate acclaim, and the petitioner has not established the influence of the published articles that he appears to have ceased producing over a decade ago.

The director denied the petition, stating that the petitioner's evidence illustrates a successful career but not sustained acclaim. The director also noted that, whatever recognition the petitioner may have gained in his native China in the first half of the 1990s, he has not earned any particular distinction since his 1996 arrival in the United States. The director cited a pending student visa application as evidence that the petitioner no longer works at Rechem, and the director concluded that U.S. employers do not appear to be eagerly seeking the petitioner's services, despite the petitioner's claimed reputation as one of the very best in his field.

On appeal, the petitioner submits a substantial quantity of documents, many of which are copies of previously submitted documents. Other documents are newly submitted, and it is those that we shall address here. The petitioner submits an unsigned letter, dated April 10, 2002, on the letterhead of the China Machinery Industry Federation. The letter lists the petitioner's achievements, stating for example that the petitioner was "the first one to introduce the remote parameters control theory, which helped the completion of the environmental load recovery technology." The letter also indicates that the petitioner developed a "model for testing riding comfort for mechanic (primarily for construction purpose) equipment which has become the new national standard for today's testing application." The letter concludes with the assertion that the petitioner "is widely considered as one of the best and leading mechanic[al] engineers in the field of vibration and noise control." This unsigned letter, by an unidentified author, does not constitute strong evidence of sustained acclaim or extraordinary ability. Several other arguments that counsel offers on appeal are supported only by other unsigned letters on the letterhead of the same organization.

The above letter also fails to address the director's relevant finding that whatever attention the petitioner's work may have attracted in China, the petitioner has not sustained that level of recognition during the several years following his 1996 emigration to the United States. Counsel states that there is no regulatory requirement for the petitioner to show "current proof of accomplishment," but counsel does not offer an alternative definition of the term "sustained acclaim."

To demonstrate the petitioner's achievements since 1996, the petitioner submits copies of articles published in the *Chinese Journal of Mechanical Engineering* in 1996 and 1997. The petitioner's co-authors are individuals employed at the Tianjin Research Institute of Construction Machinery, where the petitioner had worked until shortly before the publication of the articles. Given the usual delays in publishing research articles, and the location of the petitioner's collaborators, it appears that the petitioner prepared these articles while working at the Tianjin Research Institute, and they simply were not published until after the petitioner moved to California. These articles are therefore not persuasive evidence of the petitioner's activities in the United States.

The petitioner applied for a U.S. patent in June 2001, less than two weeks before filing the petition. The patent, never mentioned in the initial documentation, is for a "Magnetic Dual Glasses Window Structure." The materials submitted do not clearly show the relationship between this window structure and the acoustical engineering work upon which the petitioner's reputation purportedly rests. The filing of a patent is not *prima facie* evidence of a contribution of major significance. A patent merely recognizes the originality of an invention. The record is silent as to the importance of the petitioner's "Magnetic Dual Glasses Window Structure."

Counsel disputes the director's contention that Rechem no longer employs the petitioner. The director's observation, based on the circumstantial evidence of a visa petition that has since been withdrawn, appears to be tangential rather than a deciding factor in the decision. From the discussion of the evidence of record, it is clear that the director would have approved the petition but was dissuaded by inferences arising from the student visa petition.

With regard to judging the work of others, as described at 8 C.F.R. § 204.5(h)(3)(iv), counsel states that the petitioner "did not make any such claim." While the petitioner himself may not have personally set forth such a claim, counsel definitely did so. As noted above, counsel had previously claimed that, as a director of the Chinese Vibration Engineering Institute's Specialized Commission of Vibration and Noise Control, the petitioner had "the responsibility to judge the work of others in the same or allied fields." This wording is lifted directly from the regulation, which discusses "participation . . . as a judge of the work of others in the same or an allied field." The petitioner's signature (attesting to the accuracy of the petition) appears at the end of the letter in which this claim appears.

The petitioner submits new witness letters [redacted] in a clarification of his earlier letter, states that his "knowledge of [the petitioner's] achievements is derived in part from a reading of several of his research publications." [redacted] then lists two articles from 1991 and the unpublished 1990 manuscript. [redacted] identified above as one of the petitioner's former professors, states that the petitioner "has no doubt become a leading scientist in his field. I am hoping and will not be surprised that somebody [sic] in the near future, he will surpass me in the field."

Another of the petitioner's former professors [redacted] now mayor of Wuhan City as well as president of Huazhong University of Science and Technology, states "[w]ith [the petitioner's]

outstanding contributions, our engineering computing center has been the leader in the field." This letter has been provided in an effort to satisfy a newly claimed criterion:

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

Counsel states that the petitioner "performed in a leading role for establishments that have a distinguished reputation such as Tianjin Research Institute of Construction Machinery and Huazhong University of Science and Technology." The record does not establish that the petitioner held leadership positions at either of these institutions. The petitioner held the rank of senior engineer at the Tianjin Research Institute, a facility which according to the record employs "400 professional engineers" out of a total of "more than 600 employees." Given that more than half the staff consists of engineers, it is far from clear that the title of "senior engineer" denotes an institute-wide leading role. With regard to Huazhong University, participation as a student in one of countless research groups is not a leading or critical role for the university as a whole.

Counsel claims, on appeal, that the petitioner has also fulfilled two other initially unclaimed criteria:

> *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.*

A translated article, dated June 7, 1995, discusses a project undertaken by the National Committee of Science and Technology and the Ministry of Machinery Industry, and identifies the petitioner as the director of the project. The translation does not identify the source of the article; rather, it simply refers to it as a "News report in June 7, 1995." The petitioner submits copies of excerpts from *Guangming Daily* and *Science and Technology Daily*. The copy of *Science and Technology Daily* shows a date of June 8, 1995, which differs from the June 7, 1995 date of the translation. The date of the copy of *Guangming Daily* appears to read June 7, 1995, but the darkness of the photocopied image prevents a definitive finding. The burden is on the petitioner to establish that these papers are major national media rather than local papers or otherwise non-major media.

> *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 submits an unsigned letter, on the letterhead of Tianjin Research Institute of Construction Machinery, stating that the petitioner was in "the highest salary level in the field" while employed at that facility. The record lacks objective evidence to show that the petitioner was among the highest paid workers not only at his place of employment, but throughout his field at a national or international level. This letter represents one of several instances on appeal in which the petitioner attempts to address deficiencies in the record by submitting letters from unnamed

authors, commissioned especially for submission to the Service, instead of objective documentation which would have existed whether or not the petitioner had sought immigration benefits.

Review of the record as a whole supports the director's finding that the petitioner had achieved some level of respect and success, falling short of national acclaim, in his native China, and that whatever recognition the petitioner enjoyed in China does not appear to have followed the petitioner to the United States.

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 mechanical engineer 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 petition will be denied.

ORDER: The AAO's summary dismissal of October 1, 2002, is withdrawn. The petition is denied on its merits.