B2

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.*
*BCIS, AAO, 20 Mass, 3/F*
*Washington, DC 20536*

[redacted]

File: WAC-02-247-54048 Office: California Service Center Date: SEP 10 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alicn 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:

PUBLIC COPY

[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 Bureau 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 as an engineer. 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner submitted an event program confirming that he competed in the Associated Schools of Construction's Region VI Tenth Annual Construction Management Competition in 1997. The petitioner also submitted certificates of competition for the same organization's Region VI Seventh and Eighth Annual Construction Management Competitions in 1994 and 1995. Further, in 1994, the petitioner received a Certificate of Achievement from Timberline Software Corporation for "significant achievements and accomplishments in construction management education at University of Southern California." In his request for additional documentation, the director requested evidence demonstrating that the petitioner's awards are nationally or internationally recognized. In response, the petitioner submitted a letter from past President of the American Society of Civil Engineers, Henry Koffman, asserting:

> [The petitioner] was an integral member of the team which won national prizes in engineering competitions as part of a team representing the University of Southern California. These awards (Design/Built in 1997, Steel Bridge in 1995, and Technical Paper in 1994), were national in scope and were awarded after intense competition among some of the brightest and best engineers throughout the United States.

The director concluded that the only "award" certificates in the record reflected competition among engineering students and certified only that the petitioner competed, not that he had won any award or prize. On appeal, counsel does not specifically challenge this conclusion. We concur with the director that the record includes no contemporaneous evidence supporting the assertion that the petitioner won an award or prize at any competition. Moreover, competitions limited to student engineers cannot demonstrate that the petitioner is one of the very few at the top of the field including when compared to the most experienced experts in the field.

*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 his certificate of associate membership in the American Society of Civil Engineers (ASCE). The director requested the minimum requirements and criteria used to apply for membership in ASCE. In response, the petitioner submitted a letter from past President of ASCE, Hank Koffman, asserting that the petitioner is a member of Associate General Contractors (AGC), the "premier national Association of General Contractors in the USA." The record, however, contains no evidence of that membership. While Mr. Koffman indicates that the memberships of ASCE and AGC are "composed of the foremost civil engineers," he does not indicate the minimum membership requirements for either group. The petitioner also submitted a June 19, 2001, letter inviting him to join the National Society of Professional Engineers and a brochure addressed to him requesting a membership "gift" for the University of Southern California School of Engineering's David M. Wilson Associates Group. The brochure reflects that the latter group is an alumni support group in which membership is available to all students and alumni who donate at least $25 (students) or $50 (alumni).

The director concluded that the petitioner had not established that either ASCE or AGC requires outstanding achievements of their members and that potential future memberships were not evidence of the petitioner's eligibility at the time of filing. On appeal, counsel acknowledges that ASCE requires only "a bachelor's degree from a school having an ABET/EAC-accredited civil engineering or related engineering program and/or a master's or doctorate degree in civil engineering from an ABET/EAC accredited school." Counsel implies, however, that ASCE's "strict review of the applicant's background, education, professional accomplishments and other criteria" raises ASCE membership to a level sufficient to meet this criterion. The materials submitted by the petitioner reveal that 90 percent of the applications are routinely approved and that complications in the remaining 10 percent typically arise from different degree requirements in various countries. Regardless of how carefully ASCE verifies the information provided, it remains that organizations that require a minimum of a degree and experience do not require outstanding achievements of their members. We cannot conclude that obtaining a degree or working in the field for a specific number of years is an outstanding achievement such that it is indicative of or consistent with national or international acclaim.

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

The petitioner submitted a technology disclosure related to his pending patent. In addition, the petitioner submitted several reference letters. Dr. Geoffrey R. Martin, a professor at the University of Southern California School of Engineering, discusses the petitioner's work at that school.

> [The petitioner's] Ph.D. research entailed challenging and innovative work, first involving the use of a cultivated bacterial solution of the biopolymer Xantham Gum as a soil grout for mitigating the earthquake induced liquefaction potential of saturated silts and sands. This study was followed by a systematic and comprehensive test program to evaluate the potential application of commercially available dehydrated Xantham Gum power (used as an emulsifying food additive) to develop an effective impermeable landfill cover barrier by mixing sands with silts. The success of the latter program led to research funding from the National Science Foundation and a biopolymer liner system to potentially replace existing geosynthetic clay liner systems. This research program, undertaken by [the petitioner] was very successful and the new innovative technology developed could provide a significantly improved and cost effective solution for the construction of landfill covers.

Dr. Martin indicates only that the petitioner's work has potential applications, not that it is already recognized in the field as a contribution of major significance. Dr. Martin continues that the petitioner has a patent pending and that the work "shows great promise in other applications." While Dr. Martin asserts that the petitioner's work "has already received national attention in the waste management industry and will undoubtedly receive worldwide attention with planned journal publications," he provides no examples of this "national attention." Dr. Martin acknowledges that only with additional research could the petitioner's technology lead to adoption by the waste management industry. This

analysis is consistent with Dr. Martin's initial assessment that the petitioner is "in a position to make significant and unique engineering contributions."

Dr. Teh Fu Yen, a professor at the University of Southern California, characterizes the petitioner's Ph.D. dissertation as "groundbreaking" and asserts that without the petitioner's involvement, the project "would not have been completed." Dr. L. Carter Wellford, Chairman of the Civil/Environmental Engineering Department at the University of Southern California, asserts that the petitioner's work on waste containment was "groundbreaking" and "unprecedented." Dr. Massoud Pirbazari, Director of the Environmental Engineering Program at the University of Southern California, provides similar information, indicating that his evaluation is based on information provided to him by the petitioner's advisors.

Mr. Koffman, past President of ASCE, asserts that the petitioner's credentials and accomplishments are notable, but does not explain how the petitioner's work on landfill liners has already been recognized in the field as a contribution of major significance.

Dr. Edward Kavazanjian, Jr., the petitioner's industrial liaison for his Ph.D. dissertation, describes the petitioner's dissertation as "outstanding," "innovative," and "groundbreaking." He further states that it has "sparked great interest in application of this type of biotechnology to waste containment problems," but provides no examples of this interest. Dr. Kavazanjian praises the petitioner's intelligence and abilities, then concludes that the petitioner's work "holds great promise worldwide." Such speculation, while sincere, is not evidence that the petitioner is already recognized in the field as having made contributions of major significance.

Dr. Frank Burris, Director of Engineering, Information Systems and Technical Management at the University of California, Los Angeles, indicates that he hired the petitioner to teach a review course for engineering graduates preparing for the civil engineering license exam. Dr. Burris praises the petitioner's credentials and asserts that he has "identified a new cost-effective method of enhancing environmental protection at old landfill sites in arid regions." Dr. Burris concludes that the petitioner's work in this area is "original" and has "attracted great interest in the application of such biotechnology in the geo-environmental field." Dr. Burris provides no examples of this "interest."

Dr. Farghalli A. Mohamed, a professor at the University of California, Irvine, asserts that he met the petitioner when the petitioner was considering pursuing his Ph.D. at that school. Dr. Mohamed indicates that in his letter he will "judge [the petitioner's] ability to make contributions to the field of Engineering and the field of the waste management (civil engineering)." Dr. Mohamed praises the petitioner's motivation and educational credentials. Dr. Mohamed asserts that the petitioner's "work as a geo-technical engineer has attracted the attention of scientists, researchers, and engineers who seek solutions to environmental problems," but provides no examples of this "attention." In his initial paragraph, Dr. Mohamed asserts only that the petitioner "is extremely able to significantly contribute to the engineering profession in the United States."

Lance McAfee, Project Manager for the Alameda Mid-Corridor Project at the Tutor-Saliba Corporation, asserts that while the petitioner worked as the Environmental Quality Control Manager

for the Alameda Mid-Corridor Project, he "contributed greatly to the project." Mr. McAfee does not indicate that this project has gained national attention for its environmental quality controls or otherwise explain how the petitioner's work on this project is recognized in the field as a contribution of major significance to the field.

In his request for additional documentation, the director requested evidence as to how the petitioner's work constituted a contribution of "**major**" significance to the field of engineering as compared to others in the field. In response, the petitioner submits new letters from Dr. Martin and Dr. Kavazanjian. Dr. Martin explains the deficiencies in current landfill covers and asserts that the potential U.S. market for the petitioner's product is $100 million annually. Dr. Martin reasserts that the petitioner's product "has tremendous potential to make a positive impact on the waste management environment in the U.S." Dr. Kavazanjian provides similar information, asserting that the University of California has begun "preparation of an application for a patent." Dr. Kavazanjian describes the petitioner as "one of the most promising young researchers I have worked with in the field of waste contamination."

The petitioner also submitted an article entitled, "Alternative Landfill Covers Pass the Test." The petitioner does not claim that the any of the four alternatives discussed in this article represent his product. The article concludes that Anisotropic barriers and Evapotranspiration Soil covers appear to represent the best alternatives to conventional covers.

The director noted that all of the reference letters were from the petitioner's immediate circle of colleagues. The director concluded that the petitioner had not demonstrated that his work had attracted sustained attention and had demonstrably impacted the field at the national or international level. On appeal, counsel asserts that the director should not have questioned the objectivity of the petitioner's references. Counsel asserts that, according to Dr. Martin, the petitioner's landfill cover research "has become known by others as an answer to a long-standing problem," and that, according to Dr. Kavazanjian, the petitioner "has broken through previously observed barriers to create a science-based answer to a complex but real problem – waste treatment containment." Counsel concludes that the University of Southern California would not have "virtually jumped" at the chance to patent the petitioner's product unless it were a "development of the highest caliber and of the greatest international significance."

We do not question the sincerity of the petitioner's colleagues. National acclaim, however, by definition, implies that the petitioner is known beyond his circle of colleagues. Letters from one's own colleagues cannot establish such notoriety. Neither Dr. Martin nor Dr. Kavazanjian assert that the petitioner overcame a barrier that civil engineers have been trying but failing to resolve for a long period of time. The article on alternative landfill covers suggests that independent experts in the waste management industry are testing at least four alternatives to conventional landfill covers. Counsel's claim that the University of Southern California's pursuit of a patent of the petitioner's product is evidence of its significance is not persuasive. The record contains no evidence, such as the official university policy on seeking patents of student innovations, indicating that the university evaluates the significance of each innovation, seeking patents only on those that are considered to be major contributions to the field. More persuasive would be evidence that the waste management industry is

actively seeking to license the petitioner's innovation upon issuance of the patent. The record contains no evidence of any interest in licensing the petitioner's landfill lining innovation.

The petitioner submits new reference letters on appeal. These letters do not establish that the petitioner's Ph.D. thesis is considered a contribution of major significance in the field. David E. Daniel, Dean of the College of Engineering at the University of Illinois at Urbana-Champaign, asserts that the petitioner's innovation is "potentially very useful and is a creative addition to our technology that may prove to be very important." Dr. Iraj Nasseri, Chief Hydrologist with the Water Resources Division of the Department of Public Works, County of Los Angeles, describes the petitioner's work, which he does not claim to have been familiar with prior to being approached for a reference letter, as "creative and innovative." He continues that the product "could have many potential uses" and that the "fully developed product will have a substantial impact on the landfill industry." Richard B. Erickson, a sales manager with GSE Lining Technology, which sponsored the petitioner's research, asserts that the petitioner's technology is "innovative, unique, and will most probably lead to an expanded environmental lining product/application within the waste containment industry." Mr. Erickson further projects that the petitioner's technology could result in savings of $600,000 in the industry. None of these letters suggest that the petitioner's technology has been demonstrated to be a contribution of major significance in the industry. The issue to be decided for the classification sought is not whether the petitioner has the potential to contribute to his field, but whether he has already made contributions of major significance to the field indicative of or consistent with national acclaim. The letters uniformly reflect only that the petitioner's work is expected to eventually have a significant impact on the field.

Finally, we acknowledge that the petitioner's research has been supported by a research grant. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant has or even will make a contribution of major significance to the field.

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

In his initial cover letter, counsel asserted that the petitioner "has co-authored publications in his field which include a study published in 'Proceedings, 5th International Symposium on Insite [sic] and On-Site Bioremediation,' 1999 and he authored The Internal Research Report in the Department of Civil Engineering at University of California, 1999." The petitioner submitted an internal report, a paper relating to biopolymer grouts, and his dissertation, but no evidence that these papers had been published in a peer-reviewed journal. In response to the director's request for additional documentation, counsel did not claim that the petitioner meets this criterion; however, the petitioner submitted evidence that he obtained copyright protection for his dissertation through UMI Microform.

The director stated that the record included evidence of scholarly articles published in peer-reviewed journals and conference proceedings while the petitioner was a Ph.D. student. The director concluded that publishing work is routine for graduate students and concluded that the petitioner's publication record was not indicative of national or international acclaim. On appeal, counsel argues that the

director should have focused on the content of the petitioner's articles, not that they were authored while the petitioner was a Ph.D. student. Counsel concludes:

> Further, [the petitioner] submitted a published paper, "The Potential Use of Biopolymer Grouts for Liquefaction Mitigation," (Ex. I, EE) which was presented at "The 6th International Symposium on Insitue/Site Bioremediation," held in San Diego, CA, on June 4-7, 2001[.] The Symposium was sponsored by "BATTELE," one of the largest government research agencies in the nation, based in Ohio.

Exhibit EE of the initial submission is the article referenced by counsel but is not paginated and bears no indication that it was published. Contrary to the director's statement of the evidence, the record contains no evidence that the petitioner has been published in a peer-reviewed journal or in conference proceedings. The publication of one's own dissertation through UMI does not involve the strict scrutiny of the peer-review process. Even if the petitioner's articles had been published, we concur with the director that in the petitioner's field, the publication of articles is routine and expected. Thus, the petitioner must demonstrate the impact of his articles in order to reflect that his publication history is indicative of or at least consistent with national or international acclaim. The record contains no evidence that the petitioner's articles have been widely cited or other objective evidence of their impact in the field.

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

In response to the director's request for additional documentation, the petitioner, for the first time, claimed to meet this criterion. Counsel referenced the petitioner's position as a "senior engineer" for Interwest Consulting Group. Counsel also noted that the petitioner served as an Associate Civil Engineer with the Environmental Programs Division of the Los Angeles County Department of Public Works. The director concluded that the record did not include any evidence of the role played by the petitioner with the Department of Public Works or the reputation of Interwest Consulting Group.

On appeal, counsel initially asserts that the record demonstrates the petitioner's "participation in distinguished organizations," rather than having performed a leading or critical role for such organizations as is required by the plain language of the regulation. In his conclusion, however, counsel asserts that the letters from Ida Leon Ramos and David A. Storer confirm the petitioner's "critical" role for the Department of Public Works and the City of Elk Grove, California.

Ms. Ramos, Chief of the Human Resources Division for the Department of Public Works, provides basic information about the department and asserts that "as an Associate Civil Engineer in our Environmental Programs Division, [the petitioner] supervised subordinate engineers who were tasked with ensuring waste management programs and processes are environmentally sound and in conformance with local, state, and federal regulations." She concludes that the petitioner's background "enabled him to play a key role in evaluating and developing alternative waste management technologies."

David Storer, Assistant City Manager, Development Services, for the City of Elk Grove, asserts that "Interwest and in particular [the petitioner] plays a key role in developing and implementing" a storm water drainage system involving 6000 drainage inlets.

We have considered the petitioner's claimed contributions to the field of waste management above. The relevant inquiry for this criterion is whether the petitioner was selected for and served in a position which, in and of itself, is a critical or leading role for the organization that hired him. The petitioner must also demonstrate the distinguished reputation of the organization that hired him. We cannot conclude that every associate civil engineer, even if he supervises other engineers, plays a leading or critical role for the Department of Public Works as a whole. There is no suggestion that the position of associate civil engineer is indicative of or consistent with national or international acclaim. Further, the City of Elk Grove was not the petitioner's employer. The record still contains no evidence regarding the reputation of the Interwest Consulting Group. Moreover, the petitioner does not appear to have begun working for that company until after the date of filing. Therefore, his employment there cannot be considered evidence of his eligibility at that time.

*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 claim to meet this criterion initially. In response to the director's request for additional documentation, the petitioner submitted a letter from Terry J. Rodriguez, President of Interwest Consulting Group, Inc., asserting that the petitioner was working for that company as a senior engineer at a salary of $90,000 per year. The letter is dated January 28, 2003. The director concluded that the petitioner had not demonstrated how this salary compared with other salaries in the field.

On appeal, the petitioner submits, through counsel, evidence regarding typical salaries in the field. Specifically, the Bureau of Labor Statistics indicates that the top 10 percent of engineers earn more than $86,000. This information does not reflect what the top limit of salaries for civil engineers is.

The petitioner filed his petition on August 1, 2002. He indicated on Part 5 of the petition that his annual income was $56,500. His resume indicated that he was currently an adjunct professor at the University of California, Los Angeles, a researcher and teaching assistant at the University of Southern California, and a civil engineer with Los Angeles County. Thus, even if we concluded that $90,000 per year is a significantly high salary for a senior civil engineer with a Ph.D., the petitioner has not demonstrated that he was earning this salary at the time of filing or had previously earned an equivalent salary. Thus, this salary cannot be considered evidence of his eligibility as of the date of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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 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 indicates that the petitioner shows talent as an engineer with tremendous potential to succeed, but is not persuasive that the petitioner's achievements already 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.