B2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC-02-234-55586 Office: California Service Center Date: SEP 15 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]

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.

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 a laser/photonics researcher. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence of membership in the Institute of Electrical and Electronics Engineers (IEEE) and the Minerals, Metals and Materials Society (TMS). The petitioner submitted materials regarding the prestige of these associations, but no evidence regarding their membership requirements.

In his request for additional evidence, the director requested evidence of the minimum requirements and criteria used to apply for membership. In response, the petitioner submitted evidence that both IEEE and TMS require only some combination of a baccalaureate degree and experience. Counsel asserts:

> Although it may be possible for the Service to deem the above-described memberships by [the petitioner] to be of less distinct than sought, the petitioner respectfully requests that this portion of his credentials and accomplishments be viewed in conjunction with the rest of his extraordinary academic and research accomplishments and recognitions [sic]. The petitioner hopes to convey the true character of his extraordinary abilities, which will benefit the United States, as an entire set of evidence and hopes that the Service will look upon the entirety of the evidence in adjudicating his self-petition.

The director concluded that the record did not reflect that these organizations require outstanding achievements of their general membership. On appeal, counsel states:

> [T]he Self-petitioner pleads that despite the fact that his particular memberships may not be quite up to par with the exclusive standards established by the Service for the purpose of guidance, that the entirety of the Self-petitioner's extraordinary ability not be overlooked as a result of his membership or lack thereof. If not a direct indicator of extraordinary ability, such membership is strong indicia of the Self-petitioner's diligence and active participation in his field of endeavor.

The petitioner's commitment to his field is not in question. We cannot conclude, however, that the Bureau must look to other evidence in the record when evaluating whether the petitioner meets this criterion. The petitioner must meet three of the regulatory criteria in order to establish his eligibility. That requirement would be meaningless if submitting evidence indicative of some acclaim relating to another criterion obligated the Bureau to conclude that a petitioner meets this criterion even when the evidence is clearly insufficient according to the plain language of the regulation. Nor can evidence relating to two criteria but not indicative of or consistent with national acclaim under either criterion somehow be combined to be considered sufficient. We do concur with counsel, however, to the extent that a petitioner's failure to meet this criterion does not by itself preclude him from meeting three other criteria should the evidence satisfactorily support that conclusion, which in this case it does not.

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 did not initially claim to meet this criterion. In response to the director's request for additional documentation, counsel acknowledges the lack of "significant articles" about the petitioner, but requests that the Service (now the Bureau) consider reference letters submitted at that time. The director concluded that the record did not contain any published materials about the petitioner. Counsel does not challenge this conclusion on appeal. We concur with the director. Reference letters prepared in support of the petition cannot be considered published materials about the petitioner in professional or major trade publications or other major media. Thus, they do not meet the plain language of the criterion. We will, however, consider the content of these letters as they relate to other criteria.

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

In his cover letter, counsel asserts that the petitioner combined his background in physics and electrical engineering into a specialty in photonics and material research. While counsel discusses the importance of this field and attempts by universities to attract bright students into this field, he does not provide any specific examples of contributions by the petitioner to the field. Counsel's bare assertion that the petitioner is a "pioneer" in the field is not evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Initially, the petitioner submitted a single letter from his employer describing his job responsibilities. The letter does not single out a completed contribution or explain how it constitutes a contribution of major significance in the field.

The petitioner also submitted a list of 31 articles and six conference presentations. The petitioner submitted evidence of 20 articles and all six presentations. Counsel discusses the journals which have published the petitioner's work and concludes: "In short, one's publication to abovementioned [sic] esteemed journals demonstrates that his/her researches [sic] are valuable original findings, contributing significantly to the advancement of in the field of science."

In his request for additional documentation, the director requested "evidence to establish how the alien's work is considered original and how it has made a contribution of major significance to the field." In response, counsel relies entirely on the volume of articles published by the petitioner since 1996.

The petitioner also submitted two letters allegedly from colleagues at Oklahoma State University, neither of which appear on any letterhead or are supported by the authors' curriculum vitae.

Dr. Jin Joo Song, a former Director of Oklahoma State University's Center for Laser and Photonics Research (CLPR), asserts that the petitioner "exceeded the expectations of CLPR in all

aspects." Dr. Song asserts that the petitioner is an expert in metal organic chemical deposition (MOCVD) and that this research has commercial and military applications. Dr. Song notes that the military funded the petitioner's research. Regarding the petitioner's specific achievements, Dr. Song states:

> Throughout his stay at CLPR, [the petitioner] demonstrated an unusual capability of combining knowledge in various disciplines such as materials science, physics, photonics and electrical engineering in attacking a complex problem of photonic and electronic device development. In particular, [the petitioner] has contributed a great deal to the technical advancement of fabricating light emitting diodes (LED's) and laser diodes (LDs).

Dr. Song does not elaborate on these contributions or explain how they are significant.

Dr. Jerry S. Krasinski, a professor at OSU, asserts that the petitioner contributed "to the education and practical training for graduate students interested in physics, chemistry, and electrical engineering." Dr. Krasinski speculates that the petitioner's work with wide band gap semiconductor materials "will do tremendous service in opening the new era of photonics."

The director concluded:

> Counsel appears to imply that having a large number of one's articles published is sufficient to satisfy this criterion. However, to satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his work is novel and useful, but also that it has attracted sustained attention and had a demonstrable impact at the national or international level. The petitioner has not shown how the field has changed as a result of his work, beyond the incremental improvements in knowledge and understanding that are expected from original valid research.

On appeal, counsel responds as follows:

> [T]he director seems to oversimplify the Self-petitioner's position as indicating that the sheer volume of having authored in excess of thirty published research articles would meet the said criterion.

Counsel then goes on to discuss how publication disseminates one's work, how difficult it is to be published in a peer-reviewed publication, and states:

> Consequently, each of the articles that were published, which were authored by the Self-petitioner, constitutes a positive contribution of substantial merit to the field. Although it is plausible that such articles, on its [sic] own, may not directly equate to contributions of major significance to the field, over thirty of such articles, which has cleared the high level of scrutiny by its professionals and scholars would

> in fact constitute a significant contribution to the field as articles of significant value and knowledge that has caused exponential growth and advancement to the field.

Counsel then lists 14 contributions allegedly made by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no corroboration that these 14 topics are widely considered in the field to be significant contributions. Thus, it is not an oversimplification to state that the primary basis of the petitioner's claim to meet this criterion is the quantity of published articles.

We concur with the director that evidence that the petitioner's ideas have been disseminated through publication cannot be considered evidence that those ideas are also widely considered to be significant contributions to the field by independent members of the field. While the peer review process subjects published articles to the scrutiny of other members of the field, the process is not as exclusive as implied by counsel. 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 Bureau'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.

It remains, neither counsel nor the petitioner make any effort on appeal to address the director's concern that the record lacked evidence regarding the response to these articles in the field. Such evidence might include evidence that the articles are widely cited or that the petitioner's innovations are licensed for major distribution or widely utilized.

The only evidence relating to this criterion in addition to the petitioner's published articles are the two letters from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the materials research community. Any thesis or research, in order to be accepted for graduation or publication must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains an advanced degree or is published has made a contribution of major significance to the field. The record does not establish that the petitioner's work represented a groundbreaking advance in photonics research.

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

As stated above, the petitioner claims to have authored 31 articles since 1996 and submitted evidence of 20 of those articles. In his request for additional documentation, the director requested "evidence to establish the significance and importance of the alien's scholarly articles in the field." In response, counsel refers to his arguments regarding the previous criterion. The director concluded that the petitioner had met this criterion.

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, counsel asserts that the petitioner plays a leading or critical role for Xepix Corporation as a photonics research scientist. Counsel asserts that Hyosong Corporation of Korea is Xepix's major shareholder and that its decision to financially support Xepix is evidence of the importance of photonics research. Counsel continues:

> To qualify and to be selected as one of the leading scientists for such an advanced project the scientist must not only be one of the best and the brightest available, he or she must be able to dictate the pace and the direction of such research and development. As such, [the petitioner], with his extraordinary abilities and experience and world-wide recognition, which may be inferred from his numerous published scholarly articles, is indeed an integral part of the Xepix Corporation's existence and development direction.

In support of this claim, the petitioner submitted a 2000 annual report for Hyosung Corporation. The report makes no mention of Xepix.

The director concluded that the annual report reflected that Hyosung Corporation is a major shareholder in Xepix but found that while the petitioner "may very well" play a leading or critical role for Xepix, the record did not demonstrate that Xepix itself had a distinguished reputation.

On appeal, the petitioner provides more documentation regarding the relationship between Hyosung Corporation and Xepix. Counsel asserts that Xepix derives its reputation from that relationship. The petitioner submits stock certificates issued in 2002 and bank statements for Xepix documenting an infusion of capital from Hyosung in March 2002.

Contrary to the director's conclusion, Hyosung's 2000 annual report does not reflect its purchase of stock in Xepix. According to the stock certificates, Xepix may not have been incorporated until April 2001 and did not issue any stock until January 2002. Regardless, the record now contains some evidence of the relationship. Nevertheless, the petitioner does not claim to be playing a leading or critical role for Hyosung as a whole, but Xepix. Thus, the petitioner must establish that Xepix, in and of itself and independent of Hyosung, enjoys a distinguished reputation nationally. We cannot conclude that every subsidiary of a major corporation enjoys the reputation of that corporation

immediately upon the establishment of the relationship. The record contains no major media coverage of Xepix or other evidence of its national reputation.

Even if we were to find that Xepix has a nationally distinguished reputation on its own, we cannot concur with the director that the petitioner has established his leading or critical role for Xepix. The only evidence regarding the petitioner's position is a letter from the president of Xepix that describes the petitioner's duties and salary. The letter does not assert that the petitioner plays a leading or critical role for Xepix and there is nothing about the position of photonics research scientist that implies a leading or critical role beyond the fact that a research and development company must employ successful researchers to succeed. The record does not indicate the number of other photonic researchers at Xepix or explain how the petitioner's role exceeds that of these other researchers. We note that the issue in considering this criterion is the nature of the petitioner's position within the organization. The petitioner's abilities within his position do not relate to the nature of the position itself.

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

Initially, the petitioner submitted a letter from Dr. Thomas K. Choo, President of Xepix Corporation, indicating that the petitioner's salary at that company was $100,000 per year. In response to the director's request for additional documentation, the petitioner submits materials from the Department of Labor reflecting that the level two prevailing wage for materials scientists was $72,987 in 2003.

The director concluded that the petitioner had not demonstrated that he was a Level 2 materials scientist or the range of wages actually being received by such scientists. On appeal, counsel concedes that the prevailing wage is the "average" wage paid to similarly employed individuals. Counsel asserts that it would be unduly burdensome to provide additional evidence.

The issue is not whether the petitioner earns more than the average salary in his field. The petitioner must demonstrate that he has commanded a high salary in relation to others in the field, including the most experienced experts at the very top of his field. Without evidence of the high end for wages in the petitioner's field, he cannot demonstrate that his salary is comparable with such a salary.

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 laser/photonics 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 indicates that the petitioner shows talent as a laser/photonics researcher, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.