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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

SEP 26 2003

File: WAC-02-169-50172 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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 Citizenship and Immigration Services (CIS) 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 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 she 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 research 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 which, she 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 a letter dated June 26, 1998 confirming that the petitioner was awarded "first prize at the competition of theoretical works of the Institute of Theoretical and Experimental Physics [(ITEP)], 1992." We note that the petitioner was employed at the institute at the time according to her curriculum vitae. The petitioner also received a research grant from the International Science Foundation. Finally, Professor [redacted] of the Institute of Terrestrial Magnetism, Ionosphere and Radio Wave Propagation (IZMIRAN), asserts that the petitioner received a fellowship in 1995 from the Tomalla Foundation formed by the Academy of Sciences in Denmark and the Russian Academy of Sciences. Dr. [redacted] former department head at the Lebedev Physical Institute and member of the judging committee for the Russian Academy of Sciences, asserts that "this grant was aimed to support a narrow selection of the most talented Russian physicists, with the accent on Theoretical Physics."

In response to the director's request for additional documentation, the petitioner submitted general information about ITEP itself, but no information about the award received by the petitioner, such as the pool of candidates for the award. In addition, the petitioner submitted information about the International Science Foundation, a member of the Soros Foundation. The foundation was founded in December 1992 to support scientists in the former Soviet Union and issued emergency grants to over 20,000 scientists.

The director concluded that the petitioner had not provided sufficient evidence regarding the significance of the ITEP award and stated that grants are not awards. The director also questioned whether an award issued ten years prior to the filing date of the petition could demonstrate "sustained" national acclaim.

On appeal, counsel discusses the prestige of ITEP and asserts that "the main criteria for selecting the best work were: original contribution in the field of Theoretical Physics (not just Astrophysics), innovative solutions, and pioneering contribution to Physics and an understanding of Nature." Counsel further asserts that the petitioner competed against "the highest-level works in Theoretical Physics in the Soviet Union to obtain this prize." The appropriate inquiry is not whether ITEP has prestige nationally, but whether the particular award that it issues is nationally recognized such that it is indicative of national acclaim. 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). While counsel references the June 26, 1998 letter as support of her assertions, the letter makes no mention of the selection criteria for the award or the pool from which the awardees were selected. If the award was only open to researchers at ITEP, it is not clear that the petitioner competed against a national pool of experts.

Counsel further asserts that the record should be considered as a whole, and that other evidence establishes that the petitioner's acclaim attained by this award was sustained up until the date of filing. For the reasons discussed below, we do not agree that the remaining evidence suggests any acclaim following 1992.

Counsel continues to argue that the ISF and Tomalla Foundation grants meet this criterion. We concur with the director that research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. The materials submitted indicate that ISF alone has funded 20,000 researchers' projects. The record contains no information regarding the Tomalla Foundation. Obviously, the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievements.

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 New York Academy of Sciences. In response to the director's request for additional documentation, the petitioner submitted a page of the academy's website. The materials are about the academy itself, not its membership requirements. While the page indicates that information about membership is available on the site, the petitioner did not submit those materials.

The director concluded that the petitioner had not established that the academy required outstanding achievements of its members. On appeal, counsel discusses the prestige of the organization itself and indicates that while the materials might not specify that membership is selective, any prestigious organization must be selective since "a group is only as strong as its weakest link."

Counsel is not persuasive. Once again, according to the plain language of the regulation, the appropriate inquiry is not the prestige of the organization, but the requirements for membership in that organization. Many organizations with lengthy histories and distinguished reputations rely on funding from their members and require only the payment of dues for membership. The record does not reflect that the academy requires outstanding achievements of its general membership.[1] Thus, the petitioner does not meet the plain language of this criterion.

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.

Throughout the proceedings, including on appeal, counsel argues that the petitioner's citation history meets this criterion. Counsel notes the prestigious nature of the journals that have published articles citing the petitioner's work. We concur with the director that articles which cite the petitioner's work

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[1] The academy's website, www.nyas.org/services/index.cfm, indicates that "membership is open to all active professional scientists, physicians, engineers, students, and other individuals who share the Academy's interests." Thus, the academy clearly does not require outstanding achievements, or any achievements at all, of its members.

are primarily about the author's own work, not the petitioner. As such, we consistently find that citations cannot be considered published material *about the petitioner*. Thus, while the citations may be in publications that constitute major trade publications, the petitioner does not meet the plain language requirement that the published material be "about the alien."

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.

Initially, the petitioner submitted a letter from Professor [redacted] at the Institute of Terrestrial Magnetism, Ionosphere and Radio Wave Propagation (IZMIRAN) asserting that the petitioner "participates in the PhD [sic] defense committee for dissertation in Theoretical and Experimental Astrophysics." In a second letter, Professor Oraevsky reiterates that the petitioner participates in Ph.D. qualification meetings and indicates that the petitioner is a senior research scientist at IZMIRAN. Professor [redacted] does not indicate the selection criteria for Ph.D. defense committee members.

The director concluded that the petitioner did not meet this criterion. On appeal, counsel discusses the prestige of IZMIRAN itself. Counsel further alleges that "the scientists to be selected for the very prestigious Council of IZMIRAN were all known for their original and significant contribution in the Space Sciences." In addition, counsel argues that the short time between defending her own dissertation to selection for the council "is an attestation of her extraordinarily high scientific level." Counsel references the letters from Professor [redacted] in support of these assertions. Neither letter, however, provides the selection criteria for the council or makes any reference to the significance of the petitioner's selection for the council shortly after defending her own dissertation. As stated above, the assertions of counsel are not evidence.

Regardless of whether judging Ph.D. dissertations is "judging," a petitioner cannot establish eligibility simply by submitting evidence relating to three criteria. The evidence must be evaluated as to whether it is indicative of national or international acclaim. For example, all instructors, teachers, and professors engage in some type of "judging" of their students, but not all instructors, teachers, and professors are nationally acclaimed. Participation on a Ph.D. defense committee at an institution where one is employed is not indicative of national acclaim. The record contains no evidence that IZMIRAN selects only the most acclaimed experts in the field nationwide to serve on its Ph.D. defense committee.

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

The director concluded that the petitioner met this criterion. We cannot concur. The petitioner's claim to meet this criterion is supported by letters from her immediate circle of colleagues and the recognition from ITEP discussed above.

Dr. [redacted], a professor at the University of Virginia, asserts that he collaborated with the petitioner in investigating "a radiating shock wave as it propagates through the interior of a supernova star and breaks out at the surface." Dr. [redacted] states that the research is "important" and that the petitioner was "an extremely resourceful and creative member of our

group" but does not explain how this work is a contribution of major significance. Dr. [redacted] asserts that the petitioner has gained "international recognition for her state of the art works in Neutrino transport in supernovae, relativistic Gamma-Ray Bursters, supernova gas dynamics and a number of self-similar solutions for accretion, burst propagation through interstellar gas and others." Dr. [redacted] does not, however, provide a basis for that assertion, such as examples of independent physicists who have incorporated the petitioner's results into their own work.

Dr. [redacted] a professor at New York University, asserts that in addition to providing a solution for a relativistic fireball applied to the Extragalactic Gamma-Ray Bursters, the petitioner also "developed an original spherical solution for a shock wave at the surface of a Supernova star and the following gas expansion into the vacuum." Dr. [redacted] does not explain how these solutions constitute contributions of major significance such that the field of astrophysics has been noticeably altered.

Dr. [redacted] a professor at ITEP, asserts that, under the supervision of Dr. [redacted] and Dr. [redacted] the petitioner obtained new results that formed the basis of her Ph.D. obtained in 1993. While the petitioner's research clearly has practical applications, it can be argued that any Ph.D. thesis or published article, in order to be accepted or published, must offer new and useful information to the pool of knowledge. Not all research producing new or original results can be considered contributions of major significance.

Dr. [redacted] President and Technical Director of the Brookhaven Technology Group, Inc., praises the petitioner's fireball analysis discussed above and asserts that the petitioner's work on neutrino hydrodynamics and plaza confinement is "top quality," "important" and "of crucial practical importance for all thermonuclear energy projects." Dr. [redacted] also discusses his collaboration with the petitioner for the Department of Defense on a "laser-like high energy photon beam to detect explosives."

> Her contributions included calculation of the field, energy spectrum and angular distribution of photons produced when electron and their anti-particle, the positron, collide at high relativistic energy. Furthermore, she calculated the strength of the signal that results when the photon beam interacts with explosive material that may be buried underground, hidden in luggage or other objects. These calculations require knowledge of relativistic kinematics and nuclear physics and appreciation of humanitarian value as well has having strong impact on U.S. national security.

Dr. [redacted] indicates that he and the petitioner published their results on this project and that the results "led to continuing and still ongoing research by our company with DOD." Once again, while the results of this project have practical value, Dr. [redacted] has not explained how the petitioner's work on this project constituted a contribution of major significance to the field of physics as a whole.

Dr. [redacted] Chief Scientist at Celterra Ltd. (formerly Omnigon), discusses the petitioner's work for that company. Dr. [redacted] asserts that the petitioner's work with Nature-developed highly organized flows "has tremendous potential for Information Science and practical applications." Dr. [redacted] does not assert that this work is already recognized by independent experts as a contribution of major significance to the field. Dr. [redacted] further asserts that the petitioner's incorporation of logical algebra into logical hardware devices negates the need for computer central processing unites (CPUs). Dr. [redacted] states that as a result of this work, the petitioner is the author of a patent the company "is currently processing." This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, *supra*, at 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* Dr. [redacted] does not indicate that Celterra, Ltd. has generated interest in the device. As the patent has yet to be issued and the device has not been marketed, the impact of the device is not documented in the record.

The above letters are all 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.

The petitioner did provide a letter from Dr. [redacted] former head of the Theoretical Department of the Lebedev Physical Institute. Dr. [redacted] discusses the petitioner's analytical solutions, noting the prestigious publications in which the petitioner's work appeared. Dr. [redacted] asserts that the petitioner was one of the first Russians to be published in *The Astrophysical Journal* and that the petitioner's record of ten analytical solutions is "far above the standard for researchers in astrophysics." Dr. [redacted] indicates that the petitioner's work is applicable to other problems, but provides no examples of how the petitioner's work has been used by independent experts in the field.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

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

The petitioner submitted evidence that she has authored 10 published articles. The director concluded that the petitioner met this criterion. We cannot concur. As stated above, it is not sufficient to merely submit evidence relating to three criteria. The evidence must be indicative of national acclaim. 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 are 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 CIS'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.

The record contains evidence that, at the time of filing, the most citations for any one of the petitioner's articles was nine. This number of citations is not evidence that the petitioner's work is widely cited. Thus, the record does not establish that the petitioner's publication history is indicative of national acclaim and, thus, we cannot conclude that the petitioner meets this criterion.

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

The petitioner claims to have played a leading or critical role for ITEP and Celterra, Ltd. Dr. [redacted] asserts that the petitioner organized a department seminar for ITEP, including choosing and inviting the scientists for presentation of their work. Dr. [redacted] does not explain how he has first hand knowledge of this assignment and Professor Imshennik, a faculty member at ITEP, makes no mention of this assignment. Dr. [redacted] asserts that the petitioner served on IZMIRAN's dissertation defense council and scientific committee. Counsel asserts that as a member of the scientific committee, the petitioner decided what projects IZMIRAN would pursue. Dr. [redacted] makes no such claim. Dr. [redacted] asserts that the petitioner "is a crucial member of our team" who "has played and continues to play a critical role in our company's success." More specifically, Dr. [redacted] asserts that the petitioner has "been indispensable in supporting patents currently in progress" and is the author of a patent being pursued by the company. Other current and former officials at Omnigon provide similar information.

The director concluded that the petitioner had not established that she played a leading or critical role for organizations that appear to have distinguished reputations or that Omnigon has a distinguished reputation. On appeal, counsel reiterates the above claims regarding ITEP and IZMIRAN. Counsel further argues that the petitioner played a leading or critical role for the U.S. universities where she has performed research. Finally, while counsel reiterates that the petitioner played a leading or critical role for Omnigon, she does not address the director's concern that the record contains no evidence regarding Omnigon's national reputation.

What is significant when considering evidence relating to this criterion is not the contribution an alien made while working in a given position (such alleged contributions may be considered separately above) but whether the nature of the position itself is a critical or leading role for the organization as a whole.

While ITEP and IZMIRAN may have distinguished reputations, the petitioner has not established that she played a leading or critical role for either organization. The officials from both organizations do not claim that the petitioner's roles there were either leading or critical. As stated above, Dr. [redacted] does not indicate that the petitioner organized a conference for ITEP. Regardless, organizing a single conference is not a leading or critical role for the organization as a whole.

Similarly, serving on a dissertation review committee is not a leading or critical role for IZMIRAN as a whole. While dissertations must be reviewed, it is inherent to the role of faculty members to participate in this review to some degree. It is not a specific role that can be considered particularly leading or critical above other faculty roles. Finally, as stated above, Dr. [redacted] does not claim that the petitioner selected which research would be pursued by IZMIRAN and, in fact, never claims that the petitioner played a leading or critical role for IZMIRAN.

Further, we cannot conclude that every postdoctoral researcher at a university who publishes original research findings plays a leading or critical role for that university as a whole. Finally, we concur with the director that the record contains no evidence of Omnigon's national reputation.

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 herself as a research engineer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a research engineer, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.