

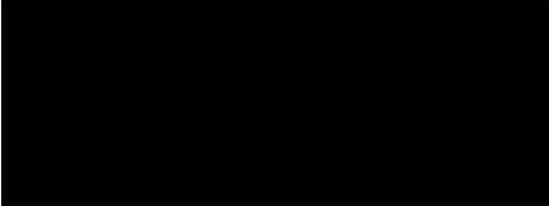
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U.S. Citizenship
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Services

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FILE: WAC 03 013 54357 Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2004

IN RE: Petitioner: [Redacted]
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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

6 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.

On appeal, counsel asserts that the petitioner responded to the director's request for additional documentation with "additional and more detailed evidence to further establish" his eligibility. This assertion is not accurate; the response to the director's request included mostly the resubmission of previously submitted documents with little attempt to address the director's concerns. Counsel's remaining arguments will be discussed in detail below. Ultimately, the petitioner provides little evidentiary support for counsel's assertions as to the significance of the petitioner's achievements. The assertions of counsel do not constitute evidence. *Matter of Obaignena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 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 chemical engineer and entrepreneur. 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.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

In May 1987, the petitioner received the title "National Excellent Factor Directors of Chemical Fertilizer and Mine Chief," bestowed by the Chinese Ministry of Chemical Industry. The certificate states that while the title was approved by the central government ministry, the recipients were "selected through a system of appraisal of the Chemical Industrial Departments (Bureaus) of the provinces, autonomous regions and the cities." In 1998, the Ministry of Chemical Industry recognized 158 individuals, including the petitioner, as "excellent working personnel in saving energy in the chemical industry."

On October 1, 1997, the Chinese State Council issued the petitioner a subsidy to "commend" the petitioner's contribution towards the development of engineering technology. Counsel asserts that the ¥5,000 (\$603.51)² Chinese subsidy is equivalent to the Nobel Prize, an internationally recognized award of \$1,000,000. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Accompanying materials reflect a recipient of a subsidy must meet only one of at least nine conditions, not all of which are translated. Condition number two requires only that the recipient be a leader in academy or technology at the *provincial* level or higher.

In 1998, the Ministry of Chemical Industry gave the petitioner a Certificate of Advanced Worker in recognition of his contributions to his industry. Accompanying materials reflect that the petitioner's company was one of 22 so recognized and the petitioner was one of dozens so recognized.

The petitioner also submitted evidence of recognition from local authorities, including a "Certificate of Accomplisher of the Scientific and Technical Results in Sichuan" from the Sichuan Commission of Science and Technology in June 1998. The petitioner is named as the sixth accomplisher and the project is identified as "Catalyst for Making Concentrated Formaldehyde with Ferro-Molybdenum Process and its Reactor (industrial test-installation.)" Counsel asserts:

This was a national project assigned to [a] distinguished factory with the aim of pioneering the production of high concentrated formaldehyde which is an essential ingredient for the production of nitrogenous-fertilizer. This title of technological accomplisher was awarded under the National Scientific and Technical Rewards Regulations. Petitioner was awarded such title according to Chapter II Clause 11(1) & (4).

As stated above, the assertions of counsel are not evidence. The certificate of accomplisher is not identified as a National Scientific and Technical Reward and no reference is made to the regulations governing those awards. The petitioner provided a translation of Chapter II, clauses 11(1) and (4) only, with no context as to what awards are covered by these regulations.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

² According to the exchange rate for October 1, 1997 provided at www.oanda.com

The director noted that many of the awards were provincial and concluded that the evidence regarding the national awards was too vague to establish their significance. On appeal, counsel correctly states that the awards need not have significance outside of China. The director, however, did not hold otherwise. At issue is not simply whether individuals from more than one province were considered, but whether the awards are nationally recognized.

First, we find that occupational titles and subsidies are not awards or prizes. The evidence suggests that such recognition is bestowed upon more than a select few in the field. The petitioner has not established that the recognition received by the petitioner receives the type of national media attention that the Nobel Prize, to which counsel compares this recognition, receives in the international media. Further, the local recognition is all from the same province, and cannot be considered evidence indicative of or even uniquely consistent with national acclaim. Finally, the petitioner's national recognition ended in 1998, four years prior to the date of filing. Thus, this national recognition is not evidence of sustained acclaim up until the time of filing.

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 his membership in the Chinese Chemical Society as of May 2001 and the China Chemistry Association. Counsel asserts that the society is "the largest academic society in the field of chemical industry" and then immediately states, somewhat contradictorily, that "membership goes only to those individuals who have made very outstanding achievements in the field of chemical industry." Counsel does not explain how an exclusive society limited to those with outstanding achievements in the field can also be the largest. Regardless, as stated above, counsel's assertions as to the membership requirements are insufficient. The record lacks official documentation, such as the society's bylaws, addressing membership requirements. The record also contains no evidence relating to the association.

The petitioner also served on the Education and Consultancy Committee of the Chemical Engineering Department of Chengdu University of Science and Technology, the Fourth Session of the Professional Committee of Chemical Fertilizer of the Sichuan Association of Chemistry and Chemical Industry, and the 66-member council of the Association of Sichuan Chemical Industrial Development Planning. These positions are not memberships and are better discussed under the leading or critical role criterion set forth below.

The director concluded that the petitioner had not established that the above organizations were exclusive. Counsel does not challenge this conclusion on appeal and we concur with the director.

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 submitted a September 23, 1995 article about the success of the Sichuan Golden Elephant Chemical Industrial Company in the *Sichuan Economic Daily*. The petitioner did not submit a full translation, but the translated portion includes a quote from the petitioner. The same article appeared a few days later in the *Sichuan Daily*. On an unknown date, *The Director and Manager's Daily* published an article with the petitioner's name in its subtitle. The petitioner did not submit a translation of any of the contents of the article as required by 8 C.F.R. § 204.5(h)(iii). Counsel asserts that this publication is circulated internationally. On December 2, 1998, the *Chemical Industry News* published an article announcing a breakthrough in producing

formaldehyde in China. The excerpts translated mention the successful work on a national project by the petitioner's company, but not the petitioner himself. Counsel asserts that this publication is circulated nationally.

In response to the director's request for evidence of the circulation of these publications, counsel asserted that *The Director and Manager's Daily* has a national circulation of 2,000,000 and comes out five times per week; that *Sichuan Economic Daily* has a national circulation of 500,000 per daily issue; and that *Sichuan Daily* has a provincial circulation of 2,000,000 copies. The petitioner did not submit any evidence to support these claims.

The director concluded that the articles were not primarily about the petitioner personally and that the petitioner had not established the circulation of the publications. On appeal, counsel erroneously asserts that exhibits 12, 13, and 14 in response to the director's request for additional documentation contained evidence of the publications' circulation. Exhibits 11, 12 and 13 contained resubmissions of three of the articles and partial translations and exhibit 14 is the petitioner's patent. Thus we concur with the director that the petitioner has not established the national distribution of these articles.

Counsel further asserts that the articles were about the petitioner and his accomplishments at his company. We agree with the director that three of the articles are not primarily about the petitioner. While the translation of the headline in *The Director and Manager's Daily* suggests that the article is primarily about the petitioner, the petitioner failed to submit a full translation of this article despite the director's expressed concern that the record did not contain such a translation. Moreover, the record does not establish that any of this coverage occurred after 1998. Thus, this evidence is not indicative of sustained acclaim at the time of filing, four years later.

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 argues that the petitioner's managerial position with Sichuan Golden Elephant Chemical Industrial Company serves to meet this criterion. As noted by the director and not contested on appeal, overseeing one's subordinates is inherent to managerial positions and cannot serve to meet this criterion. Rather, this position will be considered as evidence of a leading or critical role to be discussed below.

In addition, Sichuan United University appointed the petitioner as a "Member of the Examination Committee for the Master Dissertation" of an engineering student at the university. Further, the Meishan Regional Committee appointed the petitioner as an "Advisor of the Meishan Scientific and Technical Advisory Group." The "Articles" of the group provide that the group's main task is to give advice and make suggestions to the Area Committee and Administrative Department regarding decisions in developing science, technology, economy and social progress of the area. The director determined that the petitioner had not established that these appointments involved judging the work of other professionals in the field. Counsel does not contest this determination on appeal.

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

The petitioner relies on his patented innovations to meet this criterion. This office has previously stated, in relation to a lesser classification, 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.*, 22 I&N Dec. 215, 221 n. 7 (Comm. 1998). Rather, as implied by the director, the significance of the innovation must be

determined on a case-by-case basis. *Id.* The petitioner's Chinese patent is assigned to the Sichuan Meishan County Nitrogenous Fertilizer Factor and his U.S. patent is assigned to GreenTech, Inc.

The petitioner submitted a letter from Dr. [REDACTED] the patent agent for the petitioner's U.S. patent, but no information from GreenTech, Inc. or clients interested in purchasing products based on the petitioner's innovation.

The petitioner is listed as one of three people in charge of his company's New-modal Low-pressure Reactor for Methanol Industrial Experiment Apparatus. The minutes for a symposium on designing this reactor state that the equipment will form the technical specialization of China's methanol industry. The record lacks evidence that this prediction was eventually realized. Dr. Jiahua Zhu, a professor at Chengdu University, asserts that "the appraisal for the project is under way."

While the director acknowledged the petitioner's talent in the field, the director ultimately determined that the petitioner had not established that his contributions were of major significance. On appeal, counsel asserts that the petitioner received a local prize for his innovation patented in China and that *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) precludes us from looking beyond whether the contribution is original.

First, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value. Regardless, the court's discussion of the alien's contributions in *Buletini* only expresses concern that the denial failed to even consider the evidence relating to those contributions. *Buletini*, 860 F. Supp. at 1232-1233. The plain language of the regulation, 8 C.F.R. § 204.5(h)(3)(v), which is binding on us, requires that the contributions be of "major significance." Thus, the argument that we cannot evaluate the significance of the contributions is not persuasive.

While the petitioner has received some recognition from the Chinese government, such recognition was bestowed on many companies and individuals at the same time. We acknowledge that the petitioner's company has enjoyed success in the field. We cannot conclude, however, that every company manager who receives government subsidies and runs a successful company has made a contribution of major significance. The record does not adequately establish that the petitioner's patented innovations are contributions of major significance.

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

The petitioner has authored reports and feasibility studies. Counsel concedes that these materials were not published in professional or major trade publications and no longer asserts that the petitioner meets this criterion on appeal. The petitioner has not demonstrated that this criterion is not applicable to his field. As such, we need not consider whether reports and feasibility studies that remain unpublished are comparable to published articles. *See* 8 C.F.R. § 204.5(h)(4).

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

The petitioner is the General Manager for the [REDACTED] As discussed above, that company has been recognized at a national level. As further stated above, the petitioner also served on the Education and Consultancy Committee of the Chemical Engineering Department of Chengdu University of Science and Technology, the Fourth Session of the Professional Committee of Chemical Fertilizer of the Sichuan Association of Chemistry and Chemical Industry, and the 66-member council of the Association of Sichuan Chemical Industrial Development Planning. The director concluded that the record did not establish that his roles distinguished him from others in the field. On appeal, counsel asserts that the director failed to consider several factors relating to the reputation of the above entities and the petitioner's role with them.

The appropriate analysis for this criterion is the nature of the position the petitioner holds with an entity and the reputation that entity enjoys nationally. The petitioner has adequately demonstrated that the [REDACTED] has been recognized nationally by the Chinese government. The petitioner holds the highest managerial position within that company. Thus, the petitioner meets this criterion. This criterion, however, is just one criterion and the petitioner falls short of meeting any of the other criteria. A petitioner must meet at least three to establish eligibility.

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 submitted a certificate from his own company verifying his monthly salary of ¥12,000 in comparison to the average monthly salary at the same company of ¥600 and the "lowest living standard in Meishan City" of ¥160 per month. The petitioner also submitted charts from the Ministry of Personnel reflecting the monthly salary for "institution personnel" working as a 17th level senior engineer is ¥1,186. The director concluded that the record lacked evidence comparing the petitioner's remuneration with that of the highest members of his field outside his own company. Counsel does not contest this conclusion on appeal and we concur with the director. That the petitioner, as general manager of the company, earns more than the average worker at the same company is insignificant. The remaining materials do not clearly reflect what the top salaries in the field are nationally.

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 chemical engineer and entrepreneur 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 chemical engineer and entrepreneur, 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.