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U.S. Citizenship and Immigration Services

[redacted]

FEB 26 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Marc Johnson
for 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 Citizenship and Immigration Services (CIS) 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 process 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.

> *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 ten articles that cite his own published work. In response to the director's request for additional documentation, the petitioner submitted a letter from Dr. [redacted] a professor at the University

of Texas, Austin. Dr asserts that he has reviewed the petitioner's credentials and discusses the citations of the petitioner's work.

The director concluded that these articles were not "about" the petitioner and his work as required by the regulation. On appeal, counsel asserts that the citing articles are about the petitioner because the citations of the petitioner's work "were unusually prominent." Counsel also quotes Dr. Counsel is not persuasive.

Regarding an article in the *Journal of the Electrochemical Society,* Dr states:

> In this work, an article of [the petitioner's] is cited no less than four times in the initial two paragraphs of the article. With each citation, the authors use [the petitioner's] work to establish another key element in the foundation of their work. Without the foundation provided by [the petitioner's] article, this paper could not have been written.

Dr is clearly stating that the authors of this article, while building on previous work by the petitioner, are reporting their own results. Thus, this article cannot be concluded to be "about" the petitioner in any sense of the plain meaning of the word. Moreover, we note that this article was authored by the petitioner's co-author for the cited article. It is expected that an engineer will build on his own previous work. Thus, his citation of his own work as a building block for his current work is unremarkable and certainly not indicative of the petitioner's national or international acclaim.

Regarding an article in *Surface Science Reports*, Dr states:

> In this highly comprehensive review of the last 15 years' progress in the physics and chemistry of water in contact with solid surfaces, over 1100 peer-reviewed publications are cited. Of these, only ten treat the commercially important problem of water on silicon at high pressure. [The petitioner] is an author of one of those ten articles, and is identifiable as one of the leaders in putting this knowledge into a form usable in semiconductor manufacturing.

The record only contains the abstract and the page containing the endnote with the citation to the petitioner's work. Thus, the record does not contain the actual language for which the petitioner's article was cited. Regardless, we cannot conclude that being cited as one of over 1100 researchers is evidence that the article is about the petitioner, even if the petitioner is one of only ten cited for a specific proposition. Clearly, the article is about several issues involving water's interaction with solid surfaces, only one of which is supported by a citation of the petitioner's work. Once again, we cannot conclude that any definition of "about" warrants consideration of this article as "about" the petitioner and his work.

Finally, regarding an article published in the *Journal of Non-Crystalline Solids*, Dr states:

> In this work, the authors independently confirm the earlier results in a paper by [the petitioner] concerning water treatment of the Si surface before growing Al_2O_3. The ability to grow ever thinner oxide films of high quality is critical to the continued rapid increase of component density predicted in the well-known Moore's Law. Researchers normally do not take the time to independently confirm earlier work of others, unless the results are too important to accept on trust.

While we give weight to the opinions of experts, we are not bound by their conclusions when the evidence does not support those conclusions. The article in question begins on page 17 and ends on page 23. The abstract indicates that the purpose of the article is to report original research, not merely confirm the results of the petitioner. The petitioner is only cited for one paragraph on page 19. Section 3.1.2 of the article, the only section citing the petitioner's work, reads in its entirety:

> The growth rate of Al_2O_3 on HF-stripped Si after stabilization is also equal to 0.088 nm per cycle. However, a nucleation retardation equal to around four deposition cycles is observed (not shown). As nucleation retardation strongly depends on water amount during the pulse, we supposed that water pulses were able to create OH groups on the H terminated Si surface. Nevertheless, we unsuccessfully tried to create OH groups with 5, 10, and 20 water cycles before Al_2O_3 growth, confirming the results obtained by [the petitioner].

The article then goes on to discuss bulk and interface properties of SIMS and ERDA characterization of thick Al_2O_3 layers. Thus, the pages of the article in the record strongly suggest that the confirmation of the petitioner's work was incidental to the original research being carried out by the authors. Thus, once again, we cannot conclude that this article, published to report the results of the authors' original work, is in any way "about" the petitioner and his work.

Ultimately, the issue for this criterion is not whether an expert can explain the significance of the citation, but whether an individual unfamiliar with the petitioner, reading the article for the first time and asked a non-leading question relating to the subject matter of the article would respond that the article is about the petitioner and his work in the field. We cannot conclude that these articles would prompt such a response.

Counsel challenges a blanket dismissal of all citations for this criterion, noting their indication of influence in the field. Our conclusion does not bar consideration of citations. First, we will consider the petitioner's citation history below as evidence under the scholarly article criterion. Second, while every case must be judged on its own facts, a citation in a review article that primarily focuses on the alien or devotes an unusual amount of space to the alien's work and singles it out as particularly significant would be much stronger evidence to meet this criterion that the citations submitted in this case.

Finally, we do not find that the director applied unpublished rules in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 552. The plain language of the regulation clearly requires that the published material be "about" the petitioner. As discussed above, the articles submitted are clearly not "about" the petitioner.

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

Senior Manager at Samsung in Korea, discusses the petitioner's work as a primary engineer at Samsung. According to Mr the petitioner developed a new manufacturing processes for Dynamic Random Access Memory (DRAM) semiconductors. According to Mr which has recorded the largest market share of DRAM sales since 1992, patented and adopted those processes.

a manager at Cypress Semiconductor in San Jose, California, asserts that he previously worked for a Korean competitor of Samsung. Mr asserts that the petitioner's contribution to Samsung's semiconductor manufacturing processes "may value in excess of several million dollars." Mr continues that

the petitioner's work on surface analysis and post plasma etch cleaning, published in the *Journal of the Electrochemical Society* and *Solid State Phenomena,* allowed Mr. to "solve many issues that my company had and develop our robust post plasma etch process." Mr concludes that the petitioner's work is "recognized as an outstanding contribution to the semiconductor process technologies."

Dr. President and Chief Executive Officer of the Interuniversity Micro Electronic Center (IMEC), discusses the petitioner's Ph.D. practical work at that center. Dr states:

> I believe it is right to say that he had been the "Pioneer of the Post Plasma Etch Cleaning" at IMEC, which is no small achievement, and made sure that Post Plasma Etch Cleaning was taken into consideration both in the etch process and in the CMOS technology as a whole. When [the petitioner] was in IMEC, we were in the stage of development of 0.25μm CMOS technology. The bottle neck was the yield loss due to silicide bridging issue, for which the root cause of silicide bridging was not clear. [The petitioner] found the root cause, which was NF3 plasma cleaning. He solved the yield loss problem by implementing [a] new cleaning procedure with the SC1 chemistry. It was a huge accomplishment to shorten the project schedule.

Vice President of Wafer Process Research and Development at LSI Logic, discusses the petitioner' work for LSI Logic. Specifically, using techniques he had developed at IMEC, the petitioner resolved LSI Logic's "Via Poisoning" problem with its interconnect technology. Having spent a year attempting to eliminate the defect, LSI Logic was finally able to do so by applying the petitioner's findings to replace its baseline process with one using an oxygen plasma step. LSI Logic patented this process. Mr. concludes that the petitioner solved other problems that had previously caused production yield losses.

Dr. an associate professor at Northeastern University visiting from Hanyang University in Korea, asserts that he first became familiar with the petitioner's work after attending the petitioner's presentation at a 1994 conference. Dr further asserts that the petitioner's "work in ozone cleaning was very helpful and essential for my own research work in the novel cleaning techniques being developed at my university."

Project Manager at Therma Corporation, asserts that the petitioner joined that company in January 2002. Mr. continues that the petitioner has invested approximately $2,000,000 in developing the petitioner's patented cleaning technology and hired four engineers to work on the project.

Dr. a professor at Northeastern University who became acquainted with the petitioner at conferences, reiterates many of the claims discussed above, concluding that the petitioner has had "a substantial impact on the advancement and competitiveness of the semiconductor industry in the U.S."

Finally, the petitioner provides an evaluation of his credentials by Dr. Dr ndicates that his opinion is based on a review of materials provided to him by the petitioner. While we do not doubt the credibility of those documents, Dr. does not indicate that he had ever heard of the petitioner or his work prior to being requested to provide a reference letter. Thus, his letter is not evidence of the petitioner's national or international acclaim.

In addition to the above witness letters, the petitioner submits limited evidence of his patents. a patent attorney, asserts that he has personally filed five patent applications for the petitioner's innovations. Mr. continues: "It is my understanding that [the petitioner] has also filed a number of other patent applications

in the USPTO through other patent attorneys. I further understand that 23 patents, all related to semiconductor process technology, and all listing [the petitioner] as an investor, have been granted by the Korean Patent Office." Mr does not claim to have any first hand knowledge of the Korean patent applications.

The petitioner submitted a list of 23 patent applications filed in Korea, 14 of which had been granted, and a list of nine patent applications filed in the United States, one of which had been published. The petitioner did not submit proof of filing. While it is the petitioner's burden to support the assertions made in the record, a search of the U.S. Patent and Trade Office's website, www.uspto.gov, confirms that the petitioner is credited as an inventor for six published patents and five issued patents, three of which appear to overlap.

The director stated that patents alone cannot establish that a contribution is one of major significance. The director, however, does not appear to have considered the above letters as additional evidence of the significance of the contributions. On appeal, counsel asserts that the witness letters adequately attest to the significance of the patented innovations.

We find that the petitioner has not adequately documented his Korean patents, for which Mr. appears to have no personal knowledge. Nevertheless, while not required to do so, we have confirmed the petitioner's U.S. patents. As discussed above, the record includes letters from independent engineers in the field, including those working for competing companies. These letters not only attest to the significance of the petitioner's work, the authors confirm utilizing the petitioner's results in their own work. Given the record as a whole, we find that the petitioner does meet this criterion.

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 five published articles written while he was pursuing his Ph.D., two articles published in conference proceedings, and earlier articles published in Korea. As stated above, the petitioner also submitted articles that cite the petitioner's work. The director noted that it is typical of Ph.D. students to perform original research and concluded that the record lacked evidence to set the petitioner's publication record apart from others in the field.

On appeal, counsel asserts that the director erred in failing to conclude that mere publication in major professional journals "as specifically authorized in the regulation" was insufficient. Counsel states: "If the CSC disagrees with the regulation, it can encourage the agency to publish a revised version. It cannot ignore the current law."

Counsel is not persuasive. Any evidence submitted to meet a particular criterion must be evaluated as to whether it is indicative of or uniquely consistent with national or international acclaim. CIS has consistently held that simply counting pieces of paper is insufficient. The record does not support counsel's argument that engineers working in the private sector do not normally publish their work. The record contains evidence of several engineering journals. Dr Senior Director of Research Group at ETEC Systems, claims to have authored 150 articles. Several of the engineers presenting their work at the Sixth International Symposium on Ultra Clean Processing of Silicon Surfaces are affiliated with the private industry. The authors of one of the articles citing the petitioner's work are engineers working at Philips Semiconductors. Thus, the petitioner must demonstrate that his publication history is indicative of or uniquely consistent with national acclaim.

The petitioner submitted evidence that he has been cited. Specifically, four independent researchers have cited his 2000 article in Electrochemical and Solid State Letters and two independent researchers have cited his article in the *Journal of Vacuum Science and Technology*. The petitioner's co-author on the latter article has also cited that article an additional four times. While self-citation is a normal and expected process, it cannot demonstrate that the petitioner's work is known beyond his collaborators. Thus, the maximum number of independent citations received by any of the petitioner's articles is four. This number of citations is not evidence that the petitioner enjoys sustained national or international acclaim.

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

The petitioner relies on the witness letters discussed above as evidence to meet this criterion. The director questioned the objective nature of the witness letters and concluded that the petitioner had not corroborated the claim that the petitioner had performed a leading or critical role for any of his employers. On appeal, counsel, citing *Matter of Price*, 20 I&N Dec. 953 (1994), asserts that the director should not have dismissed the reference letters.

While we will consider the witness letters below, we note that the precedent decision cited by counsel does not suggest that witness letters alone are sufficient to establish eligibility for this classification. In that case, the alien had won several golf championships, received significant remuneration, and had been featured in several nationally circulated publications.

The petitioner's contributions to his employer and the field have already been considered above as they relate to the contributions of major significance criterion. We do not find that a finding that an alien meets the contributions criterion mandates a finding that an alien meets this criterion. The issue to be considered under this criterion is the nature of the position the petitioner was hired to fill. While some of the above letters provide the petitioner's job title, they contain little information regarding how many other individuals held that job title at the company during that time, or the organization of the company.

Dr asserts that the petitioner worked as a Process Engineer for Samsung, a Senior Process Development Engineer for IMEC and a Staff Process Development Engineer for LSI Logic. Mr. affirms that the petitioner was a primary engineer for Samsung , Director of Human Resources and Facilities affirms that the petitioner worked as a Customer Applications Engineer for Therma-Wave from 1992 to 1994. A general manager at ASM Europe confirms that the petitioner worked as a Senior Process Engineer for ASM Europe from May 1999 until March 2000. Mr does not provide the petitioner's job title for his employment with Therma beginning in 2002, although he does indicate four engineers were hired to work on the petitioner's project. (Based on the addresses provided, Therma-Wave and Therma appear to be separate companies.)

We cannot conclude that the position of Process Engineer for Samsung, which presumably employs numerous such engineers, is a leading or critical role for this company as a whole. The petitioner was working to obtain his Ph.D. while working for IMEC and ASM Europe. The record does not adequately establish that his practical work at these entities constitutes a leading or critical role for them as a whole.

The record also fails to establish the significance of a Staff Process Development Engineer at LSI Logic or a Customer Applications Engineer for Therma-Wave. In addition, the record includes little information regarding

the nature of the petitioner's position at Therma. Moreover, the record contains no objective evidence relating to the nature of Therma or Therma-Wave's national reputations.

Finally, on appeal counsel argues that the labor certification process would be prohibitive to efforts to hire the petitioner. The issue of whether the labor certification process is appropriate in this case or harmful to the national interest is not relevant to the classification sought.

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 process 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 a process engineer, 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.