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, DC 20536

[redacted]

File: LIN-02-211-51753 Office: Nebraska Service Center Date: JAN 07 2004

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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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. In his decision, the director noted that the petitioner had failed to support many of his and counsel's assertions.

On appeal, counsel asserts that the director should have accepted the evidence on its face, without requiring a "truck load" of documents establishing the significance of the petitioner's accomplishments. While we will address counsel's specific concerns below, we concur with the director that it is the petitioner's burden to establish that he is eligible for the classification sought. Section 203(b)(1)(A) of the Act. In addition, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, 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). As will be discussed in more detail below, the plain language of the requirements for the classification sought require not only specific evidence, such as published material about the petitioner, but evidence as to the significance of that evidence, such as evidence that the articles were published in professional or major trade journals or other major media. A petitioner cannot establish his eligibility by failing to submit evidence establishing that he meets all of the elements of a given criterion.

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

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

The petitioner submits a 2001 resolution issued by the International Jury for the East-West Euro Intellect sponsored "Way to the 21st Century" exhibition in Sofia, Bulgaria, awarding him three gold medals for his universal mixer, production of unsinkable ship hulls, and production of titanium base alloys. The certificates for these awards indicate that they are in recognition for compositions on the basis of spherical fibrous skeletons, display of barrier materials, and display of line for surface water from oil. Also in 2001, the petitioner received a Third-degree Diploma at InfoInvent in the Republic of Moldova. In 1999, the petitioner received a "Médaille de Bronze" for his continuous running mixer at the Brussels Eureka exhibition. In 1998, the petitioner received an AGEPI Medal of Honor at the International Exhibition of Inventions "Genius" from the State Agency on Industrial Property Protection of the Republic of Moldova. Finally, the petitioner submitted a 1997 certificate for a Bronze Medal presented to "Serghei Andrievshi & Others" at INPEX XII in Pittsburgh, Pennsylvania for display of a mixer. The petitioner does share a patent for a mixer with Mr. Andrievshi.

In his request for additional documentation, the director requested evidence relating to the significance of the above awards, including the scope and range of candidates considered. In response, the petitioner submitted an invitation to the petitioner to attend (not exhibit at) INPEX XVII in May 2001. The letter indicates that it is the world's largest innovation exhibition, with 2,000 exhibits from 35 countries expected in 2001. Counsel argued that the attendance by inventors from 35 countries makes the award international. The regulation at 8 C.F.R. § 204.5(h)(i), however, requires not that the competition be international, but that the award be nationally or internationally recognized. The petitioner also submitted INPEX's website homepage, indicating that the exhibitions range from drawings to finished products. In addition, the website indicates that all exhibits are eligible for awards that "may lend credibility to your idea." Finally, the website indicates that awards are based on

usefulness, creativity and overall appeal. The new information does not indicate how many awards were presented.[1]

Counsel further asserted that the State Agency on Industrial Property Protection of the Republic of Moldova (AGEPI) is a state agency. Thus, counsel argued, the medal of honor and InfoInvent award issued by that agency must be nationally known. The petitioner submits what is described by counsel as a program for an AGEPI meeting discussing regional problems and solutions, including a discussion of the petitioner's innovation on page 12. The petitioner, however, did not submit a translation of the cover page or page 12. Thus, it is not clear what this document is.

The petitioner also submitted an October 18, 1999 invitation to the petitioner for the Brussels Eureka World Exhibition. The letter indicated that 30 countries would participate. The petitioner also submitted materials from Eureka's website but no accompanying translation. Counsel further argued that the international panel for the Bulgarian award gives the award national scope.

Finally, counsel asserted that the petitioner won a bronze medal at a Swiss exhibition in May 2002. While the petitioner submitted the award certificate for the medal, he did not submit any information about the significance of this competition.

The director determined that the petitioner had not established the significance of his "exhibit-based" awards. In addition, while the director acknowledged that AGEPI is a government agency, he concluded that the petitioner had not adequately demonstrated the significance of the awards from that agency.

On appeal, counsel asserts that the director erred by acknowledging that the exhibits were international but according the awards no weight. Counsel questions why the petitioner would attend the exhibits if the medals had no value.

The issue is not whether the exhibits had participants from more than one country. The issue is the significance of the awards issued by the event coordinators and the recognition accorded those awards. The main purpose of trade shows is not competition, but to provide an opportunity for inventors to meet those who might be interested in licensing or purchasing their inventions. The website for INPEX, the largest such exhibition, states of its awards only that they "may lend credibility" to an award-winning invention. Moreover, the award was not issued to the petitioner, but his sometime collaborator. The record is absent documentation that the mixer honored by INPEX is the same mixer for which the petitioner is a co-inventor.

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[1] INPEX's website, www.inventionshow.com, indicates that in 2003 24 merit awards were issued: 12 gold, seven silver, and five bronze. The site also indicates that there are special and jury awards in several categories as well as cash awards up to $5,000. This information does not suggest that a bronze award at this exhibition is a nationally or internationally recognized award for excellence.

We agree with the director that the awards from AGEPI are the most notable in the record. Without documentation from AGEPI explaining the selection criteria, pool of candidates, and significance of the award, however, we cannot determine whether the award is nationally recognized as a significant award for excellence in the field. For example, if AGEPI issues such awards to every inventor that obtains a certain number of patents, that is not an award for excellence as no evaluation of the patented innovations is made.

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.

As evidence to meet this criterion, the petitioner submitted a "Brevet D'honneur" from the Société Des Inventeurs De Roumanie conferring the title of "D'inventeur D'élite Ière Classe A." The director requested evidence that this organization requires outstanding achievements of its members. In response, counsel asserted that membership in the society "is an honor reserved for only the most extraordinary individuals in [the petitioner's] field of endeavor." Counsel further asserted that any further inquiry by the director into the "pedigree" of the society goes beyond the scope of the regulation.

In his final decision, the director stated: "The specific requirements and process by which members are selected for membership in a given association are directly relevant to this criterion." The director concluded that the record lacked evidence of the membership requirements for the society.

On appeal, counsel states:

> [The petitioner] is a member of a prestigious inventor's group but we did not provide evidence that it is difficult to obtain membership. To become a member you must be invited. You do not mail $30.00 and obtain a certificate.

The issue is not whether membership is by invitation, but the requirements for membership. For example, a society that issues invitations to all inventors with a certain number of years of experience is not a qualifying society. Working in one's field for a specified number of years is not an outstanding achievement. Regardless, as stated by the director and reiterated in this decision above, the assertions of counsel do not constitute evidence. The petitioner has not provided the official bylaws of or other official information from the Société Des Inventeurs De Roumanie regarding its membership requirements. Such documentation should be readily available to members. We concur with the director that the membership requirements of the society are a major element of this criterion. We cannot conclude that the petitioner meets this criterion without a single piece of evidence relating to the society's membership requirements.

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 an article entitled "Construction Materials Plant Direct at Home," published in *Sovetskaya Moldova* in 1991 and another article entitled "Technological Innovation Poet" published in *Nezavisimaya Moldova* in 2001. The first article is primarily about the Materialovedenie Interdepartmental Research and Production Center under the [redacted] Polytechnic Institute, now the Technical University of Moldova. As Director of the Center, the petitioner provides a few quotes for the article. The petitioner is the focus of the other article, which reports on the petitioner's "award" in Pittsburgh for claydite, a thermo-insulating material. The article indicates that "it is too early to speak about any production application." The director requested evidence that these articles appeared in the major media. In response, counsel asserted that *Nezavisimaya Moldova* has a national circulation and that *Sovetskaya Moldova* was a Soviet publication circulated throughout Moldova when Moldova was a republic of the Soviet Union. The petitioner did not submit any evidence to support these assertions.

The director questioned whether two articles published ten years apart, the first of which was not primarily about the petitioner, could establish sustained national or international acclaim. The director concluded that the petitioner had not established that either publication had a national circulation.

On appeal, counsel implies that the director did not accept newspaper articles as evidence of the newspaper's existence. Such an implication is a serious mischaracterization of the director's concerns. The copy of the newspaper article is certainly evidence of the existence of the newspaper that printed the article, and the director did not state otherwise. Rather, the director noted the lack of evidence regarding the newspaper's circulation and distribution. We concur with the director that a copy of a newspaper article is not evidence of the circulation or distribution of the newspaper that printed the article.

Counsel further states:

> [The petitioner] had articles written about him in a national publication but we must provide evidence that it is in fact a national publication. If we had provided a letter from the newspaper stating that it is a national publication would then the articles be worth looking at or would we need "proof" that it is indeed a national publication. How do we obtain this "proof[?]"

Once again, the plain language of the regulation requires that the published material appear in "professional or major trade publications or other major media." Thus, it is the petitioner's burden of proof not only to submit the article itself, but evidence that establishes that it was published in a qualifying publication. It can be expected that any publication can provide information as to its circulation. The management of the publication must surely know how many issues it prints and where it distributes those issues. The petitioner has not established that the Moldovian publications in which the articles appeared do not provide such information upon request.[2]

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[2] In response to counsel's query as to how such evidence might be obtained, we note that while it is not our burden to do so, we located this information at www.mldnet.com. *Independent Moldova* is a government publication with a national distribution. We note, however, that the

At the time the first article was printed, Moldova was not an independent country. Thus, at that time, an article appearing in a newspaper distributed throughout Moldova was not indicative of national or international acclaim. Even assuming *Independent Moldova* is national, a single article is not persuasively indicative of sustained acclaim.

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

Counsel asserted that the petitioner developed superior glass fiber, granulated, froth, and gypsum insulation. Counsel further asserted that the petitioner developed a wall material made of sandy soils, stone shavings, crushing stone waste, sand, natural froth, clays, amorphous silica, shales, and mining waste. According to counsel, the petitioner also developed a composition barriering material useful for crushing and grinding as well as in mixers, dies for pressing, draw plates and equipment influenced by abrasives. In addition, counsel asserted that the petitioner developed a solution for purifying petroleum and produced persistent working mixers from homogenous dry and wet material mixtures. Finally, counsel asserted that the petitioner developed a crushing aggregate with an output of over two tons and two types of presses. The petitioner submitted evidence of his 28 patents and the awards presented at the trade shows discussed above.

The petitioner submitted reference letters from his collaborators and colleagues. Dr [redacted] currently a professor at the Kiev Polytechnic Institute, is a co-author of the petitioner's 1983 patent for "device for making a framed article" and his 1982 patent for "device for making a gauze article." Dr [redacted] discusses the potential uses of the petitioner's innovations and estimates, without explanation, the cost of non-exclusive licenses for these innovations at $18,750,000.

The petitioner also submitted a letter from Dr. [redacted] jointly signed by Dr. [redacted] colleagues at the Technical University of Moldova. Dr [redacted] is a co-author of several of the petitioner's patents. Dr. [redacted] provides a general discussion of the petitioner's patented innovations, and asserts that the petitioner's developments concerning macrolevel isotropic sphericalfibrous skeletons "may be successfully applied in shipbuilding." Dr. [redacted] concludes that the petitioner's innovations have been "recommended for wide application," but does not provide a single example of how the petitioner's innovations have already been used or even any specific negotiations to begin licensing the petitioner's innovations.

The petitioner also submitted a letter from [redacted] director of Materialovedenie and co-author of several of the petitioner's patents. The letter is jointly signed

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circulation is only 17,000 in a country with a population of approximately 4.7 million. Moreover, it is a Russian-language publication in a country whose official language has been Moldovan since 1989. The record contains no evidence that the petitioner has received media coverage in the majority language media.

by [redacted] who identifies himself as an "expert in the field of patents and trade marks." The record does not include Mr. [redacted] curriculum vitae or other evidence of his credentials. Ms. [redacted] praises the petitioner's record of innovation but fails to provide evidence of how these innovations have impacted the field of materials science or the construction industry.

In addition, the petitioner submitted a letter from Dr. [redacted] Head of the Department of Chemistry at Moldovian State Univeristy, who has no apparent connection to the petitioner. Dr. [redacted] asserts that the petitioner's innovations have been highly commended at world forums, but provides no examples of how the petitioner's innovations have impacted the field of materials of science or the construction industry. Dr. [redacted] does not indicate that the petitioner has influenced his own work, does not express any interest in licensing the petitioner's innovations, and does not explain how he came to know of the petitioner.

The petitioner did submit evidence of a four-year contract worth $372,160 between Materialovedenie and Maldova-Agroindbank for the construction of two cottages and three banks. A certificate jointly signed by the petitioner and the Vice President of Moldova-Agroindbank asserts that the petitioner developed the technology of exterior and interior wall finishing for the project.

In response to the director's request for additional evidence of the significance of the petitioner's contributions, counsel references the petitioner's awards and "scholarly articles" consisting of schematics and explanations. The director concluded that the record lacked evidence that the petitioner's innovations were recognized for their impact or influence at the time of introduction or have become widely accepted and adopted. On appeal, counsel simply expresses her disagreement with that conclusion.

We concur with the director. While letters from an alien's immediate circle of colleagues are important in providing details about the alien's role in various projects, they cannot by themselves establish the alien's national or international acclaim. Dr. [redacted] provides little information indicating that the petitioner's innovations are generally considered in the field to be contributions of major significance. A single contract with a local business is also not evidence indicative of national acclaim. Nothing in the record indicates that material scientists independent of the petitioner have expressed interest in building on the petitioner's work or that the construction industry has widely sought to license the petitioner's innovations.

Regarding the patents, 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.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* Many of the petitioner's patents are assigned to the Technical Institute of Moldova. The record does not indicate that the institute has licensed or marketed the petitioner's patented devices. Thus, the impact of the devices is not documented in the record.

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 a list of 28 presentations allegedly published in conference proceedings, reports or other materials for the Kishinev Polytechnic Institute, and a handbook on principles of automation. The director requested copies of between eight and ten of the most recent articles in qualifying publications. In response, counsel asserted that the petitioner's scholarly articles are limited to "schematics and explanations of his inventions." The petitioner submitted several such schematics and explanations printed on Materialovedenie letterhead. The director concluded that the schematics submitted were merely promotional materials for Materialovedenie. The director further concluded that the petitioner had not established that he had authored scholarly articles published in professional publications or that any such articles have received significant attention within the field. Counsel does not specifically contest this conclusion on appeal and we concur with the director.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In his request for additional documentation, the director advised the petitioner that this criterion did not apply to his field. In response, counsel asserted that the petitioner's innovations have been displayed at several trade exhibitions. The director once again concluded that this criterion is not applicable to the petitioner's field. Counsel does not address this criterion on appeal. We concur with the director that this criterion is specifically designed for visual artists. Neither counsel nor the petitioner has explained how renting space at a trade exhibition is comparable to a significant, exclusive artistic showcase.[3]

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

The petitioner did not claim to meet this criterion. The director concluded that while the petitioner may have played a leading or critical role for Materialovedenie, he had not demonstrated that this center has a distinguished reputation nationally. Counsel does not address this criterion on appeal. We concur with the director.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Initially, counsel asserted that the petitioner "has garnered contracts from Moldova-Agroindbank worth $372,160 USD and contracts from municipalities of the former Soviet Union worth $365,000 USD."

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[3] Even when adjudicating petitions for artists, this office has consistently held that displaying one's work is inherent to the field of art and that renting gallery space to display one's work is insufficient to meet this criterion.

In his request for additional documentation, the director advised that this criterion pertains to performing artists. Counsel's response did not address this criterion. We concur with the director that this criterion is specifically applicable to performing artists. Neither the petitioner nor counsel has explained how business contracts between the petitioner's center and its clients are evidence comparable to the personal commercial success of a performing artist.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an inventor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as an inventor, 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.