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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 011 54550 Office: CALIFORNIA SERVICE CENTER Date: JAN 29 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:

SELF-REPRESENTED

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
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) 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 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 research scientist. 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 was represented by counsel during his original petition for visa preference. The petitioner chose to represent himself in subsequent actions regarding his petition, and counsel submitted a formal letter of withdrawal. 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.

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. The petitioner submitted evidence of citations to his work in several trade publications. He states that the authors of these articles evaluated or critiqued his work, implying therefore that the published articles are about him or his work. A review of the documentation provided, however, reveals it is nothing more than the normal reference to a previous researcher's results. It is the nature of research to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In others, prior work is superseded by the findings of current research. In either case, the current researcher normally cites the work of prior researchers. Clearly this is not the same thing as published material written *about* an individual's work in the field. While in a general sense, the articles discuss the merits of the petitioner's work, the merits are addressed only as relative to that author's own research. Citations do not discuss the individual's standing in the field or any significant impact that his work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

The petitioner also indicates that his work is listed as required reading for graduate courses in universities all over the world. Again, this is not material written about the petitioner, but rather reflects his contribution to the mobile networking field, and will be addressed under a separate criterion. The petitioner has not established that he has been the subject of published material that meets this criterion.

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.

With the petition, counsel stated that for the last seven years, the petitioner has been asked to "judge the work of others to determine their suitability for publication in prestigious conferences and journals in the field of Mobile Computing and Networking." Counsel submitted a copy of an Internet-Draft, described as a working document of the Internet Engineering Task Force, and setting forth the protocol to be used in the operation of the IPv6 Internet with mobile computers. The petitioner was one of several members of the working group that reviewed the document prior to dissemination to the mobile networking community. Counsel also submitted copies of requests for the petitioner to review two papers prior to their publication, and evidence that he had been one of several reviewers of papers for symposiums in 1995, 1997, and 2000. The petitioner did not submit evidence of the number of papers he reviewed for the symposiums.

In his response to the director's request for evidence (RFE) dated April 23, 2003, the petitioner submitted a reference letter from Dr[redacted] who describes himself as an "established expert in the area of wireless and mobile networking" and the founder and chief technology officer of Wibhu Technologies, Inc. Dr.[redacted] states that due to the petitioner's standing at the forefront of the field of mobile networking, he has "called upon him to serve as reviewer[] for peer's (sic) research results submitted for publication at top-notch technical conferences and journals that [Dr.[redacted] has] been associated with." Dr.[redacted] curriculum vitae shows that he serves as Associate Editor of IEEE Transactions on Mobile Computing and Technical Editor of IEEE Wireless Communications. He also served as guest co-editor for special issues of IEEE Network and IEEE Wireless Communications. The evidence of record reflects only one request to review a paper that was directed by Dr[redacted] to the petitioner.

The director determined that most of the documentation presented did not serve as prima facie evidence of judgeship as there was no corroborative evidence submitted such as the actual evaluations completed by the petitioner. On appeal, the petitioner submitted a copy of one review he performed in 1997 and another in 2003, after the petition was filed. Circumstances that did not exist as of the filing date cannot establish eligibility retroactively. The petitioner must possess the necessary qualifications as of the filing date of the visa petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

In his response to the RFE, the petitioner stated that it is "implicit in the research community that people being requested to review other people's work should themselves be at the very top of the field or at least at the forefront of the specific area of the field." This statement is inaccurate and unsupported by evidence. Peer review is an integral part of the scientific publication process; it does not follow that every person who is selected to review papers for publication is an extraordinary research scientist. Evidence submitted in support of this criterion must reflect that the alien was selected to perform reviews because of his expertise in the field. Further, because the statute requires extensive documentation, the AAO will look at the frequency and the regularity of invitations to perform peer review. The evidence of record reflects that the petitioner has only occasionally participated in the peer review process. Such occasional participation does not substantiate that the petitioner has earned such sustained national or international acclaim that his opinions and insight are regularly sought as a valued element of that process.

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

Counsel states in her letter accompanying the petition that the petitioner meets this criterion as he is the principal designer and developer of the MosquitoNet Mobil IP software package. Counsel also states that the petitioner has been contacted by government, business and academia about his work. Evidence consists of e-mail from users or potential users of the Mobil IP software. A review of the e-mail shows that many are from individual users or potential users who have experienced problems in using the software. There is evidence, additionally, that several of the e-mails are from representatives of institutions regarding use of the product for their organizations.

The petitioner also claims that he meets this criterion based on his application for a patent as co-inventor of technology that will be the "sole key patent in [his company's] intellectual portfolio." We concur with the director that the mere application for a patent, whether or not it is the first in its kind, is not necessarily indicative of a major contribution to the field. Further, there is no corroborating evidence to indicate that the patent has been applied to technology in the field.

The petitioner submits several letters of support and recommendation attesting to his skill as a researcher and his accomplishments. Dr [redacted] Assistant Professor of Computer Science and Electrical Engineering at Stanford University, states the petitioner served as her graduate assistant from 1994 until he received his doctoral degree in 2001, and that the petitioner's doctoral thesis concerned the "design of network protocols to support mobile devices in the Internet". She writes that the petitioner's "contributions have shown how it is possible to maintain seamless network connectivity to a portable device as it moves from one type of network to another within the Internet." The petitioner's protocol to make this happen is called Mobile IP. Dr [redacted] further states:

> The petitioner's implementation of Mobile IP makes it possible for a portable computer to remain seamlessly connected to the Internet as it moves around, while incurring the overhead of the protocol only when actually needed. In the petitioner's implementation, Mobile IP is only deployed for those streams of network traffic that require seamless mobility. This is a major advancement, since other implementations tend to require all traffic to suffer the overhead of mobility support. The petitioner released this implementation of Mobile IP as supported in the Linux kernel, and it has become one of the most popular versions, used by many researchers around the country.

Dr. [redacted] an Associate Professor of Computer Science at the Naval Postgraduate School and founder and chief technology officer of Cranite Systems, Incorporated, states he has worked with the petitioner since 2001 in the areas of mobile networking and network security. He states the petitioner made "significant contributions" to Stanford University's Mobile Computing Group's Mobile IP project MosquitoNet. He also states that the petitioner "has developed new protocols for protecting ad hoc, wireless networks from attackers" and that his work "has had, and will continue to have a significant impact upon this important area."

A letter from Dr. [redacted] Associate Professor at the National University of Singapore, writes that he first met the petitioner when they participated in an interoperability test of the software that their respective research groups had developed. Dr. [redacted] states:

> MosquitoNet's demonstration that real-time switching between alternative network technologies was feasible, and their advocacy of a particular (so-called co-located address) architecture, were very influential within the mobile networking community, and frequently cited. [Dr. [redacted] understands that the petitioner] was a key member of this research team and contributed substantially to its success.

Dr [redacted] also writes that his judgment of the significance of the petitioner's work is based on his own research in that area, his role as program committee member at various conferences, and as referee for various journals. He states that the petitioner's "outstanding analytical and implementation skills . . . put him within the top twenty PhD graduates in the area of computer networking for his year."

The director acknowledged the letters of support and recommendation but noted that those who had worked with the petitioner, either directly or indirectly, wrote these "testimonies". As such, the director concluded that their views do not provide the breadth of recognition necessary to determine the extent of the petitioner's contribution to the field.

On appeal, the petitioner submitted a letter from Dr. [redacted] Professor of Computer Communications at the Royal Institute of Technology in Sweden. Dr. [redacted] states he is familiar with the petitioner's work through a paper the petitioner presented at a mobile communication conference, and through subsequent discussions and reading the petitioner's dissertation and other publications. He states that the petitioner introduced a mobile policy table and two new socket options to bind flows to given interfaces:

> [T]his was very important because for the first time it enabled application programmers to device (sic) which interface to use for input and separately for output for a give flow.

> Furthermore [the petitioner] implemented these mechanisms (as part of the widely available Mosquitonet [software]) and studied their performance.
>
> His papers have had a significant impact (which is evident from the number of other authors who cite his work). In addition, because the Mosquitonet source code was available to others, it has been widely studied and used as a basis for research [by] researchers from [around the] world.

Dr. [redacted] a member of the technical staff of Lucent Technology, Bell Laboratories, states he also became aware of the petitioner's work at the mobile communication conference. Dr. [redacted] states that he has been working in the field of mobile computing since 1995. He also states that the petitioner's work on the "simultaneous use of multiple packet delivery methods and multiple active network interfaces as documented in his paper is a major contribution to the knowledge base in the domain of mobile networking." He further states that he witnesses discussions of the petitioner's work both in his own lab and while traveling internationally to related technical conferences.

The petitioner also submitted evidence that his work is used internationally as part of the teaching syllabus for network mobility courses. We find that the evidence is sufficient to find that the petitioner has met this criterion, and withdraw the director's determination.

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 articles he co-authored have been published in five separate publications,[1] and that his publications have been frequently cited by others in the field. The director determined that graduate and postgraduate researchers in the scientific field are required to conduct research, and that authorship of articles in furtherance of a degree or career is not "routinely judged to be indicative of someone who has published scholarly articles in the field." However, publication alone is insufficient to establish the importance or influence of the published research. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research. Along with the list of citations to his work, the petitioner submitted evidence that his work is used internationally as a teaching tool in several courses. We find that this frequent citation to the petitioner's work and the use of his work in educational settings satisfy this criterion, and withdraw the director's determination.

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

No evidence claiming to meet this criterion was submitted with the petition. In his response to the director's RFE, the petitioner submitted a letter from the President and CEO of Cranite Systems, Mr. [redacted] Mr. [redacted] states the petitioner has worked for the company since July 2001, and that he has a "unique and critical role at Cranite due to his ability to bridge theory and practice." He states the petitioner is the "principal designer and implementer of the bridge architecture within the company's Wireless Wall product line," which won an excellence award from e-Weeks for one of its products. He also states the petitioner is a

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[1] We note that the articles in the *Journal of Mobile Networks and Applications* and *Proceedings of the Fourth Annual International Conference on Mobile Computing and Networking*, while carrying slightly different titles, are the same.

co-inventor of technology which is pending a U.S. patent. Dr. [redacted] co-inventor of the technology, states that the technology that is the subject of the patent "solves an important problem found in bridging local area network segments securely when stations can attach to bridges via wireless link," and that the technology "comprises a key component of Cranite's intellectual property portfolio." As noted above, the petitioner, without submitting corroborating evidence, asserts that this patent will be the "sole key patent in the intellectual portfolio of a leading high-tech startup company in the field of wireless networking and . . . serves as [the] technology foundation of a budding venture." The director determined that the evidence failed to distinguish the petitioner from his peers at Cranite and fails to show how the petitioner's role "is so leading or critical that it would lead to the conclusion that he stands above the rest of his peers in the field of Mobile Networking and Computing." Further, the evidence does not establish that a staff research scientist position at this organization is a leading or critical role within the meaning of the regulation.

According to the founder and the president and CEO of the company, the petitioner's work helped to garner an excellence award for a new product, and resulted in development of new technology that is one of the keys to the company's success. The evidence establishes that the petitioner has played a significant role in product development at Cranite. The evidence does not establish, however, that Cranite is an organization with a distinguished reputation. Although the record does not reflect the length of time Cranite has been in business, the CEO describes it as a start-up company, and the petitioner refers to it as a "young company." While age is not the determining factor in whether the company enjoys a distinguished reputation, the petitioner submits no evidence of the company's reputation in the industry, business or scientific world, or any other evidence of its distinguished reputation. The evidence of record does not establish that the petitioner has met this criterion.

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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research scientist 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 is a talented research scientist, 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.