U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

B2

[redacted]

MAR 0 2 2004

FILE: [redacted] Office: TEXAS 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:

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.

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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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.

In her decision, the director stated that the petitioner had submitted documentation relating to criteria 1, 2, 4, 5, 6 and 9. Nonetheless, she found that the evidence submitted was not sufficient to establish that the petitioner met those criteria. The statute requires that sustained national or international acclaim must be established by extensive documentation. The petitioner must provide ample evidence to establish that he meets the requirements of the particular criterion he claims is applicable to him.

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 submitted evidence that a research paper he co-authored and presented at a national symposium on alumina ceramics was one of two winners of a certificate awarded by the Indian Ceramic Society. In his response to the director's request for evidence (RFE) dated April 9, 2002, the petitioner explains the history of the award and the criteria for entering the competition. The petitioner does not submit documentary evidence to support his statements. 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, despite the petitioner's assertions, there is no evidence that this certificate was anything more than a one-time event at a specific symposium, and does not appear to be an award that would be recognizable on a national or international level. The evidence does not establish that the petitioner meets this criterion.

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 does not claim to have met this criterion. However, the director indicated that evidence of this criterion was documented in the record. We withdraw this statement, as the record does not reflect that the petitioner is a member of any organization.

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 general, 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. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted evidence of several citations to his work by others. Citations to a petitioner's work do not establish eligibility under this criterion. 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. The published work does 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 claims that the e-mails and letters from various universities and government agencies declining his application for a postdoctoral position, the referees' reports on his proposed doctoral thesis, a review of the book he wrote about his trip to the Himalayas, and the letters from United States Senator

and North Carolina State Senator all evidence that he meets this criterion. However, none of these constitute major media or major trade publications, and do not establish that the petitioner 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.

The petitioner did not originally claim to meet this criterion. However, in response to the RFE, he included evidence that he had reviewed a manuscript for the American Chemical Society's *Journal of Surfaces and Colloids*. The evidence indicates that the request was made of Professor of the Department of Chemical Engineering at the North Carolina State University. Professor apparently passed the request on to the petitioner. 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 once 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. The petitioner does not meet this criterion.

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

As evidence that he meets this criterion, the petitioner submitted copies of the articles he has written that he refers to in his response to the RFE as "Generalist Papers." These articles, he states, are "in-depth review papers on the current state-of-the-art in their respective domains." He states that he does not claim that these are "path-breaking research papers, they are an evaluation of how technology stands today in these respective segments."

The petitioner also submitted evidence that he has applied for two patents with the Indian patent office. The record contains no evidence of the petitioner's receipt of either patent. The record also is devoid of any evidence of the practical utility of these technologies and of evidence that they constituted a major contribution to the field.

The director indicated that the petitioner had made a significant contribution to his field "by developing the cryogenic-scanning electron microscopy as an analytical technique for ceramics and was the fist to apply it to wet ceramic systems." As noted above, the director concluded, however, that this evidence does not meet the standard for this criterion. The only evidence in support of this criterion is the petitioner's own statements and a copy of his article published in *Ceramics International*. The evidence of record does not establish that the technique, even if sufficient evidence existed to attribute its development to the petitioner, yielded significant results to the field. The petitioner does not meet this criterion.

The petitioner also relies on research proposals unrelated to the field of endeavor on which he bases his visa preference petition. In addition, he relies on his academic degrees, his receipt of the certificate awarded for his research paper, an appointment to a position with the S.D. Fine Chemical, Ltd. company, his certification as

an interpreter for the Minnesota courts and his letters from the North Carolina senators as addressed above, none of which reflect on his original contributions to chemical engineering as a research scientist. The petitioner has not met 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 copies of ten articles that he co-authored and which were published in scholarly journals. He states that these articles form ten chapters of his PhD thesis, "which consisted entirely of peer reviewed original, scientific publications." The petitioner does not submit any published work in his field beyond the articles for his thesis. The record does not reflect that he has published articles during his postdoctoral training.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, sets forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected." The petitioner's lack of publication during his postdoctoral appointments has not satisfied the minimal expectation for postdoctoral fellows. The petitioner does not distinguish himself as extraordinary under this criterion.

CIS does not consider publication alone as sufficient to establish that the petitioner has demonstrated extraordinary ability in his field. The research community's reaction to those articles must also be considered. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research. The petitioner submitted evidence that his articles have been cited six times by other researchers. The number of independent citations does not rise to a level that would demonstrate national or international recognition.

The petitioner also relies on his two patent applications. These documents are not published in professional, major trade publications or other major media as required by this criterion.

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 claims to meet this criterion based on the salary of 15,670 rupees he received as a senior manager at S.D. Fine Chemical, Ltd. from 1998 to 2000. He submitted a page from India's Centre for Advanced Technology (CAT) website showing that his salary was in the middle pay range for scientific officers. He submits that this pay is higher than a member of the Indian Parliament and twice that of a university vice chancellor. Nonetheless, the evidence does not establish that the petitioner received a significantly higher salary than those who performed similar work in his field. Nor does the evidence establish that the petitioner's salary at the time of his visa preference petition was significantly higher than that of other research scientists.

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 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 skilled researcher but is not persuasive that his 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.