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

U.S. Citizenship and Immigration Services

[redacted]

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

IN RE: Petitioner: [redacted]
Beneficiary:

MAR 17 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
ADMINISTRATIVE APPEALS OFFICE
425 I STREET, N.W.
CIS, AAO, 20 MASS 3F
WASHINGTON, DC

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 business. 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. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 has 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 in business and science in the field of optical networking and telecommunications. 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's Form I-140, Immigrant Petition for Alien Worker, indicates that he is seeking visa preference classification as a vice president of marketing. Counsel indicates that the petitioner's extraordinary ability as a scientific researcher in the fields of business and telecommunications qualify him as an alien of extraordinary ability as a marketer of telecommunications technology. Nevertheless, to be eligible for visa preference

classification as an optical networking and telecommunications marketer of extraordinary ability, the petitioner must establish that he has sustained national or international acclaim in this cross disciplinary field, and not simply as a research scientist. The petitioner has submitted evidence that he claims meets the following criteria.

> *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.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In her cover letter accompanying the petition, counsel stated that the petitioner is a member of the Institute of Electrical and Electronics Engineers (IEEE) and the Order of Engineers of Quebec. As evidence, she submitted copies of membership cards for both organizations. No evidence of the membership requirements of the organizations was submitted.

In response to the director's request for evidence (RFE) dated February 28, 2003, counsel stated that the petitioner had been elevated to a senior member in the IEEE and submitted a letter dated May 5, 2003 from the 2003 President of IEEE, [redacted] advising the petitioner on his elevation. In his letter, M[redacted] states that selection to senior member requires "experience reflecting professional maturity and significant professional achievements." A review of the IEEE website reflects that membership in IEEE is open to both professionals and students, and that the IEEE has a six tiered membership structure. The senior member grade is the "highest [grade] for which application may be made." Selection is based on at least ten years practice and one or more of six performance criteria, which include substantial engineering responsibility or achievement; publication of engineering or scientific papers, books or inventions; technical direction or management of important scientific or engineering work; recognized contributions to the welfare of the scientific or engineering profession; development or furtherance of important scientific or engineering courses; or equivalent contributions in the nature of technical editing, patent prosecutions or patent law provided they serve to substantially advance progress in IEEE-designated fields.

The evidence does not establish that the petitioner's membership in the IEEE meets the requirements of this criterion, as it fails to establish that selection as senior member is based on outstanding achievement. The criteria appear to require technical expertise, longevity in the profession and a substantial degree of competence, but do not require the outstanding accomplishment required of this criterion. This is more evident as the IEEE recognizes those of "outstanding and extraordinary qualifications and experience" by inviting them to become a Fellow in the organization. Additionally, the petitioner's selection as a senior member postdates his visa preference petition. A petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner submits no evidence regarding membership in any marketing association.

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.

Counsel asserts that the petitioner's published articles have been cited 18 times and that these citations establish that he meets this criterion. Counsel finds contradictions in the director's decision between his statements that citations to the petitioner's work by others are not published work "about" the petitioner and his statement that citation of another's work is routine and expected in the scientific community. We fail to see how these statements contradict each other. The AAO has consistently held that this criterion is not satisfied by citations to a petitioner's work by others in the field. The plain language of the regulation requires that the published material be about the alien, relating to his or her work. Citations of the petitioner's work are the subject of a separate criterion.

As noted by the director, 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. Citations to one's work do not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field.

The petitioner has not submitted evidence to satisfy this criterion.

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

The petitioner bases his claim of meeting this criterion on his technical presentations, citations to his work, and his participation in standardization forums and international conferences.

Counsel states that because of his "expertise in the field of optical networks," the petitioner has "often been invited to provide technical presentations regarding his original research." Counsel asserts that the petitioner's "original innovations were integral to the redesign of the Saudi Telecom network." As evidence the petitioner submitted three documents that counsel refers to as presentations and appear to be technical plans and specifications for Saudi Telecom and the Saudi Arabian Network [redacted] Chief Executive Officer of International Telecommunication Systems Operation in Saudi Arabia, stated he worked with the petitioner at Saudi Telecom. In his letter of support for the petitioner, Mr [redacted] describes the benefits gained by Saudi Telecom as a result of the petitioner's work, but does not show how this work benefited or was a contribution of major significance to either the field of telecommunications or marketing.

Counsel also asserts that the petitioner's significant contributions to the field are evidenced by the number of citations to his work by others in the field. The record reflects that the petitioner wrote one article that appeared in the November 1974 edition of the IEEE journal *Transactions on Communications*. The petitioner's co-authorship of published articles may demonstrate that his research efforts yielded some useful

and valid results; however, it is apparent that any article, in order to be accepted in a scientific journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a major contribution to his or her field. The record reflects that the petitioner's article has been cited 18 times by other published researchers. Counsel is correct in that the number of times a researcher's work is cited by others may be an indication of its significance to the field. The evidence submitted by the petitioner shows that the first citation to his article was in 1976 and the latest in 1997. These few citations over a 25 year period are not sufficient evidence that the petitioner's work constituted a major finding that contributed significantly to the field of telecommunications, and provides no evidence of his contributions to the field of marketing.

As further evidence that the petitioner meets this criterion, counsel states the petitioner plays a "critical role in standardization practices for the industry and in industry organizations." As evidence, he submits a copy of a document labeled ANSI/IEEE Standard 820-1984. The petitioner is listed as a member of the working group, but no evidence submitted establishes that he made a major or significant contribution to the standard or the field of telecommunications. Other evidence submitted includes copies of presentations made by the petitioner to various American National Standards Institute (ANSI) working groups. Again, nothing in the record reflects the significance of these presentations to the field of telecommunication marketing.

The evidence reflects that the petitioner has made presentations at five international conferences and had papers presented at three of them (one paper and presentation were presented at two different conferences). While presentations at scientific conferences may indicate the petitioner's work is noteworthy, it does not, without more, establish that the work presented at the conferences constitutes an original major contribution to the field. Further, the evidence of the presentation at the China Broadband Service Demand Conference is the only evidence that appears to combine the disciplines of telecommunications and marketing. The petitioner must demonstrate his contributions to his filed, which combines both business and telecommunications.

[redacted] Senior Director of Marketing and Product Line Management at Norcom/CDT, states he was the senior product manager for telecommunications cables during the petitioner's tenure at Northern Telecom Cable Group. In his letter of support for the petitioner, he states that the petitioner served as a senior manager with several other product managers reporting to him, and under his leadership:

> Northern Telecom introduced several breakthrough products, including category-5 copper cables and connectors capable of supporting high-speed data transport without the need for optical cables. Today, Category 5 connectivity products constitute the industry standard globally. However, it was the [Northern] Telecom Cable Group that pioneered this technology, as a direct result of the critical role played by [the petitioner]. Consequently, [the petitioner] can truly be considered as the father of high end communications connectivity products and systems.

Mr. [redacted] also writes that through a development partnership with Crescendo Communications and Northern Telecom Cable, the companies introduced the "world's first LAN hub operating at 100 Mbs on unshielded twisted pair copper – an accomplishment that was thought to be impossible at the time. Through his input into the project, [the petitioner] played a critical role in accomplishing this seemingly impossible task."

Although Mr. [redacted] letter is highly complimentary of the petitioner and states that the petitioner has played a major role in telecommunications development, the letter does not specify exactly what that role was. No evidence establishes that any of the "breakthrough" products was the result of the petitioner's own work. Mr. [redacted] also does not state how the petitioner's role was critical in the development of the project with Crescendo Communications.

[redacted] Product Line Management leader in the Optical Networks division of Nortel Networks, worked with the petitioner in this division for approximately six years. He states that under the petitioner's management:

> a number of innovative products were commercially and technically defined and introduced including video encoders, ATM multiservice access multiplexers, network management and switching software packages, etc. [The petitioner] played a critical role in the product definition as well as the development of the strategic and commercial value of a very successful Nortel technology and product called OpTera Packet Edge.

Like Mr. [redacted] Mr. [redacted] does not state how the petitioner's work contributed to defining the innovative products released by Nortel or how those products constituted a significant contribution to telecommunications marketing. Although the development of the strategic and commercial value of the OpTera Packet Edge product appears to be a marketing related activity, Mr [redacted] does not detail the petitioner's "critical role" in the development of the strategy. Furthermore, no evidence establishes that the successful marketing of the product constituted a contribution of major significance to the field of telecommunication marketing.

Counsel alleges that the petitioner has made other contributions that are detailed in proprietary documents that he is not at liberty to release. 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) The AAO cannot consider evidence that is not part of the record, and no evidence submitted by the petitioner establishes that he meets this criterion either as having contributed significantly to the field of telecommunications or to the field of marketing.

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

As noted above, the petitioner submitted evidence of having co-authored one paper that appeared in the IEEE journal *Transactions on Communications*. That article has been cited by others in the field approximately 18 times since its publication in 1974. Although the petitioner submits a list of publications in which his article has been cited, the list only states the name of the citing author and the journal in which the article was published. The record contains no evidence of the nature of the citations to the petitioner's work or whether or not others in the field favorably cited his work. The evidence reflects that two papers co-authored by the petitioner have been presented at three different conferences and the petitioner has made presentations at five separate conferences. Not every presenter at conferences is a person of extraordinary ability. As with his written scholarly work, the petitioner must demonstrate the significance of his presentations to the field. The petitioner does not provide evidence that his presentations were favorably received by others in the field. While the record reflects that the petitioner has authored scholarly work that has appeared in a professional or major trade publication, the evidence is insufficient to meet the extensive documentation requirements of the

statute and to establish sustained acclaim. The presentation at the China Broadband Service Demand Conference is the only piece of documentary evidence submitted by the petitioner applicable to this criterion relating to his request for visa preference classification as a telecommunications marketer of extraordinary ability.

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

The petitioner currently serves as vice president of marketing at Sorrento Networks Corporation. A review of his curriculum vitae reveals that he is in charge of marketing for the company, reporting directly to the Chief Executive Officer. Dr. [redacted] Vice President of Systems Architecture for Sorrento Networks, states that the petitioner "plays a critical role in ensuring the success of Sorrento Networks at a time when the telecommunications industry is facing tremendous challenges and is responsible for the entire corporate marketing function at Sorrento Networks." The evidence establishes that the petitioner plays a leading role for Sorrento Networks.

The evidence of record does not establish that Sorrento Networks Corporation enjoys a distinguished reputation. According to its fiscal year (FY) 2002 annual Securities and Exchange Commission report, the Sorrento Networks Corporation, which changed its name from Osicom Technologies, Inc. in 2001, had revenues of approximately $41 million. It is a multinational corporation and indicated that its sales were to 17 customers worldwide, including AT&T Broadband, Cox Communications and Deutsch Telekom. Although the company has entered into long-term agreements with some of its customers, the petitioner submits no evidence of the company's standing or reputation in the telecommunications or business communities, nor any evidence that Sorrento Networks is considered by others to be a technological leader in telecommunications.

The petitioner worked in various senior management positions at Northern Telecom Cable Group (now Nortel Networks) and had responsibility for specific product lines within the company. As noted above, Mr. [redacted] and Mr [redacted] state that under the petitioner's leadership, the company pioneered several technological products of significance to Nortel Networks. The petitioner's duties in these positions also entailed marketing of the product lines for which he had responsibility. The evidence establishes that the petitioner had a leading role at Nortel Networks. Nortel Networks is a venerable company that is a recognized leader in the field of telecommunications.

According to the petitioner's résumé, his work with Saudi Telecom was under a contract with Bell Canada International (BCI). No evidence in the record establishes the petitioner's role at BCI. According to Mr. [redacted] the petitioner developed a revised transmission plan that improved transmission performance over the Saudi network. He also assessed technology for their applicability to the Saudi Telecom Network and assisted Saudi engineers with standardization proposals, and did some training. While the evidence establishes that the petitioner aided the Saudi Telecom Network in updating his transmission systems, it does not establish that he played a leading or critical role for the organization, or that his work for BCI or the Saudi Telecom Network was related to telecommunications marketing. We find, however, that the petitioner meets this criterion based on his work with Nortel Networks.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In her cover letters and brief, counsel asserts that the petitioner is compensated at a rate of $200,000 per year. To establish that he meets this criterion, the petitioner submitted a copy of an earnings statement for the period September 2 through September 15, 2002, showing earnings for that pay period of $7,692.80 and year to date of $146,163.20. In response to the RFE, the petitioner submitted a copy of an Economic Research Institute survey that shows the mean salary for a telecommunications engineer with 20 years experience is $91,927, with the top 10% earning $113,997. A physicist at the top salary level earns approximately $114,947. The director determined that the petitioner did not submit comparative evidence of the salary of a vice president of marketing and therefore did not provide sufficient evidence that he meets this criterion. On appeal, counsel asserts that the petitioner holds both a business position and a scientist position, and that the evidence establishes he is compensated highly as a scientist. Nonetheless, the petitioner indicated on the Form I-140 that he is seeking visa classification as a marketer, and the evidence indicates that he intends to work in telecommunication marketing if granted a visa preference classification as a worker of extraordinary ability. The petitioner did not submit evidence of the salary earned by others in the marketing field or of those who have dual responsibilities as a scientist and marketer. The petitioner has not submitted sufficient evidence to establish that he meets this criterion.

Other comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. [Emphasis added]" The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the 10 criteria specified by the regulation. However, we will briefly address the evidence the petitioner submitted under this provision.

Counsel states that the petitioner is "highly sought for quotes and comments on industry events and the work conducted by others in his field due to his renown in the field." The evidence submitted, however, does not support counsel's statement. The petitioner submitted copies of e-mail correspondence detailing his interviews for various media, which indicate that generally the interviewer was seeking to interview "someone" from Sorrento Networks. The evidence indicates that one of the requests was for the interviewer to obtain an overview of the company; one was the result of the interviewer reading a white paper on the company's website and requesting a follow-up interview; and one of the requests for interview was in follow-up to a news release by Sorrento. The record does not reflect that the petitioner was individually sought based on his expertise in the field.

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 marketer or 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 scientist who is able to successfully market his company's technology, 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.

B2

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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 17 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]

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.

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

for Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 she 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 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.

Through counsel, the petitioner has submitted evidence that she 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.

Counsel argues that the petitioner's patent, granted by the United States Patent and Trademark Office (USPTO), is a nationally and internationally recognized award that meets this criterion, as it is an "award bestowed upon an individual for a new invention that has not yet been claimed or published in the United States or in a foreign country." Counsel's argument is without merit. Patents are granted to inventors upon their applications to protect their intellectual or commercial interest in their inventions. The grant of a patent is USPTO's acknowledgement that the inventor has proved that his or her invention is different from other patented inventions and to put others on notice that a particular invention has received patent protection. A patent is not granted to signify excellence in a particular field of endeavor. As noted by counsel and the director, a patent may be evidence of an original major contribution to the field, and the petitioner's patent and pending applications will be further discussed under a separate criterion below.

The record reflects that, in 1998, Nortel Networks filed a patent application for one of the petitioner's inventions. As a result of the filing, she became eligible for a monetary award from the company based on company policy. Counsel asserts that, as Nortel is prominent in the telecommunications industry, this award carries national and international significance. This is a specious argument, as the evidence indicates this is nothing more than an incentive award. Regardless of the standing of the company involved, a company's incentive award is an institutional award limited to its employees, and is not a nationally or internationally recognized award for excellence in the field

The record also reveals that to financially support her attendance at Canada's Queen's University, the petitioner received an [redacted] Fellowship, a Dean's Award and a Queen's Graduate Award from the University. The fellowship is not listed under the "National Fellowships" section on the Queen's University web page that was submitted as evidence by the petitioner. The Dean's Award appears to be a travel award for Queen's University students pursuing research some distance from the University. Counsel submits no further evidence regarding the Queen's Award; however it also appears to be limited to Queen's University students. Fellowships and scholarships awarded by a specific college or university and limited to students at that particular institution are not nationally or internationally recognized prizes or awards in the field. A fellowship is granted generally to fund future research rather than to award an achievement in the field. While the fellowship committee will take the recipient's accomplishments into account, such consideration ensures that the fellowship funds will advance the project and is not an award for excellence in the field. The petitioner was also the recipient of an award from the Chinese government that allowed her to spend a year studying at Queen's University. A scholarship does not measure a recipient's standing in the field, but is limited to students in an academic endeavor. Academic training is not the field of endeavor, but preparation for entry into the field of endeavor. Thus, scholarships do not qualify as awards under 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.

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding

achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In her cover letter accompanying the petition, counsel stated that the petitioner had been nominated as a senior member of the Institute of Electrical and Electronics Engineers (IEEE) and invited to join the Optical Society of America (OSA) "as a full member." As evidence, she submitted copies of membership cards for both organizations. No evidence of the membership requirements of the organizations was submitted.

In response to the director's request for evidence (RFE) dated November 26, 2002, counsel stated that the petitioner had become a senior member in the IEEE and submitted a letter dated September 9, 2002 from the 2002 President of IEEE, Dr. [redacted] advising the petitioner's employer of her elevation to senior member. In his letter, Dr. [redacted] states that elevation to senior member requires "experience reflecting professional maturity" and that 7% of the approximately 377,000 members had reached this grade. The evidence reflects that membership in IEEE is open to both professionals and students, and that the IEEE has a six-tiered membership structure. The senior member grade is the "highest [grade] for which application may be made." Selection is based on at least ten years practice and one or more of six performance criteria, which include substantial engineering responsibility or achievement; publication of engineering or scientific papers, books or inventions; technical direction or management of important scientific or engineering work; recognized contributions to the welfare of the scientific or engineering profession; development or furtherance of important scientific or engineering courses; or equivalent contributions in the nature of technical editing, patent prosecutions or patent law provided they serve to substantially advance progress in IEEE-designated fields.

The evidence does not establish that the petitioner's membership in the IEEE meets the requirements of this criterion, as it fails to establish that selection as a senior member is based on outstanding achievement. The criteria appear to require technical expertise, longevity in the profession and a substantial degree of competence but do not require the outstanding accomplishment required of this criterion. This is more evident as the IEEE recognizes those of "outstanding and extraordinary qualifications and experience" by inviting them to become a Fellow in the organization. Quoting *Muni v. INS*, 891, F. Supp. 440 (N.D. Ill 1995), in which the court stated that it did not believe that "only superstars can qualify as having extraordinary ability," counsel opines that the superstars of IEEE are Fellows of the organization. According to counsel, it then "stands to reason that those small percentage who qualify for Senior Membership do have outstanding qualities that merit their membership because they still have to meet a standard that is not possible for 90 percent or more of membership to meet." Nonetheless, senior membership in IEEE is based on, among other things, substantial engineering responsibility *or* achievement, or contributions to the welfare of the scientific or engineering professions. The organization clearly does not limit senior membership only to those who have outstanding achievement. Additionally, the petitioner's elevation to senior member postdates her visa preference petition. A petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Counsel submitted no information regarding membership requirements for the OSA. A review of its website reflects that it has eight types of membership, ranging from student to honorary. The honorary membership is "[b]estowed upon an individual who has made unique, unparalleled contributions to the field of optics" and is a lifetime membership. The petitioner is a "regular" member of the organization. Regular membership is open

to individuals who are currently working or interested in optics or a related field.[1] Regular membership is on a calendar year basis. It is unclear what counsel means by her statement that the petitioner was "invited" to become a "full member" in OSA. It is clear, however, that membership in the organization is based on application and not invitation, and is not based on achievement. The evidence does not establish that the petitioner meets this requirement.

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.

Counsel asserts that the petitioner's work has been cited numerous times and that these citations establish that she meets this criterion. Counsel finds contradictions in the director's decision in which he stated that citations to the petitioner's work by others are not published work "about" the petitioner and his statement that citation of another's work is routine and expected in the scientific community. We fail to see how these statements contradict each other. 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 are 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," even among researchers who have not yet begun "a full-time academic and/or research career." Furthermore, the AAO has consistently held that this criterion is not satisfied by citations to a petitioner's work by others in the field. The plain language of the regulation requires that the published material be about the alien, relating to his or her work. Citations of the petitioner's work are the subject of a separate criterion discussed below.

As noted by the director, 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. Citations to one's work do not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. The petitioner has not submitted evidence to satisfy 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.

As evidence of this criterion, the petitioner cites her faculty work at Northern Jiaotong University. [redacted], a former professor and head of the Telecommunication Engineering Research Division at Northern Jiaotong University, Beijing, China, states the petitioner assisted him "in supervising a few graduate students research work in leading technologies such as CCS No. 7 signaling, and Broadband ISDN, and was invited to be a reviewer for four graduate students' Masters theses, and sat on the judging committee for the defense of

[1] *See* www.osa.org/join/types.

their theses." Appointment as faculty advisor for graduate students is a common university practice and is not necessarily indicative of national or international acclaim. A professor's role is to evaluate and critique a student's work; fulfillment of such duties does not indicate eligibility under this criterion, without more.

Mr. [redacted], professor of Electrical and Control Engineering and vice president of Northern Jiaotong University, states that the petitioner was chosen to sit on the "Master Degree Thesis Review Committee" based on her "broad knowledge and original contributions to the telecommunications field, her highly recognized achievements, and her reputation in the telecommunications field as a scientist of extraordinary ability." Despite Professor [redacted] comments, no evidence of record establishes that the petitioner had gained a national or international reputation as an outstanding scientist at the time she was selected to sit on the review committee. The only achievement noted in the record at the time of her selection was her master's degree. As discussed further below, the professor mentions in his letter that the technology that the petitioner developed while pursuing her master's degree was subsequently manufactured and used in telephone offices. However, the record contains no independent corroborative evidence that this technology has established the petitioner's reputation in the national or international telecommunications community.

Part of the petitioner's responsibilities as a voting member of the American National Standard Institute (ANSI T1X1) subcommittee was to review contributing research to determine whether it should become part of the industry standards. The evidence of record is insufficient to establish to what extent and how often the petitioner participated in this process. The authors of letters submitted in support of the petitioner write primarily of her written contributions to the standardization process. An occasional participation in the review process is not sufficient to meet the extensive documentation requirements of the statute. The evidence of record does not establish that the petitioner meets this criterion.

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

Counsel cites the petitioner's receipt of a patent as evidence that she meets this criterion. In her cover letter accompanying the petitioner, counsel asserts that under patent law, "a person who was awarded patents by the [USPTO] has demonstrated original scientific research and contribution to the relevant field." This argument is meritless and based on an unfounded assumption. The patent office grants over 100,000 patents each year. As the evidence indicates, the applicant must prove only that the invention is new as defined by patent law. This means that the invention was unknown or not used by others in the United States, or was not previously patented or described in print in the United States or another country. If either of the mentioned incidents has occurred, then the applicant must show that the incidents occurred within a one-year period prior to the patent application. Furthermore, the inventor must show that his or her invention involves one or more differences from the "prior art." In no case does the USPTO require the work to be new or to make a contribution to any particular field of endeavor. Thus the simple grant of a patent does not signify the petitioner has made an original contribution to her field of endeavor, or that if the invention was an original contribution, that it was one of major significance. It follows therefore that the petitioner's three pending applications do not, by themselves, establish that she has made a contribution of major significance to her field of endeavor.

As further evidence of the petitioner's contributions to the field of optics and telecommunications, counsel submits letters from other professionals in the field. They speak generally of the petitioner's original research and contributions to the field. Dr. [redacted] a professor in the Department of Electrical and

Computer Engineering, Queen's University, Kingston, Ontario, Canada, states that the petitioner worked in his research group for a year as a visiting research scholar, and later as a PhD candidate. He states:

> [The petitioner] developed an advanced simulation test-bed facility for the design and performance evaluation of broadband Integrated Services Digital Network (BISDN), called "Broadnest." I was very pleased with her accomplishments . . . Her PhD thesis topic was multicast switch architectures, routing algorithms and queueing methodologies. She did an excellent piece of work and contributed original scientific research that led to the publication of 10 papers in journals and conference proceedings out of her thesis results.

While Dr. [redacted] states that the petitioner contributed original research results, he does not state that her work was of major significance to the field. [redacted] manager of the Optical Transport Networks Architecture group at Nortel Networks, states that the petitioner joined Nortel Networks as a senior network analyst in the Optical Network Planning Group, where she was responsible for "providing recommendations on product capabilities and evolution strategies for various Optical Networking and SONET/SDH transport products." He states that the petitioner became the residential "subject matter expert in the optical network architecture areas." According to Mr. [redacted]:

> She also made significant contributions in the emerging area of optical networking, in areas such as automatic switched optical networking architectures, Optical network hierarchy, and optical control and management protocols . . . After [the petitioner] joined my group as a senior systems engineer in 1999, where she was responsible for defining the initial requirements for Automatic Switched Optical Networks (ASON), which is been [sic] recognized as the next generation transport network. ASON is now being defined in ITU-T SG-15 for an international standard. She is one of the key initial contributors to this internationally significant project.

Being a "subject matter expert" within an organization does not automatically imply that one is among the top in his or her field. Mr. [redacted] does not explain the significant contributions that the petitioner has made or how her contributions have impacted the telecommunications and optical fields. Additionally, while he indicates that ASON is an internationally significant project, no other evidence in record establishes the significance of this standard to the field of telecommunications.

Dr. [redacted] Vice President of Optical Networking and System Architecture for Sorrento Networks, states that the petitioner leads the company's optical networking system architecture department. Dr. [redacted] states:

> One of [the petitioner's] original scientific research results is the unique optical channel layer protection design, which has been submitted for a patent application. This invention is both innovative and unique in that it is capable of providing a high degree of reliability for the optical networks against either fiber or wavelength channel failures, and of allowing continued operation during network maintenance. Another of her unique design innovations is the optical multiplexing section (OMS) layer shared ring protection architecture and protocol, which significantly reduces the system costs and complexity, and is very suitable for smaller size network applications . . . The advanced all-optical switch architecture, and the optical network protection schemes, on which [the petitioner] has made critical contributions of great significance both to our company and to industry in general, will

> definitely unlock the potential of optical networks for speed, capacity, reliability and efficiency and allow us to build the state-of-art optical networks to be inherently independent of network protocol, data rare and transmission wavelength for the Internet age.

Dr. [redacted] describes the petitioner's research as "novel," some of which has resulted in a patent application. As noted above, merely applying for a patent does not by itself imply that the petitioner has made a major contribution. It is the practical use of the patented technology by the field that determines whether it is a significant contribution. Furthermore, simply because research is new, innovative or novel does not indicate it is research that has had a significant impact on the field. Dr. [redacted] states the advanced all-optical switch architecture and the optical network protection schemes have the potential to result in a significant contribution. This criterion cannot be satisfied by events that may occur on some future date. *Matter of Katigbak*, 14 I&N Dec. at 49.

[redacted] an advisor and senior technical manager in charge of advanced research in high speed optical networking infrastructure in the Nortel Networks Emerging Network Technology Department, while writing of her potential for future success, also does not detail specific achievements of the petitioner:

> [She has] made impressive contributions on the emerging area of optical networking, where she has looked at automatic switched optical networking architectures and attributes, optical network hierarchy, and optical control and management protocols . . . She is playing a leading role in designing the TeraMatrix, which is a versatile optical wavelength switching router that enables carriers to build reliable, proactive metropolitan optical networks. At the Supercom' 2000 conference, I saw the TeraMatrix demo. I was strongly impressed by the TeraMatrix functions and designs. I know what challenges [she] had to overcome to design these kinds of systems. The TeraMatrix promises improved network efficiencies, and will allow service providers to more cost effectively deliver a broad range of services to their customers. Thus, the R&D work that [the petitioner] is doing is of tremendous significance to the development of advanced communication systems that are integral to the present and future U.S. commercial and national defense communications infrastructures.

The authors of the letters also indicate that the petitioner has made significant contributions as a representative to ANSI and as a member of the International Telecommunication Union-Telecommunication Standardization Sector (ITU-T) Study Group 15. Dr. [redacted] states that during this period she "produced more than 30 contributions to standard bodies, two patents and a number of papers. This is considered an outstanding performance by any one working in this area." According to Mr. [redacted], as Nortel's representative at the ANSI T1X1 subcommittee and the ITU-T Study Group 15:

> [The petitioner] was responsible for presenting technical contributions on behalf of Nortel Networks and ensuring that Nortel Networks transport product development plan is in alignment with the standards development. She made more than 30 technical contributions during this time, focusing on improving SONET Automatic Protection Switching protocol and ring interworking mechanisms. Some of her contributions have been included published [sic] ITU-T Recommendations such as G.841, G.842, and in ANSI standards such as T1.105.01.

Others write in a similar vein. However, [redacted] a technical staff member at AT&T and current chair of ANSI T1X1.5 subcommittee and past Vice-Chair of ANSI T1X1.5, while stating that the petitioner was a contributor, does not credit her with contributions of major significance to the standards. She writes that the petitioner, as an expert, "contributed greatly towards improving SONET/SDH standards, and proposing new topics such as virtual concatenation and Automatic Switch Optical Networks (ASON). In the past, she has submitted more than 30 contributions to T1X1.5; some of her proposals have been included in the ANSI standards T1.105.01 . . . and T1.105.08. Some of her contributions were forwarded to ITU as proposed USA contributions." Dr. [redacted] Director of Advanced Optics and Chief Architect at Quantum Bridge Communications, also writes of the petitioner's participation in ITU-T Study Group 15 meetings. While noting that she "contributed substantially to the field of SONET/SDH protection protocol and Optical Networking architecture" and has made "impressive contributions in the SDH ring protection protocol, and the emerging area of optical networking," he, too, does not characterize her contributions as more significant than other members of the group or that they were a major contribution to the group's final results.

Two of the authors write of technology developed by the petitioner that resulted in practical use in the field. Professor [redacted] states the petitioner completed her master's studies under his supervision and that he was the petitioner's supervisor during her faculty days at the university. He states:

> One of her unique research contributions is based on her Masters Thesis . . . which proposed a novel and simple mechanism to transmit data signals (such as computer or static video signal) using the idle period of voice signals. She extended her study on voice/data interpretation techniques, and developed a videophone system to allow the transmission of both voice and static video signals simultaneously over a single telephone line. Based on the same concept, she developed a system testing set to monitor the telephone system's performance by interpolating the testing signal with the live telephone voice signal. This automatic transmission testing set significantly improved the testing accuracy, reduced the intensive human interaction and also reduced cost. The research sample was finally manufactured, and is used in telephone network central offices.

Professor [redacted] also states that the petitioner's "design for computer controlled testing systems for performance monitoring of PCM systems was highly praised and was manufactured and used in Telcos center offices." However, the petitioner submits no independent evidence of this invention or of its commercial use by manufacturers or Telcos center offices. The evidence does not establish that she meets this criterion.

Counsel submits that the petitioner's presentation of her work at various international conferences is also indicative of her major contributions to the field. However, merely reporting research results does not establish its importance unless there is some indication that others utilize the results. Presentation of research results is also more akin to authorship of scholarly articles, and will be discussed further below.

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

Counsel submits evidence that the petitioner has published five papers in journals of international circulation and prestige such as the *Proceedings of the IEEE* and the *Optical Networks Magazine*. However, publication alone is insufficient to establish the petitioner has sustained acclaim. The research community's reaction to those articles must also be considered. When judging the influence and impact that the petitioner's work has

had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's conclusions. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research.

The evidence indicates that the petitioner's articles have been cited twice by independent researchers. This is far from the extensive documentation required by the statute to establish that the petitioner meets this criterion. The petitioner wrote and submitted several papers as contributions to the ANSI subcommittee and the ITU-T Study Group 15 of which she was a member. Counsel asserts that the references to the petitioner's contributions to the ANSI and ITU-T protocols are also citations to her work. However, the evidence does not establish that the petitioner's contributions to these standardization groups are published in professional or major trade media, and the references to her contributions in the standards are not scholarly articles published by the petitioner. The record also reflects that the petitioner has presented papers at several international conferences. The presentations evidence dissemination of the petitioner's research work to others. However, as with other published work, the impact upon the field is best gauged by reference to the petitioner's work or reliance upon her research findings by independent researchers in the field. While Mr. [redacted] states that he was "impressed" with the petitioner's work on the TeraMatrix project, the evidence does not reflect that others in the field have cited or relied upon the petitioner's reported research findings at these conferences.

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

The petitioner currently serves as a senior manager and scientist at Sorrento Networks Corporation. According to Dr. [redacted] the vice president of Optical Networking and System Architecture, the petitioner leads the optical networking system architecture department. He states that her position is "one of the most critical positions in the company, since it defines and designs Sorrento's overall product strategy, system architecture and product development direction." Dr. [redacted] President and Chief Operating Officer of Dowslake Microsystems, Inc. and former Chief Executive Officer of Sorrento Networks, Inc., states that at Sorrento, the petitioner has "guided the detailed architectural design of next generation optical switch mechanisms, and has designed the key components of an interoperable networking infrastructure to extend the reach of telecommunications services." The evidence establishes that the petitioner has played a leading role at Sorrento Networks Corporation.

The evidence of record does not establish that Sorrento Networks Corporation enjoys a distinguished reputation. Counsel states that Sorrento Networks is a subsidiary of Osicom Technologies and submits what she says is a excerpt from Osicom's 2001 Annual Report. The assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel submits no other information about Sorrento Networks; specifically, she submits no evidence of the company's standing or reputation in the telecommunications or business communities, nor any evidence that Sorrento Networks is considered by others to be a technological leader in telecommunications.

The petitioner worked as a senior optical network analyst at Nortel Networks. According to Mr. [redacted] she was responsible for "providing recommendations on product capabilities and evolution strategies for various Optical Networking and SONET/SDH transport products," and became the residential "subject matter expert in the optical network architecture areas." She was also Nortel's representative at the ANSI T1X1

subcommittee and the ITU-T Study Group 15, responsible for presenting "technical contributions on behalf of Nortel Networks and ensuring that Nortel Networks transport product development plan is in alignment with the standards development." The petitioner does not explain how her role as a staff analyst was critical to Nortel Networks. Further, representatives to the ANSI subcommittee and ITU-T study group promote the interest of their employers, and while important, the evidence does not establish that the petitioner's particular role in these groups was critical to the success of the company.

The petitioner has also not shown that her participation in the standardization forums was of a leading or critical nature. As discussed earlier, while her colleagues assert that she made significant contributions to the standards, no one described her contributions as being more vital to the adopted standards than other contributors. Further, there is no evidence that she was a committee chair or played any other leading role in the committees. Similarly, the petitioner has not shown that her position as a professor and researcher at Northern Jiaotong University was of a leading or critical nature. No evidence establishes that she contributed significantly to the University in either capacity.

Counsel asserts that the petitioner's presentations at conferences are also evidence that she meets this criterion. However, a conference is neither an organization nor an establishment. The petitioner has not established that she meets 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.

Claiming for the first time in her response to the RFE that the petitioner meets this criterion, counsel submitted no evidence of the petitioner's salary. On the Form I-140, Immigrant Petition for Alien Worker, and in her letter submitted with the petition, the petitioner states her salary is $130,000 per year. However, no corroborative evidence was submitted to support her statements. As comparison evidence, counsel submitted a copy of the "Sorrento Networks Corporation Salary and Merit Increase Guidelines 2002." The guidelines state that the "survey data is from Radford unless designated SD which is the San Diego Employers' Association." It is unclear whether the document represents the surveys or the salary guides set by the company. Further, the document does not reveal the parameters of the survey and thus provides little guidance on its use for purposes of this criterion. On appeal, counsel submits a salary survey from the Economic Research Institute, which reflects that the petitioner's stated salary is above the average and the mean reported for the United States. However, as the petitioner has not provided independent evidence of her salary from Sorrento Networks, the evidence does not establish that she meets 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 herself as an engineer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner is a talented scientist but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.