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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: WAC 01 258 50646 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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted; the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

In support of his motion, counsel for the petitioner states he is submitting "new, first-hand" evidence that the petitioner was reluctant to submit during the initial phases of his visa preference classification petition because the evidence was classified as confidential by the Korean government and the companies for which he worked. Counsel also provides additional explanations for evidence previously submitted in support of the petition and addresses 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.*

In its previous decision, the AAO determined that the "Certificate of Achievement" from Union Carbide represented an institutional award, rather than a national or international award for excellence. On motion, counsel again asserts that as Union Carbide is the world leader in the polyolefin industry, an award from the company is an international award. This argument is without merit as the recognition bestowed upon the petitioner by Union Carbide was in appreciation of the work he did with the company. There is no evidence in the record to establish that such recognition from Union Carbide is recognized nationally or internationally by others in chemical engineering as denoting excellence in the field. The petitioner submits no new evidence to establish that he 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.*

On motion, counsel focuses on the AAO's statement that the petitioner was selected to participate in the Union Carbide catalyst research training program based on a cooperative agreement between his then employer and Union Carbide, rather than on his outstanding research achievements. Counsel submits evidence of the procedure by which the petitioner was selected to represent his employer on the project with Union Carbide. Nonetheless, as noted in the prior AAO decision, participation in a joint development agreement does not connote membership in an association, regardless of the reason for the selection.

Counsel contends that the petitioner meets this criterion based on his "honorary membership" in the POD Catalyst Skill Center as evidenced by his "Certificate of Achievement."[1] The record contains no evidence that the POD Catalyst Skill Center is an association within the meaning of this criterion. D[redacted] Intellectual Asset Manager for Union Carbide Corporation, states the "Certificate of Achievement" is reserved for those who demonstrate the highest level of performance. He does not explain why the petitioner received an honorary membership to the Skill Center or state that the Skill Center is an association rather than a work place unit of Union Carbide. On appeal, counsel asserted that the POD Catalyst Skill Center is a "group of the Internationally Recognized Award Winners and the world's top level people [in the petitioner's] field of endeavor. That

[1] Other than statements of counsel in his cover letter and the "Certificate of Appreciation," the record contains no other evidence regarding the POD Catalyst Skill Center.

organization belongs to a private company not well known to the public, but that is the only organization ruling the Polyolefin Industry of the Civilized World." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). No other evidence submitted on motion establishes that the petitioner meets this criterion.

> *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 its prior decision, the AAO informed the petitioner that his reliance upon his published articles to meet this criterion was misplaced. As stated in the AAO's decision, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. On motion, counsel submits copies of internal business correspondence and an internal evaluation study from Union Carbide. Not only is the petitioner not mentioned by name in these documents, internal company documents are not professional or major trade publications. The petitioner does not establish that he 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.*

On motion, the petitioner submits a copy of a request from the Korea Administrative Institute of Industry Technology Evaluation asking him to evaluate the propriety of research proposals from three companies. As a preliminary matter, we note that the translations accompanying these documents do not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which require the translator to certify the translation as complete and accurate and to his or her competency to translate the documents. We further note that the record does not contain evidence that the petitioner actually evaluated he proposals. The record does not reflect the basis for the petitioner's selection to perform the evaluations. The petitioner's selection to serve as a judge of his peers must be indicative of his national or international acclaim in the field. Not all engineers who sit on panels are eligible for extraordinary ability classification under this criterion. Furthermore, the evidence establishes that the petitioner was asked once to review and evaluate the works of others. This falls short of the extensive documentation required by the statute to 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 states that evidence that the petitioner meets this criterion can be found in the fact that he is one of only a few persons who received a patent in polyolefin catalysts. He further states that the fact that the petitioner's patent has not been cited as a reference evidences that no better patent has been developed. However, as previously noted by the AAO, the petitioner must demonstrate that his patent is not only original, but also recognized as a contribution of major significance to the field of chemical engineering.

Counsel states that the petitioner's patented process is tailored for a specific location, the Hanwha Polyethylene plant, and only Union Carbide licensees can use the patented process. As evidence of the importance of the petitioner's work, counsel states that Union Carbide invested several hundred thousand dollars into the testing of the process. As stated above, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner submits several technical documents to establish that his process meets this criterion. However, the record contains no evidence from Union Carbide or Hanwha Chemical Corporation, the petitioner's previous employer and assignee of the patent, of the impact, either scientifically or commercially, of the petitioner's work. Dr. [redacted] who states that the petitioner acquired a patent for his technology, does not confirm its significance to Union Carbide or to the field.

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 of having published three articles in professional publications. In its previous decision, the AAO noted that publication alone is insufficient to establish sustained acclaim. We must also consider the frequency of citation to the articles by independent researchers, which tends to demonstrate the interest in and reliance on the published research in the field. The petitioner submitted no evidence of citations to his articles. On motion, counsel attempts to explain why others have not cited the petitioner's work in the field. The fact remains that there are no citations to the petitioner's published work. No evidence submitted establishes that the petitioner meets this criterion.

Counsel also references the internal business documents discussed above as evidence that the petitioner meets this criterion. Internal communications are not professional or major trade publications. Further, the petitioner did not author these documents as required by this criterion.

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

Counsel asserts that the petitioner meets this criterion based on his participation in the joint development program between his previous employer and Union Carbide. As further evidence, counsel submits a copy of a memorandum regarding a meeting on the joint project. The petitioner is listed as one of the recipients of the memorandum. Counsel also cites Dr. [redacted] letter in which he said that he was impressed with the petitioner's rate of progress. None of these documents establish that the petitioner played a critical role at Union Carbide. Dr. [redacted] does not credit the petitioner with significant advances that were critical to the company's success. No evidence of record establishes that the petitioner 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.

The AAO, in its prior decision, noted that the only indication of the petitioner's salary was a statement of counsel. It further noted that, even if counsel's statement was acceptable proof, the petitioner submitted no comparison evidence to establish that his salary was significantly high in relation to others in the field. On motion, counsel submits what is apparently a statement of the petitioner's salary in 1997. As noted above, the translated document does not meet the requirements of the regulation in that the translator has failed to provide a full translation of the document, failed to certify that the translation is complete and accurate and failed to certify his or her competency to translate the documents. The translation does not indicate the source of the information, although the original document shows it was faxed from "Hanwha R&E Center." The translated document indicates the petitioner was paid the equivalent of approximately $42,000. Copies of bank wire transfers dated in October and November 1993 indicate that the petitioner received money from his employer, but the U.S. equivalency amount is undetermined and the wires do not indicate the purpose of the funds. Further, as stated in the AAO's previous decision, the petitioner must show that he commands a high salary in relation to others in his field, and not just in relation to others in his company. The petitioner has submitted no evidence to establish that he received a significantly high remuneration in relation to others in his field.

Other comparable evidence.

Counsel states that evidence of the petitioner's sustained acclaim is proved by the interest of other companies that tried to hire him because of his new invention. The evidence submitted indicates the petitioner interviewed for a position with BP-Amoco, that he submitted his résumé to Union Carbide who stated they would keep it on file, and a partial letter from the petitioner to the process development manager of Saudi Basic Industries Corporation (SABIC) in Saudi Arabia thanking him for his call. None of this substantiates counsel's statements regarding the

intense interest in the petitioner because of his new invention or that he declined a job offer with SABIC. Furthermore, assuming that the companies did express an interest in hiring the petitioner, such interest does not prove, without more, that the petitioner has achieved sustained national or international acclaim.

The petitioner submits no precedential decisions establishing that the AAO's previous decision was based on an incorrect application of law or policy. As the evidence presented does not overcome the grounds for the previous dismissal, and no reasons are set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of May 13, 2003 is affirmed. The petition is denied.