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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 03 005 51633 Office: CALIFORNIA SERVICE CENTER Date: MAY 12 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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who 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 she has sustained national or international acclaim at the very top level.

This petition, filed October 3, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a meteorologist and scientific researcher. 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 his decision, the director stated, "Even if the petitioner fulfills three of the criteria, it does not necessarily mean that he or she has achieved sustained national or international acclaim and recognition and therefore, mandate a finding of eligibility . . . Rather than focusing on submitting documentation that 'fits' at least three

of the ten criteria, it is important to look upon the evidence in its totality." This is an erroneous statement that we withdraw. Clearly, if the petitioner satisfies three of the regulatory criteria, she will qualify for the visa classification. However, the petitioner must do more than submit evidence addressing at least three of the criteria. The evidence in support of each criterion must qualitatively satisfy the criterion, and indicate that the petitioner meets the criterion through extensive documentation establishing national or international acclaim.

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.*

The petitioner claims to meet this criterion based upon being named "National Excellent Young Meteorologist" in 1994 by the Meteorology Society of China. The translation accompanying the certificate submitted as evidence of this criterion does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The translation appears to be a summary of the certificate and does not contain the translator's name or certification. Therefore, the document lacks evidentiary value. Further, there is no indication in the record that the title conferred by the certificate is a nationally or internationally recognized award. The record does not reflect how many individuals were honored by the distinction of national excellent young meteorologist. The petitioner submitted no information regarding the organization conferring the title, the criteria for selection to receive the title, or the nature of the distinction conferred by the title. It is noted that the accompanying translation does not state that the petitioner was named "**the** National Excellent Young Meteorologist." According to [redacted] Director of the Nanjing Institute of Meteorology in Jiangsu, People's Republic of China, the petitioner was named "an" excellent young meteorologist in 1995. The evidence does not establish that the title of "National Excellent Young Meteorologist" is a nationally or internationally recognized award for excellence in the field.

The petitioner also submitted evidence of an honor certificate in 1999 for her "significant contribution" to a research project that won a 1998 science and technology progress award from the Nanjing Institute of Meteorology; an award certification indicating that she won a 1991 second class "Tu Changwang Meteorological Science and Technology Prize for Young Meteorologists" awarded by the Meteorology Society of China; and a 1988 "certification" from the Meteorology Society of Jiangsu Province for a paper. The translations accompanying the certificates do not comply with the requirements of the regulation, as they do not contain a translator's name and certification. Further, the certification regarding the 1998 paper appears to be incomplete, as it does not indicate the nature of the certificate, although counsel indicates it is for an "excellent thesis." Additionally, the record does not reflect that any of these certificates are nationally or internationally recognized awards for excellence.

On appeal, counsel states that evidence of these "miscellaneous" honor recognitions was submitted for consideration as evidence of the "totality" of the petitioner's achievements. Nonetheless, the evidence does not establish that the petitioner has received a nationally or internationally recognized award or prize for excellence in meteorology in satisfaction of 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 record contains evidence of the petitioner's membership in the American Meteorological Society and the Chinese Meteorology Society. The director determined that the petitioner did not meet this criterion as she failed to establish that the organizations required outstanding achievement as a prerequisite for membership.

On appeal, counsel states that the petitioner did not claim to meet this criterion and submitted no evidence pertaining to it. According to counsel, the information was included to establish the petitioner's "overall dedication to her field and to demonstrate that she continually excels in her endeavors."

As the petitioner does not claim to meet this criterion and submitted no evidence for consideration of the criterion, we will not address it further on appeal.

*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 submitted a statement from the Editor-in-Chief of the journal *ACTA Meteorological Sinica* stating that the petitioner had "helped the editor division" in reviewing two papers in August of 1999. Another letter from the Executive Editor of the same journal states that the editor had asked the petitioner to review four papers during 1996 through 1998. A document entitled "Proof" indicates that the petitioner reviewed a paper for the *Journal of Nanjin Institute of Meteorology*, although no publication date was provided. The translations provided with the first and last documents are questionable, as they appear to accompany the original Chinese documents but also appear to be copies of the original certifications. Furthermore, as noted by the director, the petitioner submits no evidence regarding the *ACTA Meteorological Sinica*, including information on its distribution and whether it is a journal of national or international circulation. On appeal, counsel states that these journals are "international Chinese journals;" however, 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).

The petitioner also submitted a statement from [redacted] a professor and scientist of the National Key Basic Research Project of China. Professor [redacted] states that the petitioner reviewed eight papers by his research group for submission to journals. The letters from the editors of the *ACTA Meteorological Sinica* do not indicate that the petitioner was requested by the journal to review the research work by Professor [redacted] group. The evidence indicates that the petitioner and Professor [redacted] collaborated on research for over ten years. The record is unclear as to whether the petitioner's review of the work by Professor [redacted] group was a comprehensive and critical judgment of the value of the work done by the group, or whether she served in the capacity as an editor, assisting in refining the final product.

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 extraordinary in his or her field. Evidence submitted in support of this criterion must reflect that the alien was selected to perform reviews because of her 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. Occasional participation in the peer review process does not substantiate that the petitioner has earned such sustained national or international acclaim that her opinions and insight are regularly sought as a valued element of that process.

The evidence 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.*

According to counsel, the petitioner has "performed a substantial amount of original research that has been of [sic] major contribution to the field of Meteorological science." Counsel lists among these accomplishments, the petitioner's participation in a "national key project on short-term climate change," which resulted in a research paper, "A Study for the Relationship of Anomalous Developing ENSO Events During the 1990's and Decadal Variability of Climate Change." Counsel states that the petitioner's work – an improved tropical Pacific coupled model and regular forecasts of sea surface temperature anomalies (SSTA) associated with El Nino and Southern Oscillation (ENSO) in the tropical Pacific – "was a key part of the successful prediction of the 1997 El Nino event six months ahead of time."

Professor [redacted] in a second letter submitted on behalf of the petitioner, identifies himself as a professor of meteorological sciences at the China Meteorological Administration and professor in the Department of Atmospheric Science, Nanjing University. He credits the petitioner with successfully predicting the 1997 El Nino event six months in advance, which made a "great contribution to reduce the disaster over China.' [redacted] the petitioner's PhD academic advisor and a professor and director of the National Climate Center of the China Meteorological Administration, states that the petitioner was part of a national key project on short-term climate change and was responsible for improving the tropical Pacific coupled model. Professor [redacted] stated the petitioner made regular forecasts of SSTA in the tropical Pacific associated with ENSO and contributed to the successful prediction six months in advance of the El Nino event.

While Professor [redacted] implied that the petitioner was solely responsible for the prediction of the 1997 El Nino event, Professor [redacted] indicates it was a joint effort by a research project team. It is noted that the research paper written by the petitioner as a result of her research was her doctoral dissertation and while presented as a conference paper, was never published in a professional or scholarly journal. Professor [redacted] states that the petitioner's dissertation has made "impressive progresses on ENSO studies." However, the nature of research is to advance understanding and progress in the field. It does not necessarily follow that every advance or every progressive step is an achievement of major significance. The evidence does not indicate that the petitioner's research constituted a contribution of major significance to the field.

On appeal, counsel suggests that the petitioner's contribution to the research project was her improvement of the tropical Pacific coupled model, "which was key to the successful prediction of the 1997 El Nino event." Neither Professor [redacted] nor Professor [redacted] support counsel's assertion that the improved model was the "key" to the prediction. Although Professor [redacted] states the El Nino prediction was an "outstanding accomplishment," he does not attribute this accomplishment solely to the petitioner and does not state that the accomplishment was of major significance to the science of meteorology.

Counsel states that the petitioner has completed six "cooperative projects" on ENSO and was the key person in the design of a global three-level spectral model using primitive equations, the principal investigator of the study of multiple time-scale analysis of air-sea interaction in the tropical Pacific, and the principal investigator of the study of the air-sea interaction between low and middle latitudes. Counsel states that the papers resulting from these research projects were the recipients of the Excellent Thesis awards by the Meteorology Society of Jiangsu Province and the Tu Changwang Meteorological Science and Technology Prize for Young Meteorologists by the Meteorology Society of China.

Professor [redacted] states that the petitioner played an important part in his research group, completing six cooperative projects about the ENSO and "association with the air-sea interaction," which were supported by the National Nature Science Foundation of China. Professor [redacted] states that the petitioner's work resulted in more than 20 papers published in scientific journals. He also states that, based on her "outstanding work in both teaching and research, she gained the honor of an excellent young meteorologist by the Meteorology Society of China in 1995. She also [was] awarded the first prize of the science and technology progress by Nanjing Institute of Meteorology in 1998 due to her great contribution" to a research project there. Professor [redacted] does not indicate that any of the projects on which the petitioner worked was a contribution of major significance to the field.

[redacted] professor of meteorology at the University of Hawaii, states:

> [The petitioner] has exceptional expertise in designing a global three-level spectral model including developing the program codes and physical parameterizations processes. She has also done numerical simulation and experiments to diagnose intra-seasonal oscillations of the middle-high latitudes by using atmospheric general circulation models. Her work contributed to the improvement of tropical Pacific coupled models and the prediction of the ENSO.

Professo[redacted] does not indicate that the petitioner's expertise in or design of a global three-level spectral model constitutes a contribution of major significance to the field. The professor, although stating that the petitioner's work contributed to the improvement of the tropical Pacific coupled model and the prediction of the ENSO, does not establish that the petitioner's advances in either of these two areas were contributions of major significance to meteorology.

[redacted] an associate professor of meteorology at the University of Hawaii, states that the petitioner has recently co-authored a paper on the "fundamental physical mechanism of ENSO," which is with the *Journal of Climate*, "one of the most renowned journals in meteorology" for publication. Professor [redacted] also states, "[t]he acceptance of this work by such a renowned journal indicates the importance of these research findings." As noted above, the purpose of research is to advance knowledge in the field, and important findings do not always equate with findings of major significance. Publication in a renowned journal, without more, does not establish that the research results are a contribution of major significance to the field.

[redacted] head of the Paleoclimatology Department at the Institute for Marine Research, Kiel Germany, states that the petitioner "has not only advanced our knowledge on the dynamics of the El Nino-Southern Oscillation phenomenon as documented by her extensive publication list on this topic, but she also

contributed greatly to understanding its predictability." In order to be accepted for publication in a scientific journal, an article 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. Additionally, while the petitioner may have aided the field's understanding of the predictability of the ENSO, the record does not reflect that this understanding has constituted a major contribution to the field.

Dr [redacted] also stated that the petitioner has "developed new prediction techniques which will improve significantly national climate predictions on timescales of several seasons. These predictions will help to mitigate El Nino-related climate impacts on agriculture, fishery, health and water management." No other evidence of the petitioner's new prediction techniques appears in the record and there is no evidence of their widespread use by practitioners in the field.

Counsel states that the petitioner has made "substantial progress in the study of ENSO," and has found the cause of ENSO decadal variability, which is a "significant contribution to the field of Meteorology and a substantial meteorological advancement." The evidence does not establish that the petitioner has found the "cause" of ENSO decadal variability. According to Professor [redacted] in her doctoral studies, the petitioner "investigated" the "possible mechanism for the influence of the decadal variability on the ENSO cycle," and her research increased the field's understanding about the ENSO decadal variability, which "could improve the forecast skill of the ENSO."

The evidence does not establish that the petitioner meets 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 submits evidence that several papers that she has co-authored have been published in various scientific journals, including the *ACTA Meteorological Sinica*, the *Journal of Tropical Meteorology*, the *Journal of Nanjing Institute of Meteorology*, and *Advances in Atmospheric Sciences*. The petitioner submits no evidence regarding these publications, including whether or not they have national or international circulation, or their standing or reputation among other scientific or scholarly publications on meteorology. The petitioner indicated that she had one article published in the *Journal of Climate*, another submitted and another in press. The evidence indicates that petitioner's article in the *Journal of Climate*, which the authors of her letters of support indicate is one of the most renowned journals in meteorology in the world, was published after the filing date of her preference petition. Therefore, it cannot be used to determine visa classification preference under this criterion. Additionally, articles submitted for publication that have not yet been published do not satisfy the requirements of this criterion. The 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).

Furthermore, publication alone is insufficient to establish the importance or influence of the published research. The frequency of citation to the articles by independent researchers provides a better gauge of the importance and impact of the petitioner's publications to those in the field. Although the authors of the letters in support of the petition mention the petitioner's publications, the petitioner provides no corroborative evidence that her work has been cited and relied upon by independent researchers in the field.

The petitioner submitted evidence that she has participated in and presented papers at various international conferences and workshops. However, merely reporting research results does not establish its importance unless there is some indication that others utilize the results. As with her publications, the petitioner submitted no evidence to show that others in the field relied upon the information and research results she presented during her conference presentations.

The evidence does not establish that the petitioner meets this criterion.

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

To meet this criterion, the petitioner must show that she performed in a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner claims to meet this criterion based on her work at the Wyrtki Center for Climate Research and Prediction at the University of Hawaii, where she is performing postdoctoral work. According to Dr. [redacted] the petitioner's academic mentor in her postdoctoral degree program, the petitioner is working on several projects on the dynamics of the tropical intraseasonal oscillation and ENSO, which is supported by the National Science Foundation and the National Oceanic and Atmospheric Administration. Dr. [redacted] states the petitioner has become a key researcher in his group. A research project is not an organization or establishment within the meaning of this criterion. Similarly, working on a project funded by a distinguished research organization is not performing a leading role for an organization or establishment with a distinguished reputation. The petitioner has not established that she plays a leading or critical role within the Wyrtki Center for Climate Research and Prediction. Additionally, the petitioner has not established that the Wyrtki Center has a distinguished reputation. The petitioner submitted no evidence regarding the Wyrtki Center's reputation in academics, research or meteorology.

Counsel states that the petitioner's collaborative work with the Department of Meteorology at the University of Hawaii, the National Climate Center and Endingburger University has resulted in substantial progress in the study of ENSO; however, the petitioner's contribution to the progress of science does not establish that she performed in a leading or critical role for these institutions.

Counsel also asserts that the petitioner assumed a new position with the Climate Prediction Center of the National Weather Service in April 2003. A letter from the agency states that the petitioner is "one of the key members of a team focus on improving ocean-atmospheric coupled model for the seasonal predictions" and has played a critical role in conducting research on understanding mechanisms of El Nino and air-sea interaction in the climate model." As noted previously, a research project is not an organization or establishment within the meaning of this criterion. The petitioner submitted no evidence to establish that she has a leading or critical role within the National Weather Service or the Climate Prediction Center. Further, as the petitioner assumed this position after the date she filed her visa classification preference petition, the evidence pertaining to this position cannot be considered in determining her eligibility for the visa classification preference. *See Matter of Katigbak, supra.*

The evidence does not establish that the petitioner 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 her field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a scientific researcher and meteorologist 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 skilled meteorologist and researcher, 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.