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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: NEBRASKA SERVICE CENTER Date: MAY 14 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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).

On motion, the petitioner asserts that the AAO's decision violated his First Amendment rights and that its analysis of his petition was inconsistent with the evidence provided. The petitioner also submitted additional evidence in support of his petition.

The petitioner states that as a Muslim, he cannot tell a lie, and asserts that as this is one of the basic tenets of his faith, the failure of CIS and the AAO to accept his uncorroborated statements in support of his petition infringes upon his First Amendment right of freedom of religion. While the AAO respects the petitioner's right to practice his religion in accordance with his faith, nothing in the Constitution, statute or regulation requires the agency to accept uncorroborated statements as proof from a petitioner because of his faith. Regardless of the veracity required of members of the Muslim faith, the petitioner cannot establish his eligibility to immigrant visa classification with the unsupported, unverified statements he puts forth as fact.

The petitioner asserts that an eyewitness testifying in a court of law is not required to produce additional proof to support his or her testimony, and the witness's statement under oath is sufficient evidence. The petitioner asserts that by compelling him to substantiate his statement forces him to behave as an atheist. Regardless of his view of the value of eyewitness testimony in the judicial system, the petitioner is required by statute to establish through extensive documentation that he is an alien of extraordinary ability. A statement by the petitioner without corroborating documentary evidence does not satisfy the evidentiary requirements established by statute.

On the Form I-140, Immigrant Petition for Alien Worker, the petitioner listed his occupation as teacher, researcher and inventor, and stated he sought visa preference classification as an alien of extraordinary ability as a "World Wide Web Educator." In its previous decision, the AAO noted that the petitioner's past experience was in computer science, and that the areas of research that he indicated he intended to explore, including fire-resistant building materials, avoidance of identity theft, a new gasoline/diesel additive to improve engine performance, and a new method of treating wood picnic tables did not establish his intention to continue to work in his field of endeavor as a "World Wide Web Educator." Acknowledging the petitioner's statement that he has "successfully handled many fields of inquiry," the AAO advised the petitioner that he must establish sustained acclaim in at least one specific field, and that demonstrating lesser accomplishments in a series of loosely related fields does not satisfy the statutory requirements for eligibility for visa classification preference.

On motion, the petitioner argues that computer science and engineering, his fields of endeavor, involve problem solving and that he, accordingly, is a problem solver in a variety of disciplines. The petitioner claims to meet six of the regulatory 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 petitioner had not established that his deputation to the Asian Institute of Technology (AIT) constituted a national award. On motion, the petitioner argues that as he did

not apply for the position but was rather nominated for the assignment, the deputation met the dictionary definition of award. This argument is without merit. Many forms of recognition may be bestowed on a person and meet the technical dictionary definition of award. The petitioner must provide more than a simple dictionary definition to establish that the assignment to a temporary teaching position at the AIT is a nationally recognized award within the meaning of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner stated that he served on the committees for selection of a software maintenance specialist for the Power Engineers Training Society and for the selection of engineers for the Defence Projects Cell. The AAO determined that the petitioner had not established that he was selected to serve on these committees based on his reputation or acclaim in the field. On motion, the petitioner offers his explanation of the selection process for service on these committees but provides no evidence to substantiate his statements. As noted in the AAO's previous decision, 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).

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

The petitioner asserts that he has made contributions of major significance in the field through his publications. As evidence, he listed three examples: an article that he co-authored which was published in the December 1978 edition of *Communications of the ACM* (*CACM*), an April 2002 proposal to the National Science Foundation (NSF) to rebuild the Intel ASCI Red Supercomputer, and a presentation he made at a conference of the International Association of Science and Technology for Development (IASTED) entitled "Parallel and Distributed Computing and Systems." In its decision, the AAO stated that the petitioner had not established by independent evidence that others recognized his contributions as constituting a contribution of major significance to the field.

On motion, the petitioner references an article by Lincoln Stone that appeared in *Interpreter Releases* in 2003. In his article on the recent amendment to the investor statute, Mr. Stone apparently concluded that the intent of the statute was for CIS to defer to the opinions of economics professionals on the issue of job creation. The petitioner states he would like to "echo similar sentiments, and request that CIS not insist on additional certifications than the fact that the 1978 publication in the CACM itself is an acclaim." The petitioner suggests that his expert opinion could be verified by CIS consulting other experts in the field who had also published in the CACM during the late 70s. The petitioner also asserts that the significance of his proposal to the NSF can be verified by contacting the experts he listed as reviewers in his proposal.

The burden of proof is on the petitioner to establish his eligibility for visa preference classification. The responsibility for providing corroboration of the evidence submitted is with the petitioner and not CIS or the AAO. That the AAO verifies evidence presented if it is in the public domain is consistent with Mr. Stone's statement that the AAO should take administrative notice of commonly known facts, and does not constitute "cherry-picking" as alleged by the petitioner. The petitioner submitted no new evidence to substantiate that his article or the research proposal constituted a contribution of major significance to any field.

Further, the record contains no evidence that the research project in the petitioner's proposal was ever conducted. The petitioner does not explain how a research proposal, with no evidence of the results of the proposed research, constitutes a contribution of significance to the field.

The petitioner also asserts that the significance of his conference publication is evidenced by the invitation

extended to him by the journal *Information Sciences* (INS) to review a manuscript prior to publication in the journal. On motion, the petitioner submits an e-mail message from the editorial office of INS requesting his review of a manuscript entitled "Self-Similarity and Internet Performance." Nothing in the e-mail message indicates that the editors or anyone else had made an evaluation of the petitioner's conference paper and concluded that it was of major significance to the field.

In its previous decision, the AAO, citing *Matter of Treasure Craft of California, supra*, advised the petitioner that statements unaccompanied by supporting documentary evidence are insufficient to meet the burden of proof required in these proceedings. Again citing Mr. Stone's interpretation of the investor statute, the petitioner argues that CIS's reliance upon the *Treasure Craft* decision is misplaced, and further that because his publications appeared in prestigious refereed journals, the *Treasure Craft* case puts the "onus" on CIS to prove the publications are not of major significance. The petitioner also asserts that in light of Mr. Stone's opinion, he is not required to submit additional evidence as "demanded" by CIS. The burden of establishing visa classification preference is on the petitioner and never shifts to CIS. The petitioner does not cite statute, case law or other judicial precedent that would support his contention that CIS has the burden of "proving" or disproving any part of a petitioner's claim for visa classification preference. CIS is obligated to render its decision based on the evidence presented by the petitioner. When the evidence presented is not sufficient to meet the burden of proof, as in this case, then CIS has properly denied the petition.

The petitioner also submitted copies of unsolicited correspondence that he sent to the space shuttle Columbia Accident Investigation Board (CAIB) in March 2003. The AAO noted that the shuttle tragedy and thus the petitioner's correspondence to the board regarding suggested remedies to avoid future disasters occurred after the petitioner filed his petition for visa classification preference. Citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971), the AAO advised the petitioner that facts that come into evidence after the filing of the petition cannot be used to establish visa classification preference eligibility. The petitioner argues that *Katigbak* is inapplicable in his case because he has not yet "legally entered the US," and therefore "each and every contribution of the petitioner until the petition is finally decided is applicable," and that *Katigbak* is further inapplicable because there is no "queue of petitioners for the classification sought." It is unclear how the petitioner arrived at his conclusions of law and his interpretation of the *Katigbak* case. His arguments are without merit, and are unsupported by statute, regulation or case law.

In another piece of unsolicited correspondence addressed to an architect designing a replacement structure to be established on the site of the World Trade Center, the petitioner recommended including "sky gardens." The petitioner submitted no evidence that his suggestions to the CAIB or to the architect were used. On motion, the petitioner provides no new evidence that would indicate his suggestions were used, although he states he believes his correspondence "induced" the architect to include gardens in his design.

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

In its previous decision, the AAO found that although the petitioner submitted evidence of his authorship of scholarly articles, he presented no objective evidence that established his publication record had earned him acclaim. The AAO has determined that publication alone is insufficient to establish that a petitioner has demonstrated extraordinary ability in his field. The research community's reaction to those articles must also be considered. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research by others in the field.

On motion, the petitioner states that as an educator, he attaches no importance to citations as "even a worthless work could get cited by many friends of the author." This statement ignores the purpose and value of peer reviews and publication in respected journals. Notwithstanding the petitioner's personal views on citations, he provided no evidence that his published work is indicative of acclaim. The petitioner claims to believe that he expected his

publications to be forwarded by CIS for evaluation, and in the absence of that, CIS must accept his opinion of the importance of the publications, as he is an expert in the subject matter. We reiterate again that the petitioner's unsupported statements are not sufficient evidence to meet his burden of proof. *See Matter of Treasure Craft of California, supra.* The value and importance of the petitioner's publications are not commonly known facts of which CIS or the AAO can take administrative notice as suggested by Mr. Stone in cases involving investor petitions.

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

The petitioner stated that he served on a Senate subcommittee on "Department of Computer Science and Engineering." The apparent purpose of the subcommittee was to recommend the organizational structure of a new department of computer science and engineering at the Indian Institute of Technology (ITT). In order to meet this criterion, the petitioner must establish that he performed a leading role in an organization or establishment and that the organization or establishment has a distinguished reputation. The petitioner must show that the subcommittee on which he served is an organization within the meaning of this criterion, and that it had a distinguished reputation separate and distinct from the ITT.

On motion, the petitioner submits an e-mail message from one of the other members who served on the committee. Professor P.C.P. Bhatt concurred with the petitioner's recollection of the process by which the committee was organized and the role it played in establishing the new department of computer science. The petitioner states he enjoyed a special rapport between two factions who each apparently wanted computer science studies under the auspices of their respective departments. The petitioner alleges that his critical role in the process produced a statement to the effect that the students at the institute needed a separate computer science department. Although the senate eventually voted in favor of the new department, the evidence does not establish that the petitioner was instrumental in swaying the vote in favor of the new department.

The petitioner stated that he started three new technology departments at the Crescent Engineering College, which he states is affiliated with the University of Madras. The evidence provided by the petitioner indicates that he served as the head of three departments during his nine and a half years at the college; however, the evidence does not establish that the petitioner started these departments. As a department head, the petitioner might have played a leading role at the engineering college. The petitioner submitted no evidence regarding the reputation and status of Crescent Engineering College. On motion, the petitioner asserts that Crescent Engineering College "bagged the first rank among all students at the University of Madras." As evidence he submits a letter from the Department of Information Technology that lists students from 1994 to 2003 who "obtained University ranks." It is unclear what this evidence purports to show; however it appears that it is the graduating rank of students from the engineering college relative to all students at the university. However, this provides no evidence of the status or reputation of the Crescent College of Engineering.

The petitioner attempts to establish the reputation of the University of Madras by showing the number of Uniform Resource Locators (URLs) associated with the university's name though a search on Google, a popular search engine. The petitioner theorizes that the more URLs returned in the search, the more distinguished the reputation of the organization. The petitioner offers no foundation for this theory, and provides no evidence regarding Crescent's reputation. The reputation of the University of Madras cannot, without more, be imputed to Crescent College of Engineering. Further, no evidence establishes the college's "affiliation" with the University of Madras.

The petitioner served as an associate professor in the computer science department of Framingham State College. On motion, the petitioner submits a letter in support of his H1 visa petition from the acting vice president for academic affairs for the college, who stated that the college had had difficulty in filling its computer science faculty positions and that the petitioner's presence was "critical for the college's ability to continue to offer" computer science to its students. Nonetheless, the chair of the department did not indicate that the petitioner

served in a leading or critical role for the college or in the computer science department. As noted by the AAO in its previous decision, the position of associate professor is not, without more, a leading or critical position.

On motion, the petitioner states that he identified a conflict between the requirements for accreditation required by the collective bargaining agreement for faculty at the state colleges and the "CSAB." According to the petitioner, since the department did not have the power to resolve the conflict, the curriculum was improved instead and became a recommended model by the CSAB. The petitioner states that his efforts ensured the survival of the computer science department at Framingham State College. Although the department head acknowledged that the petitioner played a role in CSAB accreditation and in "constantly" improving the curriculum, no evidence establishes that the petitioner "ensured" the survival of the department. The roles attributed to him by the department head are no more than would be expected of any instructor within an institution of higher learning.

The petitioner submits no additional evidence on motion to correct the deficiencies in the evidence noted by the AAO with respect to his service as a member on committees such as Working Group V on Information Science and Technology. As with much of his motion, the petitioner provides his explanation of the issue in question but provides no documentary evidence to substantiate the explanation.

The petitioner also attempts to establish the reputation of Framingham State College by the number of URLs returned by Google. As noted above, the theory that the more URLs returned by the Internet search, the more distinguished the organization is without foundation. The petitioner states that CIS agrees that Framingham State College is a reputed institution; however, neither the director nor the AAO indicated in their decisions that the petitioner had established that Framingham State College possessed a distinguished reputation.

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

On motion, the petitioner submits a statement from Dr. M. Abdullah Khan, who states that the petitioner's salary at Crescent Engineering College during the period of 1991 to 2000 exceeded his own at Anna University, Chennai, where he was one of the highest paid faculty members. He opined that this made the petitioner one of the highest paid engineering college professors in India at the time. Dr. Khan does not indicate what his own salary was during the relevant time frame, nor does he indicate the pay scales of engineering professors at Anna University. The evidence of record does not support his opinion as to the compensation received by the petitioner in relation to others in the field.

The petitioner also submits a letter from Crescent Engineering College, which indicates that the petitioner was paid a basic salary of 6,300 rupees per month, along with a special pay of 894 rupees per month and other special allowances. The letter does not indicate the applicable time frame that the petitioner was paid this salary, although the petitioner states the year was 1991. The letter indicates that the pay rates were set nationally, but the evidence does not reflect how the petitioner's salary rate compared with others on the pay scale.

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 December 18, 2003 is affirmed. The petition is denied.