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U.S. Citizenship and Immigration Services

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[redacted]

NOV 30 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
LIN 03 188 51852

IN RE: Petitioner:
Beneficiary [redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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

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

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

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

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an aerospace 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. The petitioner has submitted evidence that, he claims, meets the following criteria.[1]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submits evidence of the following awards:

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

1. Best Paper Award from the Visualization Society of Japan (VSJ) in 2001
2. The [redacted] Excellent Visualization Image Award in 2000,
3. A Fellowship with the Japan Society for the Promotion of Science (JSPS), 1997-1999,
4. Best Paper Award from the Chinese Society of Aeronautics and Astronautics (CSAA) in 1995,
5. A Fifth Place, Second Class Achievement Award from the CSAA in 1996, and
6. Best Graduate Student Award from the [redacted] of Aeronautics and Astronautics in 1993.

The petitioner also claims to have won an award at the Nikkei Science Sixth Computer Visualization Contest in 2000, but that award is not in the record.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships is limited to other students. Experienced experts in the field are not seeking scholarships. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, the petitioner's fellowship and best graduate student award cannot establish that a petitioner is one of the very few at the top of his field.

While the petitioner submitted evidence about CSAA and VSJ, he initially submitted no evidence regarding the significance of the awards they issue. The record also lacks Chinese or Japanese media coverage of the award selections that might be indicative of national recognition.

On appeal, the petitioner submits evidence that VSJ issues two Best Paper Awards and four Excellent Visualization Image Awards per year. Awardees are selected from authors of articles in the journals published by the society and conferences hosted by the society. As awardees are selected from a pool of researchers presenting their work at VSJ conferences or in VSJ journals, the rankings of these conferences and journals are relevant. While the petitioner submitted evidence that other journals which have published his work are highly ranked, the petitioner did not submit such evidence relating to VSJ

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.

While the petitioner does not claim to meet this criterion, we will discuss it briefly as he submitted evidence of membership in the following associations: the American Institute of Aeronautics and Astronautics (AIAA), the American Society of Mechanical Engineers (ASME), and the American Physical Society (APS). The petitioner did not submit evidence of the membership requirements for these associations. The general information submitted, however, suggests that they are large professional associations that do not have exclusive membership requirements. As the record does not reflect that these organizations require outstanding achievements of their general membership, the petitioner has not demonstrated that he 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.

While the petitioner does not claim to meet this criterion, he submitted articles citing his own work and his brief biographic entry in Who's Who in the World. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. In addition, appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim. Thus, the record does not establish that the petitioner meets this criterion.

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

The record reflects that the petitioner has refereed articles for *Experiments in Fluids*, the *Journal of Visualization*, and *Measurement Science and Technology*. [redacted]n engineering publisher at Cambridge University Press, requested the petitioner's assistance with an assessment of a book proposal. The director concluded that the petitioner had not established that these reviews were more than participation in a widespread process that does not distinguish him from others in the field. On appeal, counsel asserts that the petitioner served as reviewer for top ranked journals and asserts that three of the petitioner's references affirm that the petitioner was selected to review articles based on his excellent scientific reputation. The petitioner submits a request to review an article for the *Journal of Propulsion and Power* noting the petitioner's "expertise" in the area.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude 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.

The director acknowledged that many of the petitioner's references attest to his contributions, but noted the lack of evidence corroborating some claims, such as the claim that the petitioner is widely cited. On appeal, counsel asserts that the opinions of experts should be accepted unless rebutted.

Letters from the petitioner's collaborators and immediate colleagues are important in providing details about the petitioner's role in various projects, but they cannot by themselves establish the petitioner's national or international acclaim. Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

At the time of filing, the petitioner was a research associate at Michigan State University. Prior to that employment, he worked as research fellow at the Kobayashi Laboratory at the University of Tokyo during which time he also obtained his second Ph.D.

[redacted] a professor at the Institute of Industrial Science, University of Tokyo, asserts that while at the institute, the petitioner worked on developing "advanced optical diagnostic techniques like Dual-plane Stereoscopic Particle Image Velocimetry (PIV) and Planar Laser Induced Fluorescence (LIF) technique for complex fluid flow and heat transfer studies." The petitioner also performed "fundamental studies of turbulent mixing and jet mixing control/enhancement." [redacted] explains that the petitioner's PIV system "is one of the very few optical diagnostic systems that can achieve simultaneous measurements of all three components of velocity vector and vorticity vector distributions in fluid flows." This system "provides a very powerful tool for the studies of turbulent combustion and complex flow phenomena with chemical reaction where the mixing extent of reactants at the molecular level is a prerequisite." [redacted] concludes that the petitioner's work with jet mixing and mixing enhancement using passive and active control methods has "been cited widely by other researchers" including the U.S. National Aeronautics and Space Agency (NASA). [redacted] a professor at Saitama University, provides similar information.

[redacted] Project Manager of the VSJ-PIV-STD program, indicates that the petitioner was one of the "key researchers" in an international collaborative research project that involved 50 researchers at 30 institutions, national laboratories and private companies in Japan and Korea. [redacted] a professor at the Korea Maritime University, discusses the collaboration and asserts that upon comparison of the "results from different research groups and national laboratories, the PIV results obtained by [the petitioner] were found to be the most authoritative, and were selected unanimously to be the standard result of the PIV standard experiment." [redacted] further asserts that based on this work, he invited the petitioner to give a lecture at the Korea Maritime University to the faculty, research staff, and graduate students in [redacted] division.

[redacted] a professor at Michigan State University, asserts that the petitioner is one of the primary investigators in his laboratory. His letter, however, discusses the petitioner's work at the University of Tokyo and uses language very similar to that used [redacted] In a subsequent letter, Dr. [redacted] asserts that the petitioner's publication and presentation history establishes him as "an international leader and authority in his field" [redacted] State University Automotive Research Experiment Station, provides similar information, adding that the petitioner's techniques "will be implemented in our research at the MSU Automotive Research Experiment Station and hold the promise of helping us to develop internal combustion engines which use 50% less fuel than do current internal combustion engines."

The record contains letters from other, more independent experts, who attest to the petitioner's accomplishments based on a review of his credentials, as provided by the petitioner. Letters from independent experts who were already aware of the petitioner and his work based on his notoriety in the field are more persuasive than letters from references who base their opinions solely on a review of the petitioner's credentials.

Finally, the petitioner submitted a letter from [redacted] a research staff and project scientist at NASA. [redacted] asserts that by using the petitioner's measurement technique, NASA "will be able to design much better and safer energy storage tanks, and consequently lower the high cost of cryogenic transportation vessels into space and increase the [sic] NASA's space mission durations." [redacted] affirms that other scientists at NASA are interested in the petitioner's work. [redacted] does not appear to be a high level official of NASA and his opinion does not appear to represent the official opinion of the agency. Moreover [redacted] does not assert that NASA has adopted the petitioner's technique as its standard.

The petitioner has established that his work has attracted some attention and is being evaluated at NASA for possible implementation. It can be argued, however, that most research, in order to receive funding and attention from the scientific community, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher performing original work has made a contribution of major significance. Without evidence supporting the claims that the petitioner has been widely cited and evidence that his techniques are not only being evaluated but have been adopted in the field nationally, we cannot conclude that his contributions are considered to be of major significance.

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 that he had authored at least 23 published journal articles and 22 published conference articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set 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." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The record contains evidence that ten of the petitioner's articles have been cited at least once. In response to the director's request for additional documentation, the petitioner submitted an additional six citations, including in reviews and books. The petitioner asserts that these citations are not merely "footnotes or bibliographies; my work and publications have been widely used as authoritative evidence by other researchers to support their theories or assumptions." The petitioner submits diagrams in foreign-language papers credited to him, but without translations we cannot determine whether these citations are more significant than typical citations. The citations in the English-language articles are not particularly noteworthy.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as an aerospace engineer 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 shows talent as an aerospace engineer, 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.