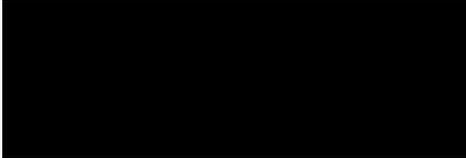


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FILE: WAC 03 096 51177 Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2005**

IN RE: Petitioner: [Redacted]
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:

SELF-REPRESENTED

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

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 a conductive polymer 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 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.

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

The director determined that the petitioner had not demonstrated that the American Chemical Society (ACS) or the Institute of Electrical and Electronics Engineers (IEEE) require outstanding achievements of their members. The petitioner does not contest this conclusion on appeal and we concur with the director.

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.

The director concluded that the articles that cite the petitioner's articles were not about the petitioner and, thus, could not serve to meet this criterion. On appeal, the petitioner asserts that the director erred. The petitioner submits two articles that cite his work and resubmits a list of articles that cite his work. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material about the petitioner. Articles that cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, we concur with the director that these articles cannot be considered published material about the petitioner. Nevertheless, frequent citation is an indication of the influence of a particular article. Thus, we will consider the petitioner's citations below pursuant to the scholarly article criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi).

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

The director concluded that the reference letters were all from individuals acquainted with the petitioner and could not demonstrate that the petitioner's contributions were recognized as being of major significance beyond his immediate circle of colleagues. The petitioner does not contest this conclusion on appeal.

As implied by the director, the reference letters are all from the petitioner's professors, employers, and members of his church. [REDACTED], Vice President for Engineering at Advanced Micro Devices, Inc. (AMD), asserts that the petitioner has a unique combination of experience and that he has "greatly accelerated the development of alternative memory technology at AMD." Specifically, the petitioner has contributed by "modeling the molecular and nano-scale dimensions of these novel memory systems." Mr. [REDACTED] states that the petitioner's contributions "are evident in his inventions disclosures and patents in the field of alternative memory devices." [REDACTED], Principal Consultant for CTECH Research and a member of the petitioner's church, provides nearly identical information. The record, however, contains no evidence that the petitioner has patented any innovations. His resume lists four patents "to be submitted." Without evidence that the memory technology developed by the petitioner has already impacted the field, we cannot conclude that his work on this technology constitutes a contribution of major significance to the field as a whole.

Dr. [REDACTED], the petitioner's supervisor at DBR Group of Companies, discusses three projects on which the petitioner worked at that company. While Dr. [REDACTED] indicates that the petitioner completed these projects successfully, performing one's job responsibilities and contributing to one's employer are not necessarily contributions of major significance to the field. Dr. [REDACTED] does not explain how the petitioner's work at DBR impacted the field such that it can be considered a contribution of major significance to the field as a whole.

Finally, [REDACTED], Emeritus Professor at the University of Alberta, discusses the petitioner's research while at that institution. Professor Bertie asserts that the petitioner measured "the optical properties of mixtures of the organic molecule acetonitrile with water and, through development of a theory by computer modeling, their

interpretation in terms of the structure of liquid water and these mixtures.” According to Professor [REDACTED], the petitioner’s external examiner concluded that the petitioner’s work “would guide this area of science over the next 20 years.” The petitioner also measured “the optical properties of pure liquid water in the infrared region of the electromagnetic spectrum.” Professor [REDACTED] asserts that both studies “have met with wide acceptance by the international community of spectroscopists.” The number of citations and the examples of articles citing the petitioner’s two articles support Professor [REDACTED]’s assertion.

As will be discussed below, we find that the petitioner’s articles authored while a Ph.D. student suffice to meet the scholarly article criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi). The statute requires “extensive documentation” to support eligibility for this exclusive classification. Two widely cited articles, while notable, hardly qualify as “extensive documentation” that can support meeting more than one criterion. Moreover, these papers were published in 1996 and 1997. A petitioner must demonstrate sustained acclaim at the time of filing. Without evidence beyond the petitioner’s widely cited articles, such as letters from independent experts who were aware of the petitioner’s reputation prior to being contacted for a reference, and evidence that the petitioner has continued to make contributions to the field as a whole after 1997, we cannot conclude that the petitioner meets this criterion. Even if we were to conclude that the petitioner’s articles are sufficient to meet this criterion in addition to 8 C.F.R. § 204.5(h)(3)(vi), for the reasons discussed above and below, the evidence falls far short of demonstrating that the petitioner meets a third criterion. A petitioner must meet three criteria to establish eligibility.

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

The petitioner lists eight published articles and four conference presentations on his curriculum vitae. He submitted a copy of one of his articles and a list of 30 articles that cite it. The petitioner also submitted a list of 40 articles that cite another of his articles. The director noted that publication was typical of Ph.D. graduates and concluded that the petitioner had not demonstrated the significance of his articles. While we concur with the director that the articles that cite the petitioner’s work are not published material about the petitioner, frequent citation is indicative of the cited article’s influence in the field. As such, we find that the petitioner has demonstrated that he 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 petitioner submitted two Forms W-2 for 2001. The W-2 from [REDACTED] Research Institute reflects income of \$191,650 and the W-2 from [REDACTED] reflects wages of \$19,314. Of the \$191,650, \$66,647 represented wages, \$10,000 represented a bonus, \$13,794.81 represented relocation expenses, \$19,166.67 represented “warn pay,” \$28,750 represented severance, \$16,500 represented “AVP III payout,” \$26,094.69 represented “severance av,” and other minor compensation amounts. The director concluded that the petitioner had not submitted evidence comparing his income with others in the same position. On appeal, the petitioner submits information from [REDACTED] reflecting that \$120,709 is the 75th percentile base pay for an “Engineer V” in Cupertino, California.

A petitioner must demonstrate that his remuneration is significant in comparison to others in the field nationally. Thus, data for the 75th percentile base pay in Cupertino, California is insufficient. Moreover, the information on Monster.com includes base pay only. The page provided includes links to bonuses and other benefits, but the

petitioner did not provide that information. The petitioner's remuneration of \$191,650 includes several non-salary items, not all of which can be discerned from the notations on the Form W-2. The petitioner's base pay, \$66,647, does not appear remarkable. The materials provided from Monster.com does not list typical bonuses or compensation for relocation expenses, severance pay, and the other items included on the Form W-2. Thus, the information from Monster.com does not overcome the director's conclusion that the petitioner does not meet 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 the field of endeavor.

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