

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B2



FILE: WAC 03 105 52560 Office: CALIFORNIA SERVICE CENTER Date: APR 28 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.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on February 12, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a nuclear physics researcher. The petitioner earned his Ph.D. in Physics from the University of California, Los Angeles (UCLA) in 2002. At the time of filing, the petitioner was working as a Postgraduate Researcher in the Department of Physics and Astronomy at UCLA.

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.

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

The petitioner submitted evidence of his conference presentations and an invited talk as evidence for this criterion. Such presentations, however, do not constitute "prizes or awards" for excellence. We find no evidence to establish that the petitioner has received a nationally or internationally recognized prize or award for excellence in the field of physics.

*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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner claims membership in the American Physical Society (APS) and two scientific collaborations. A scientific collaboration, however, does not constitute "membership in an association" for purposes of this criterion. In regard to the petitioner's claim that he is a member of the APS, there is no evidence to demonstrate that membership in the APS required outstanding achievement in his field or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that the petitioner is a member of any associations that require outstanding achievement of their members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

*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 an e-mail from Professor John Harris, Physics Department, Yale University. The e-mail states:

Dear STAR [Solenoidal Tracker at RHIC (Relativistic Heavy Ion Collider)] collaborators,

It is a pleasure to announce that the first STAR Lambda paper is ready for collaboration review. The principal authors of the paper are [the petitioner], [REDACTED]. The paper has been reviewed by a STAR Godfather Committee consisting of Sergey Panitkin (chair), [the

petitioner], [REDACTED]. The intention is to submit the paper to *Physical Review Letters*.

On appeal, the petitioner states:

I would like to address my appointment to the Godparent Committee for publication of my work on Lambda production in *Physical Review Letters*. The purpose of this committee is not the review of my own work, but to oversee the very rigorous process of submission and criticism by outside scientists (peer-review) of articles about my work prior to acceptance by a journal.

From Professor Harris' e-mail and the petitioner's statements, it is apparent that the petitioner served on a committee charged with reviewing his own publication and responding to independent reviewer criticisms of that publication. Overseeing the peer review process for one's own publication is not tantamount to judging the work of others for purposes of this criterion.

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

The petitioner provided several witness letters in support of the petition.

Dr. Timothy Hallman, STAR Spokesperson and Group Leader at the Brookhaven National Laboratory (BNL), states:

The work done by [the petitioner] has been key to the successful use of the TPC [Time Projection Chamber] in STAR. Once calibrated, [the petitioner] has used information from this detector to produce the first results on lambda hyperon production at RHIC. The production of Lambda hyperons is of great scientific interest because these sub-atomic particles contain a strange quark, normally not found in nature.

Dr. Charles Whitten, Professor of Physics, UCLA, states:

In his work with our group [the petitioner] quickly established himself as an exceptional experimental physicist. During the 1997-2000 period our research group was involved with developing analysis software to use with a major . . . detector, the Solenoidal Tracker at RHIC (STAR) Time Projection Chamber (TPC), then under construction at Lawrence Berkeley Laboratory. [The petitioner's] work on a variety of projects connected with the TPC including the accurate alignment of the TPC using cosmic rays, the production of a sophisticated code to simulate the TPC response, and a systematic study of ExB distortions in the TPC was truly outstanding.

The petitioner submits letters from other researchers at UCLA who provide similar information such as Dr. Stephen Trentalange and the petitioner's Ph.D. thesis supervisor, Dr. Huan Huang.

Dr. Howard Wieman, Senior Staff Scientist, Nuclear Science Division, Lawrence Berkley National Laboratory, states: "[The petitioner] is internationally recognized for his development of a software program

which simulates the detailed performance of the STAR TPC. This program is critical to the analysis of all the STAR data and publications.”

Dr. Renee Bellwied, Professor of Physics, Wayne State University, states that he has collaborated with the petitioner since the petitioner became a graduate student at UCLA in 1998. Dr. Bellwied further states:

[The petitioner] has developed and applied novel software in order to measure the existence of specific particles generated during the violent collision of two Gold particles traveling with almost the speed of light. . . . [The petitioner’s] analysis enabled us to isolate the strange baryons from the more mundane debris of such a collision in a genuine way, a way which he developed all by himself.

We accept that petitioner’s work has yielded some useful and valid results; however, it is apparent that any Ph.D. thesis or journal article, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose scholarly research is accepted for publication, or who successfully develops and applies novel software to a particular project, has made a major contribution in his field. In this case, the record lacks extensive documentation showing that the petitioner’s work has attracted a significant level of national or international attention beyond UCLA or the STAR collaborative project. Without extensive documentation showing that the petitioner’s work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that it fulfills this criterion.

In regard to the letters of support offered with this petition, we note that all of the testimonials in this case were written either by STAR project collaborators or the petitioner’s professors at UCLA. This fact indicates that while the petitioner’s work is valued by those close to him, others outside his circle of collaborators are largely unaware of his research and do not attribute the same level of importance to his work. With regard to the personal recommendation of his fellow collaborators, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner’s reputation is limited to the STAR collaborative project and UCLA, then he has not achieved national or international acclaim regardless of the expertise of his project leaders, collaborators, and professors. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

In regard to the petitioner’s conference presentations, the record contains no documentation demonstrating that the presentation of one’s work is unusual in the field of physics or that the invitation to present at the petitioner’s conferences was a privilege extended to only a small number of top nuclear physicists. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field. The record contains no evidence showing that the petitioner’s conference presentations commanded an unusual level of attention in comparison to the other conference participants, or that the petitioner has served as a keynote speaker. In the field of nuclear physics, acclaim is generally not established by the mere act of presenting one’s work at a conference.

In conclusion, we find that the documentation presented in regard to this criterion is not adequate to support a finding that the petitioner's work in nuclear physics is nationally or internationally acclaimed throughout this field as a major contribution.

*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 his co-authorship of articles appearing in publications such as *Physical Review Letters*, *Physical Review C*, and *Nuclear Physics*. The director's decision noted that the petitioner was only one of scores of authors who contributed to these publications. The director specifically cited two papers in which the petitioner was listed as the 142<sup>nd</sup> and 21<sup>st</sup> author.

On appeal, the petitioner submits a letter from Dr. James Thomas, Deputy Spokesman for STAR at RHIC, Brookhaven National Laboratory. Dr. Thomas notes that "the author list of all papers from the STAR Collaboration (and most high energy physics groups worldwide) is strictly alphabetical." The AAO's review of the petitioner's publications confirms that the authors are indeed listed alphabetically. Dr. Thomas cites two *Physical Review Letters* publications for which the petitioner "especially contributed as primary author." One of these publications was mentioned in Professor Harris' e-mail, which referred to the petitioner as a "principal author."

The petitioner's appellate submission includes evidence showing that "Mid-rapidity Lambda and Lambda bar Production in AU + AU Collisions . . .," a paper published in *Physical Review Letters* for which the petitioner served as primary author, has been cited 67 times. When judging the influence and impact that the petitioner's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. In this case, however, the number of cites to the petitioner's article demonstrates a significant degree of interest in, and reliance on, his work. While a large percentage of these cites are from STAR project collaborators, we find that the petitioner's evidence is adequate to minimally satisfy this criterion. Based on the evidence provided on appeal, the director's finding in regard to this criterion is withdrawn.

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

The petitioner submitted a letter from Cecile Chang, Academic Apprentice Personnel, Department of Physics and Astronomy, UCLA, stating that the petitioner is employed as a "Postgraduate Researcher." We do not find, however, that the petitioner's roles as a graduate student and postdoctoral researcher at UCLA are tantamount to a leading or critical role in the same manner as that of a professor or research group leader. The petitioner's roles at UCLA represent temporary training for future employment in a field of endeavor. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of his colleagues in the physics field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner's role to that of his witnesses. In this case, it is immediately apparent that the importance of the role of individuals such as Professors Whitten and Bellwied, for example, far exceeds that of the petitioner. While

we accept that the petitioner has contributed to the STAR collaborative project, it has not been shown that his role is any more critical than that of the other accomplished scientists working on this endeavor. For the above reasons, we find that the petitioner's evidence falls short of establishing that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

The letter from Cecile Chang of UCLA indicates that the petitioner earned a salary of \$40,512.00 in 2003. The record contains no evidence showing that this salary is significantly high when compared to that of other nuclear physicists.

In this case, we find that the evidence presented satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientific researcher who has published the results of his work, presented findings at a scientific conference, or earned the respect of a handful of his research collaborators, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as nuclear physics researcher 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.