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[REDACTED]

FILE: [REDACTED]
WAC 03 247 54375

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 12 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 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 assistant professor of electrical engineering. 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.

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

The petitioner initially asserted that his scholarships and National Science Foundation (NSF) grant serve to meet this criterion. The petitioner submitted his grant proposal, but no evidence that the grant was approved, although he provides a grant number. In response to the director's request for additional evidence, the petitioner submits evidence regarding the review process utilized by the NSF.

In his discussion of this criterion, the director concluded that the petitioner had not submitted evidence of a major international recognized award. We note that a prize or award need not meet that standard for this criterion. The director further concluded that the petitioner's academic awards could not serve to meet this criterion. On appeal, the petitioner continues to assert that his NSF grant serves to meet this criterion.

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. Thus, we concur with the director that they cannot establish that a petitioner is one of the very few at the top of his field.

Regarding the petitioner's research grants, we reiterate that the petitioner has not demonstrated that the grant was actually issued. Regardless, research grants, even competitive grants, simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

In light of the above, the petitioner has not established that he meets 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 director concluded that the petitioner had not established that the Institute of Electrical and Electronics Engineers (IEEE), of which the petitioner is a member, requires outstanding achievements of its members. The petitioner does not contest this conclusion on appeal and we concur with the director's analysis and conclusion.

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 petitioner submitted articles that cite his own published articles. The director concluded that the citations were not specifically "about" the petitioner. The petitioner does not challenge this conclusion on appeal, although he asserts that citations are relevant to other criteria. We concur with the director's analysis and conclusion and will consider the petitioner's citation record below.

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 director concluded that the petitioner's work as a peer reviewer meets this criterion. Given that the petitioner has reviewed articles for several entities, we will not withdraw that conclusion. We note, however, 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. As such, the evidence only minimally serves to meet this criterion.

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 record lacked evidence to support the assertions made in the petitioner's reference letters. On appeal, the petitioner asserts that he submitted 14 letters from "company leaders, distinguished professors, and well-known scientists." He further asserts that the letters were supported by a book offer, an invited seminar, citations of the petitioner's work and "numerous review requests from all around the world."

First, we note that the director's discussion under this criterion includes the assertion that even if the petitioner "achieved" three criteria, that alone would be insufficient to establish eligibility. While we have concerns with the exact wording of the statement, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director's decision is that the petitioner submitted documentation that related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of sustained national or international acclaim.

We will examine the content of the petitioner's reference letters in detail. We note, however, that the petitioner's characterization of the status of his references appears somewhat hyperbolic. We will then examine the evidence supporting the assertions in those letters. The petitioner's assertion that his peer review duties are evidence of eligibility under the instant criterion is not persuasive. Concluding that evidence directly relating to one criterion can serve to meet an unrelated criterion undermines the regulatory requirement that an alien meet three criteria and the statutory standard for "extensive evidence." The petitioner's published articles are more demonstrably related to this criterion, as researchers typically publish their contributions to the field, and will be considered below. As will be discussed below, however, not every published article is a contribution of major significance.

The petitioner obtained his Ph.D. from The Ohio State University. Upon graduation, the petitioner worked as a postdoctoral research associate at Yale University and then a research assistant professor at the University of Southern California, where he was at the time of filing.

[REDACTED] a research staff member at IBM and formerly a fellow Ph.D. student at The Ohio State University, explains the nature of the petitioner's work on wireless systems. Specifically, traveling cell phone users must be able to switch from base station to base station, otherwise known as "handoff." In addition, cell phones must adjust transmission power "so as to keep acceptable call quality and not to interfere with other users." The goal is to maximize the number of users and satisfy users. [REDACTED] asserts:

The algorithms that have been developed by [the petitioner] present a paradigm shift in integrated handoff/power control by capturing the tradeoff between user satisfactions and network overhead, which enjoy the advantages of joint resource allocation, and provide significant improvement over the existing methods.

While [redacted] asserts that the petitioner's algorithms have "great potential" for implementation in the next generation of wireless networks, he does not identify a wireless network company that has expressed interest in the petitioner's work. Similarly, while [redacted] asserts that the petitioner's designs are applicable to military communication and coordination of unmanned air and space vehicles, he fails to provide examples of interest from the relevant government agencies. He does not indicate that his employer, IBM, is applying the petitioner's work. The petitioner provides similar letters from other former doctoral students at The Ohio State University. Such letters are not indicative of any recognition beyond the petitioner's classmates.

[redacted] the petitioner's Ph.D. advisor at The Ohio State University, notes that the petitioner's work has been published in reputable journals and asserts that the petitioner's techniques are "readily applicable" to Intelligent Transportation Systems (ITS) as well as having commercial and military applications. That the petitioner's work is applicable to real world projects in his field does not elevate that work to a contribution of major significance. Every research project has potential applications or it would not be likely to receive funding or to be published. Not every funded or published research project is a contribution of major significance.

[redacted] one of the petitioner's collaborators at the University of Southern California, asserts that the petitioner reformulated and solved a challenging problem in cellular phone network design and developed some of the latest and most influential techniques and theories. More specifically, the petitioner applied the theory of stability to wireless communication networks, endowing networks with the ability to autonomously learn and modify their own behaviors to improve performance and reliability.

[redacted] Director of the Center for Systems Science at Yale University, and [redacted] a professor at The Ohio State University, assert that the petitioner's research is "cutting edge" but do not provide details of the petitioner's work or explain its significance. [redacted] a senior researcher at the National University of Ireland, Maynooth, explains that he met the petitioner during his visits to Yale University. He asserts that [redacted] research group is a leading research group and that the petitioner is "considered to be a leading research by his peers," but provides little explanation for the significance of the petitioner's work. [redacted] a professor at Anadolu University in Turkey explain how the petitioner's work is applicable to Intelligent Transportation Systems (ITS), but does not explain the significance of the petitioner's past accomplishments.

Dr. [redacted] an employee at Los Alamos Research Laboratory, asserts:

[The petitioner] has proposed several integrated power control and handoff algorithms that offer capacity and coverage advantages for Code Division Multiple Access (CDMA) which has become the leading technology to be implemented in next generation wireless systems. The spectral efficiency and transmission quality in a DCMA system . . . are best achieved by proper implementation of power control that regulates the signal to interference ratio at the receiver end, and handoff that updates the assigned base station based on channel conditions, and [the petitioner's] algorithms provide significance improvement over existing methods.

does not provide his job title, explain how he knows of the petitioner's work, or assert that he has personally applied the petitioner's work.

Naveen Srinivasamurthy, a senior engineer at Qualcomm, praises the petitioner's algorithms as able to improve wireless system performance, but does not assert that these algorithms have been implemented or are even under consideration for implementation. Rather, asserts that the petitioner's algorithms "have great potential to be implemented" and have "far reaching implications ranging from commercial to military." As stated above, we cannot conclude that speculation that a contribution may one day be considered to be of major significance is sufficient to meet this criterion. Once again, does not explain how he became aware of the petitioner's work or assert that he has personally been influenced by it.

The petitioner submitted a letter purportedly from a senior staff engineer with Aware, Inc. The letter, however, is unsigned and has no evidentiary value. an associate professor at the University of Virginia, praises the petitioner's publication record, but does not explain how the petitioner's work has impacted the field.

The petitioner submitted a single letter from an independent member of the telecommunications industry. Specifically, the petitioner submitted a letter from a senior technical specialist at AT&T. As with the other references, however, merely states that the petitioner's algorithms are "likely to be implemented in next generation wireless networks" and that his technologies "have the potential to be used by millions of U.S. consumers." His opinion does not appear to reflect the official opinion of AT&T and he does not assert that AT&T has expressed interest in applying the petitioner's work.

The only reference who claims to be applying the petitioner's results is of Ciudad Universitaria in Mexico. He explains that he met the petitioner at a conference in 1998. He asserts:

Among many of [the petitioner's] original contributions, we, at the National University of Mexico, are currently investigating his decentralized sliding mode controller design for large scale continuous-time systems. He has proposed a decentralized design scheme using a decomposition technique that allows information sharing between subsystems. This technique has potential applications in automatic power generation control, and automotive and aerospace industries. He has also extended his work on sliding mode control to discrete-time systems and to a class of hybrid systems.

Even this letter, however, attests only to the potential application of the petitioner's work. Technology is continually advancing; not every original improvement to existing technology is a contribution of major significance.

The petitioner submitted an offer from Kluwer Academic/Plenum Publishers to commission a book on wireless networks and a draft of the contents for the book. In response to the director's request for additional evidence, the petitioner stated that he had "declined" this offer but was still working on the book for possible publication by a different company. While the offer is indicative of Kluwer's evaluation of the petitioner's knowledge in his field, it does not necessarily imply recognition of the petitioner's impact in the field. We cannot conclude that a book that is in progress and has not been disseminated to the field constitutes a contribution of major significance.

The petitioner submitted evidence that he had authored 19 articles published in journals or conference proceedings as of the date of filing.² The petitioner also submitted evidence of nine articles that cite his work. No article received more than five citations. Five citations is not evidence that the petitioner has been widely and frequently cited in his field. While the petitioner also submitted requests for reprints, such requests represent an interest in the petitioner's work but are not evidence that the petitioner's work has been applied. The record contains insufficient evidence regarding the significance of an "invited paper."

The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

As discussed above, with the exception of [REDACTED] the petitioner's independent references do not claim to be influenced by the petitioner's work and, for the most part, provide little explanation for how they know of the petitioner's work. While we presume these references to be independent, the record lacks the curriculum vitae for all of his references. While the record includes numerous attestations of the potential impact of the petitioner's work, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented researcher with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established that he 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.

As stated above, the petitioner submitted evidence that he had authored 19 articles published in journals or conference proceedings as of the date of filing. The petitioner also submitted evidence of nine articles that cite his work. No article received more than five citations.

The director stated that the articles were coauthored and concluded that the record lacked evidence of the petitioner's contribution to each article. The director further concluded that publication is inherent to the petitioner's field and that the record lacked evidence of the significance of the articles.

On appeal, the petitioner notes that he submitted evidence of citations and that he was requested to review other manuscripts submitted for publication.

First, we note that science is a collaborative field and reject the implication that coauthored articles have little evidentiary value, especially where the number of coauthors is extremely low, as is the case with the petitioner's

² The record contains other manuscripts, but the pagination of and acceptance dates for these manuscripts is not indicative of a published article as of the date of filing. Articles that have not been disseminated as of the date of filing are not persuasive evidence of eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971).

articles. In fact, most of the petitioner's articles are coauthored with only a single other researcher. That said, we agree that publication is inherent in the petitioner's field and, thus, the petitioner must establish the significance of his published articles.

Specifically, 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 our position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

As stated above, peer-review is routine in the field as journals rely on peer reviewers to review the more than one million articles published annually in scientific, medical and technical peer-reviewed journals. We note that the materials from IEEE's website, provided by the petitioner, invites those interested in serving as a volunteer reviewer to submit resumes to the Editor in Chief. Thus, we are not persuaded that the petitioner's peer review requests, which we will not dispute serve to meet the criterion set forth at 8 C.F.R. § 204.5(h)(iv) due to the number of requests, demonstrate the significance of the petitioner's own articles.

We concur with the petitioner that his citation record is relevant to this criterion. Five citations or less for any given article, however, is not evidence that the petitioner has been widely and frequently cited in his field. Thus, while the petitioner is a prolific writer, we are not persuaded that his publication record is sufficient to meet this criterion. Even if we concluded that the petitioner did meet this criterion, for the reasons discussed above and below, he would not meet the necessary three criteria.

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

The petitioner did not initially claim to meet this criterion. In response to the director's request for additional evidence, the petitioner submitted evidence of service on program committees and as a session organizer or chair. All but one of these responsibilities occurred after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner claimed to have served as session chair for an American Control Conference in 2001, prior to the date of filing. The petitioner also noted his employment at Yale University and the University of Southern California.

The director concluded that the petitioner had not demonstrated his roles were leading or critical. On appeal, the petitioner reiterates previous claims that he meets this criterion.

We have already considered the petitioner's contributions while at Yale University and the University of Southern California above. At issue for *this* criterion, however, are the role the petitioner was hired to fill and the reputation of the entity that hired him. Serving as session chair for a single session at a single conference is not a leading or critical role for the entity sponsoring the conference or even the conference. While we acknowledge the prestige of the universities where the petitioner has been employed, concluding that all

postdoctoral or even permanent appointments are leading or critical roles would render the phrase "leading or critical" meaningless. Not every assistant research professor plays a leading or critical role for the university where he works beyond the obvious necessity for a university to employ professors. We note that the accomplishments of the other members of the petitioner's department, elaborated in his response to the director's request for additional evidence, do not reflect on the petitioner's role even within that department, let alone the university as a whole.

In light of the above, the petitioner has not established that he 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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself in his field 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 assistant research professor, 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.