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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 02 2005
WAC 03 209 51252

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:
[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

§ 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 The decision of the director will be withdrawn and the appeal will be sustained.

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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, counsel submits a brief and additional evidence. We find the evidence submitted previously and on appeal sufficient to establish the petitioner's eligibility for classification under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and the appeal will be sustained.

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

(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 into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, specifically in the field of automatic control and signal processing. The record shows that the petitioner was a visiting professor in the Department of Molecular Biosciences and Bioengineering at the University of Hawaii at Manoa at the time of filing and was previously a Professor in the Department of Automatic Control at the Beijing

Polytechnic University in China where he was employed in various academic positions for nearly 40 years. With his petition and in response to the director's Request for Evidence (RFE), the petitioner submitted numerous supporting documents including evidence of his academic credentials and employment, his published scholarly articles and books, his research funding, his peer review of manuscripts for an international journal in his field, his receipt of two scientific prizes and a special salary subsidy in China, his membership in scientific associations, professional evaluations of his work and achievements by his peers in China, and 11 recommendation letters from collaborators and colleagues. The petitioner submits additional evidence of his achievements on appeal. We address the relevant evidence, the director's decision and counsel's and the petitioner's claims in the following discussion of the principal regulatory criteria applicable to the petitioner's case.

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

The petitioner claims eligibility under this criterion by virtue of his receipt of the Beijing Municipal Academic Outstanding Prize in 1982 and a Third-Place Beijing Municipal Science-Technology Prize in 1992. The record documents the petitioner's receipt of these honors, but does not establish their national recognition. In addition, the honors were accorded 21 and 13 years before this petition was filed and do not reflect sustained acclaim.

The record contains no information regarding the selection criteria for the Beijing Municipal Outstanding Prize or any other evidence that the significance of this prize extends beyond the Beijing metropolitan region and is nationally recognized in China. The "Beijing Municipal Awarding Provisions on Science-Technological Progresses" state that those prizes are granted, in part, to promote the scientific and technological progress of the city of Beijing. The Provisions also state that the judgment standard for the third-place prize is that "[t]he main science-technological indexes have achieved the national advanced level, the achievement plays a relatively significant role in promoting the science-technological progress, and has obtained relatively big economic effect or social effect." This evidence indicates that while the awarded work is at a "national advanced level," the prize itself is a regional honor limited to the Beijing metropolitan area. On page two of his cover letter accompanying his Form I-140, the petitioner states, "Beijing, as the capital city of China, has a population of 16 million with over two thousand national level research universities, scientific institutions, and hi-tech companies. So, the prizes awarded in Beijing reflect the national science-technology level of China to a great extent." The submitted evidence does not support this statement and simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director briefly noted the petitioner's receipt of these two prizes and the submission of supporting documentation, but did not specifically address the relevant evidence or analyze its significance. The submitted evidence does not establish that the petitioner's prizes were nationally recognized in China. Moreover, the petitioner's receipt of prizes 21 and 13 years prior to filing this petition does not demonstrate the requisite sustained acclaim. Accordingly, he does not meet this criterion.

(iv) 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 evidence that in 1991 he was appointed to the Beijing Municipal High-Level Judge Committee for University Faculty Series to examine and evaluate the work of electrical engineers. The record further shows that from 1997 to 1999, the petitioner was appointed to the same committee for the "University Faculty Series (i.e., full and associate professors)." The petitioner submitted evidence that the University Faculty Series is the highest ranked judge committee for the Beijing Municipal region, but the record does not establish that the petitioner's appointment to this committee was nationally recognized or otherwise consistent with national acclaim.

In 1998 and 1999, the record further shows that the petitioner served as an invited member of the committee to judge projects on developing target products for the "863/CIMS [Computer-Integrated Manufacturing System]" by the National Expert Group on the High-Tech Computer-Integrated Manufacturing System Subject in China. The evidence indicates that the petitioner was asked to judge projects by a national body due to his expertise in the field.

The petitioner also claims to meet this criterion, in part, due to his review of manuscripts and editorial work for scientific journals. Because peer review is a common feature of the publication process for many scientific journals, service as a peer reviewer in and of itself will not satisfy this criterion without evidence that the alien has served on the editorial board, completed a substantial number of reviews, or has otherwise conducted peer review of other scientists' work in a manner consistent with sustained national or international acclaim. In this case, the petitioner submitted evidence that he reviewed a substantial number of manuscripts for *Zentralblatt MATH*, an international journal edited by the European Mathematical Society, between 1996 and 2001. The record also shows that the petitioner was appointed Associate Editor-in-Chief of the *Journal of Beijing Polytechnic University* from 1993 to 1995.

The relevant evidence demonstrates that between 1993 and 2001, the petitioner was appointed to a national judging committee in China due to his expertise in his field, completed a substantial number of peer reviews for an international scientific journal and served as Associate Editor-in-Chief for a Chinese scientific journal. The director did not fully assess this evidence, which we find sufficient to show that the petitioner has judged the work of other scientists in his field in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner meets this criterion.

(vi) 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 authored 56 articles published in Chinese scientific journals in his field between 1963 and 2001 and authored 12 more articles published in English in Chinese scientific journals and conference proceedings between 1992 and 1997. In addition, the record documents the petitioner's authorship of two books published in China in 1986 and 2001 and his co-authorship of a third book published in China in 1988. The petitioner submitted copies of numerous independent evaluations of his research and professional achievements that attest to the significance and impact of the petitioner's books and published articles on his field. Scientists from, for example, the Chinese Academy of Sciences and Tsing-Hua University wrote these evaluations between 1988 and 2001.

The petitioner also submitted evidence that he has published twelve scholarly articles in English in professional, international scientific journals between 1981 and 2003. The petitioner is the lead author of seven of these articles. The record also documents the petitioner's publication of 15 manuscripts in the proceedings of

international scientific conferences in his field between 1984 and 2001. The petitioner is the lead author of 12 of these manuscripts. The record also documents the impact factor and rank within the discipline of six international journals that have published the petitioner's articles. Many of the recommendation letters submitted with the petition and the three letters from independent experts submitted on appeal further attest to the significance of several of the petitioner's published articles. The evidence thus shows that the petitioner has authored 94 scholarly manuscripts published in Chinese and international professional scientific journals in his field. He has also authored three books in his field published in China. The petitioner's publication record demonstrates that he achieved national acclaim in China, which has been sustained through his subsequent publications after his arrival in the United States. Accordingly, we concur with the director's determination that the petitioner meets this criterion.

(ix) 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 claims to meet this criterion because he received a 100 *yuan* monthly salary subsidy from the Chinese government. The record contains a certificate issued to the petitioner that reads: "This is to certify that you have made extraordinary contributions to the development of higher education of this country, and [are] hereby qualified to gain the governmental special subsidy [as of] October of 1992 and awarded with this certificate." The State Council of the People's Republic of China issued the document. A certificate verifying the work experiences of the petitioner at the Beijing Polytechnic University affirms that he was awarded "the monthly Governmental Special Subsidy for Extraordinary Contribution Experts by the State Council of P.R. China since October 1992." The petitioner also submitted materials from the national Chinese Ministry of Personnel and the Beijing Municipal Bureau of Science-Technological Personnel that document the national selection criteria and local implementation of the special subsidies. The materials show that the subsidies are awarded selectively to high-ranking individuals who have made distinguished contributions which have been nationally or internationally recognized. The latter document states that subsidies in Beijing will be granted in two classes, 100 *yuan* and 50 *yuan*, and that scientists who receive 100 *yuan* subsidies must be engaged in research at an "internationally advanced level," but that scientists awarded a 50 *yuan* subsidy must only show perform research at a "nationally advanced level."

The director found the evidence did not clearly show that the petitioner's remuneration was significantly high in comparison to other individuals in his field. On appeal, the petitioner submits an official notice from the national Chinese Ministry of Personnel dated June 6, 1990, which announces the "Basic Salary and Position Salary Standards for Faculty at Colleges." This notice states that the salary for a full professor of the tenth grade is 180 *yuan*. A letter from the Personnel Section of the Beijing University of Technology (formerly the Beijing Polytechnic University) submitted on appeal further verifies that the petitioner received the standard salary for full professors of the tenth grade, which has been 180 *yuan* per month since January 1992. The letter affirms, "Due to his extraordinary contribution to the cause of national high education and scientific research, Professor Xu was awarded by the State Council of China to enjoy a life-time governmental special subsidy of \$100 [*yuan*] per month since October 1, 1992."

On appeal, the petitioner also submits an article entitled "Extra Pay to Credit Leading Scholars" that was published in the December 5, 1991 national edition of *China Daily*. The article reports that "China's outstanding scientists and intellectuals are getting a special monthly allowance as a reward for their contribution to the country's development." The article explains that the salaries of Chinese intellectuals have remained basically unchanged for the last decade and that the special subsidies are a governmental effort to "upgrade the

economic position of Chinese intellectuals.” On appeal, the petitioner also submits an article entitled “China’s Brain Drain Problem: Causes, Consequences and Policy Options” and published in the Fall 1992 edition of the *Journal of Contemporary China*. This article affirms the low salaries of professors in China and discusses the challenges facing the Chinese government in adequately compensating professors and teachers. The evidence submitted on appeal, combined with the documents previously submitted, demonstrates that the petitioner received a high salary in comparison to other professors in the sciences in China from 1992 until his departure in 2000 in a manner consistent with sustained national acclaim. Accordingly, the petitioner meets this criterion.

Because we find the petitioner meets three of the regulatory criteria sufficient to establish sustained national acclaim under 8 C.F.R. § 204.5(h)(3), we do not address the less persuasive claims of counsel and the petitioner regarding his eligibility under the remaining criteria. The petitioner has established that he has achieved the requisite sustained acclaim as a scientist and that his achievements have been recognized in his field of expertise. The petitioner submitted documentation of his credible intentions to continue working in his field in the United States and the record shows that his entry will substantially benefit prospectively this country. The petitioner has thus established his eligibility for immigrant classification under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his petition will 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. The petitioner has met that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.