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U.S. Citizenship
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Services

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FILE: WAC 03 258 53255 Office: CALIFORNIA SERVICE CENTER Date: **DEC 22 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:

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 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 that the director did not fully assess all the relevant evidence, which, combined with the evidence submitted on appeal, demonstrates the petitioner's eligibility for classification under section 203(b)(1)(A) of the Act.

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 as a materials engineer. The record indicates that at the time of filing the petitioner was a Principal Research Fellow in the Department of Mechanical Engineering at the Imperial College in London. The petitioner submitted numerous supporting documents with his petition and in response to the director's Request for Evidence (RFE). We

address the evidence submitted and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not discussed below.

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

Counsel claims the petitioner meets this criterion by virtue of his receipt of: 1) the Royal Academy for Engineering Fellowship from 1998 to 2003, 2) "Window on Science" (WOS) program funding in 1998, 3) a Certificate of Appreciation from the American Society for Testing Materials (ASTM) in 2000 and 4) the Outstanding Technical Paper award at the 1998 American Society of Mechanical Engineers (ASME) Annual Conference. We examine the relevant evidence of each of these achievements in turn.

The record indicates that the petitioner received a Senior Research Fellowship from the Royal Academy of Engineering ("the Academy") from 1998 to 2003. The submitted printout from the website of the Academy states that through its fellowships, the Academy "honours the UK's most distinguished engineers. . . . Election to The Academy is by invitation only; up to 60 Fellows are elected each year from nominations made by existing Fellows." The program from the Academy's Annual 2001 annual meeting states that all fellows "are elected by their peers for personal achievement of exceptional merit and distinction." According to the printout, Senior Research Fellowships, such as that held by the petitioner, "provide funding for Senior Lecturer/Reader level appointments, at UK universities, in order to enable individuals with several years of post-doctoral research experience to progress in their chosen field." The printout further states that a Senior Research Fellow "is expected to develop and lead a prestigious research group." The record contains no independent evidence to corroborate the significance and national recognition of the petitioner's fellowship. The evidence submitted does not persuasively establish that a Senior Research Fellowship from the Academy is a nationally recognized prize or award for scientific excellence, rather than a form of research funding for distinguished scientists.

The record shows that the petitioner received WOS funding to visit the United States in 1998. The submitted printout from the website of the Air Force Office of Scientific Research states that the WOS program funds "visits to Air Force laboratories and research and development organizations by outstanding foreign scientists and engineers." The program is managed by the European Office of Aerospace Research and Development (EOARD) and the Asian Office of Aerospace Research and Development (AOARD). WOS participants are nominated by these offices or Air Force research and development organizations and subject to approval by EOARD, AOARD and the hosting Air Force organization. The printout states that the WOS program "arranges for a payment of an honorarium to offset part or all of the visitor's expenses." Although WOS funding may be prestigious, the record does not demonstrate that it is a nationally or internationally recognized prize or award. Rather, the evidence submitted indicates that the WOS program facilitates and partially funds research visits.

The petitioner submitted a copy of his "Award of Appreciation" from the ASTM Committee E08 on Fatigue and Fracture. The award plaque states that it was presented to the petitioner in 2000 "[i]n recognition of his technical contributions toward the modification of the Standard Test Method for Measurement of Creep Crack Growth Data in Metals to include creep brittle materials. His technical knowledge and insight made the modification a possibility and completion of the document brought recognition to ASTM." K. Ravi-Chandar, Professor in the Department of Aerospace Engineering and Engineering Materials at the University of Texas at Austin, affirms the petitioner's receipt of this award but does not further discuss its significance. Jeff Adkins, Staff Manager of ASTM International, states that the petitioner "was presented a Certificate of Appreciation by his peers for the work he did during the revision of ASTM Standard E1457," but also does not further discuss

the significance of this recognition. The evidence submitted does not demonstrate that the petitioner's appreciation award is a nationally or internationally recognized prize or award for scientific excellence in his field.

The petitioner submitted a copy of his award certificate for Outstanding Technical Paper at the 1999 conference of the Pressure Vessels and Piping Division (PVPD) of ASME International. The program from the honors and award luncheon at this conference lists the petitioner as one of two individuals to receive "Conference Awards" and as one of over 50 individuals honored with awards, certificates of appreciation, special recognition or a medal at this event. Even if the petitioner's best paper award was nationally or internationally recognized, it was presented in 1999, four years before this petition was filed, and does not demonstrate the requisite sustained acclaim.

The petitioner's accomplishments indicate that he has been recognized and honored by his peers in his field. However, the evidence submitted does not establish that this recognition was made in the form of prizes or awards reflective of the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(ii) 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 petitioner did not initially claim eligibility under this criterion. In response to the director's RFE, however, counsel contended that the petitioner satisfied this criterion through his membership in ASME, ASTM, and the Versailles Agreement on Materials and Standards (VAMAS) Technical Working Area (TWA) 25 Committee.

The record indicates that the petitioner is a member of ASME. The submitted printout from ASME's website states that an individual is eligible to become a member of ASME if he or she has received a degree from an approved engineering curriculum or has eight years of active professional engineering practice or teaching. These criteria are not outstanding achievements and are notably distinct from the requirements for membership as an ASME Fellow, which the printout states is "a grade of distinction" granted to individuals who "have been responsible for significant engineering achievements." Accordingly, the ASME membership at the level held by the petitioner does not meet this criterion.

The record indicates that the petitioner has been a member of ASTM since the middle 1980s and has chaired the Creep Crack Task Group since 2000. The submitted printout from the website of ASTM lists different types of membership, but the printout is cut off on the right margin rendering much of the text illegible. Based on the legible text, the printout describes different membership types but does not state any eligibility criteria for ASTM membership or otherwise indicate that outstanding achievements are prerequisite to ASTM membership. However, on appeal, the petitioner submits a second letter from Mr. [REDACTED] (Staff Manager of ASTM International) who affirms the petitioner's chairmanship of the Creep Crack Growth Committee. Mr. Adkins explains that the petitioner was appointed chairman by his peers "because of his national and international reputation, which he has developed since the 1980's. As an expert in experimental and numerical high temperature fracture mechanics, one can say that he ranks among only a handful of people in the world who could lead this chairmanship of this very specialized field." In addition, as discussed above under the first criterion, the petitioner received an appreciation award from the ASTM Secretary and Chairman in recognition of his work in this area. The record does not establish, however, that nationally or internationally recognized experts in the field appointed the petitioner as committee chairman. Consequently, the petitioner's ASTM

membership does not satisfy this criterion.

The record shows that in 1999, the petitioner was appointed Chairman of the VAMAS TWA25 Committee on Creep/fatigue Crack Growth and continues to serve in this capacity. A description of VAMAS submitted in response to the RFE explains that VAMAS was formed in 1985 after a G7 summit meeting where the member countries agreed to encourage trade in advanced technologies. VAMAS was thus established as "a mechanism for international collaboration on pre-standardisation materials research to provide a technical basis for agreement on methodologies prior to the formal development of a standard." An informational document about VAMAS submitted on appeal states, "Chairmen are appointed by the VAMAS steering Committee, comprised of national representatives primarily from National Measurement Institutes. TWA chairmen need to be eminent in their technical field in order to plan and lead the technical work and, importantly, to command the respect of their peers participating in the research activity." The petitioner's work as a VAMAS TWA chairman is confirmed by Roger Hurst, Adviser to the European Commission Directorate General Joint Research Centre Institute for Energy, and A. Toshimitsu Yokobori, Jr., Professor of Tohoku University Fracture Research Institute and Secretary General of the International Congress of Fracture. Both Mr. Hurst and Professor Yokobori cite the petitioner's VAMAS TWA chairmanship as evidence of the international recognition of his expertise in this field. Hence, the evidence submitted establishes that the petitioner was appointed as a VAMAS TWA chairman by virtue of his internationally recognized expertise in his field, as judged by the nationally recognized experts comprising the VAMAS Steering Committee. The director did not address the evidence of the petitioner's VAMAS membership, which we find sufficient to 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 director did not discuss the petitioner's eligibility under this criterion in his decision. Counsel claims the petitioner meets this criterion because he has reviewed manuscripts for several scientific journals in his field and edited a subsection of a scientific treatise. The record does not support this claim. We cannot ignore the fact that most scientific journals rely on peer review of manuscripts submitted for publication. Hence, service as a peer reviewer, in and of itself, does not demonstrate sustained national or international acclaim without additional evidence that the alien has completed a significantly high number of reviews, has served on the editorial boards of journals in his or her field, or has otherwise judged the work of other scientists in a manner reflective of sustained national or international acclaim.

In this case, the petitioner initially submitted six letters requesting his review of manuscripts submitted for publication to various scientific journals in his field. However, the petitioner submitted evidence that he actually completed the invited reviews for only two papers submitted to *Engineering Fracture Mechanics*. In addition, Professor Ravi-Chandar, Editor-in-Chief of *International Journal of Fracture*, confirms that the petitioner has served as a reviewer for that journal. Professor Ravi-Chandar does not state the dates or number of the petitioner's reviews.

The record shows that the petitioner was also the editor of the "Fracture and Fatigue" subsection of the Third Edition (2001) of the *Encyclopedia of Physical Science and Technology*. The submitted description of the encyclopedia states that section chiefs were nominated by the Editor-in-Chief and the Executive Board. The description also states that the first and second editions of the encyclopedia "are now being used in some 3,000 libraries located in centers of learning and research and development organizations worldwide." A letter from the Editor-in-Chief of the *Encyclopedia* states that the Section Editor for Materials Science and Engineering

recommended the petitioner “as the most qualified person to provide either an update of [the] existing article [on fracture and fatigue], or a completely new article on the subject.”

The record shows that the petitioner has reviewed an unspecified number of articles for two journals in his field and edited one subsection for a scientific reference book. This evidence does not persuasively establish that the petitioner has judged the work of others in his field in a manner consistent with sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

The director did not address the petitioner's eligibility under this criterion in his decision. As evidence of the petitioner's eligibility under this category, counsel cites the recommendation letters submitted with the petition. The petitioner submitted ten recommendation letters from scientists working in his field or related specialties. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

Ashok Saxena, Regents' Professor of Materials Science and Engineering at the Georgia Institute of Technology in Atlanta, Georgia, states that he has known the petitioner for over 20 years. Professor Saxena states that the petitioner's “contributions in the field of nonlinear fracture mechanics have been outstanding and in particular his efforts in developing and integrating computational modelling and experimental aspects of high temperature fracture have been of substantial benefit to the power generation and aerospace industries across the world.” Bahram Farahmand, Technical Fellow at the Boeing Aerospace Company, states that he knows the petitioner through their collaborative involvement in ASTM and at Boeing. Dr. Farahmand explains that Boeing is researching the high temperature creep and fatigue interaction of spacecraft components and that the petitioner's “work in this field both in terms of fundamental research and development of life assessment and testing standards is well known internationally and is very useful to our projects. In particular his views in dealing [sic] design and life assessment of operating components are of relevance to the advanced materials that we are testing.” In a second letter submitted on appeal, Dr. Farahmand further explains that the petitioner's “high temperature crack growth knowledge is extremely helpful in structural integrity assessment of space structures upon re-entry where vehicle [sic] is exposed to elevated temperature environment.” John J. Ruschau, Senior Research Engineer at the University of Dayton Research Institute and ASTM E08.06 Chairman, also confirms that the petitioner's “work on structural analysis and advanced materials has contributed to new and improved international test methods involving testing and analysis for high temperature fracture applications.”

Stephen W. Hopkins, Senior Manager of the Exponent company, states that he has known the petitioner for a number of years and that the petitioner's work on high temperature fracture mechanics “is very relevant to the on going problem in the USA of dealing with aging power plants and the energy industry in general.” This point is also made by Jonathan Parker, Associate of Structural Integrity Associates, Incorporated and Judith A. Todd, Professor and P.B. Breneman Department Head Chair of Engineering Science and Mechanics at the Pennsylvania State University who collaborated with the petitioner at Imperial College in the 1980s.

Other evidence in the record confirms the significance of the petitioner's work and its impact on his field. As discussed above under the first and second criteria, the petitioner received an award for Outstanding Technical Paper at the 1999 ASME International PVPD conference. The petitioner was appointed and had served as chairman of the ASTM Creep Crack Task Group for the three years preceding the filing of this petition and in 2000 he received Award of Appreciation" from the ASTM Committee E08 on Fatigue and Fracture. The petitioner was also a Senior Research Fellow at the Royal Academy of Engineering from 1998 to 2003, where his work was featured at the Academy's Annual Meeting of Research Chairs and Fellowships in 2000. In 1999 the petitioner was appointed Chairman of the VAMAS TWA25 Committee on Creep/fatigue Crack Growth, a position he continued to hold at the time of filing. The record further shows that the petitioner was a keynote speaker at the Seventh International Conference on Creep and Fatigue at Elevated Temperatures (CREEP7) in 2001, and delivered invited lectures at the "SmiRT 17 Conference" in 2003 in Prague and the 2003 "ICF Conference" in Moscow. In addition, the record shows that the petitioner presented his work upon invitation to researchers at Ibaraki University in Japan in 2003 and the United States Air Force Advanced Materials Group at the Wright Patterson Air Force Base in Dayton, Ohio in 1999.

The petitioner's publication and citation record also affirms the significance of his research in his field. Dr. Hopkins states that "[s]ome of [redacted] early work on 'Creep Cracking' that he published in 1976 and 1977 is still referenced today." The petitioner submitted copies of several scientific papers published as recently as 2000 that cite his 1976 and 1977 articles on creep cracking. In addition, the record contains copies of numerous articles written by the petitioner that have been printed in peer-reviewed publications and books in his field between 1976 and 2003. The petitioner submitted evidence that other scientists in his field have consistently cited many of his publications.

In review, the record shows that the petitioner has been appointed as chairman of two international committees to develop and revise important standards in his field, that his work has been applied in the aerospace industry that he has been repeatedly honored as a featured speaker at international scientific conferences, and that he has published peer reviewed articles in journals and books that have been consistently cited in the publications of other scientists in his field. The record shows that the petitioner's work has been recognized in his field since the late 1970s through 2003, the year this petition was filed. His accomplishments thus demonstrate sustained international 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.

Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. As frequent publication of research findings is inherent to success as an established research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent research teams or other proof that the alien's publications have had a significant impact in his or her field.

In this case, counsel claims the petitioner has authored or co-authored "over 95 published refereed papers in every leading international journal relevant to his field." The record does not fully corroborate this claim. Although the petitioner's curriculum vitae lists 95 publications, the record does not document all of these articles. 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)). In his RFE response, the petitioner also submitted evidence of the recent publication of several additional articles authored and co-authored by him. We cannot consider this evidence because it arose after the petition was filed. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Nonetheless, the record documents the petitioner's authorship and co-authorship of numerous published articles and book chapters in his field from the late 1970s through 2003. The petitioner has submitted evidence that many of his articles have been consistently cited in the publications of other scientists in his field. Moreover, the record shows that several of the petitioner's earlier articles have been consistently cited in international scientific literature in his field over the more than 10 and 20 years since their publication. Hence, the petitioner's publication and citation records demonstrate sustained international acclaim. The director did not fully assess all the relevant evidence which we find sufficient to establish the petitioner's eligibility under this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The record in this case demonstrates that the petitioner has achieved sustained international acclaim in his field. The petitioner is an outstanding member of one prestigious international association in his field. He has made original contributions of major significance to his field and has published numerous articles that have been consistently cited throughout his career. Several letters in the record attest to the need for the petitioner's expertise in the United States and the authors' estimation that the petitioner would have no difficulty finding employment in his field in the United States. The petitioner has thus established that he seeks entry into the United States to continue working in his area of extraordinary ability and that his entry will substantially benefit prospectively this country. He is thus eligible for classification as an alien with extraordinary ability pursuant to 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. Accordingly, the appeal will be sustained.

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