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FILE: [Redacted]  
EAC 03 091 50810

Office: VERMONT SERVICE CENTER

Date: **DEC 27 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:

[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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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.

On appeal, counsel asserts that the director erred in failing to request additional evidence prior to issuing the notice of denial. Assuming the director erred, counsel has not demonstrated how this failure has prejudiced the petitioner. Specifically, the petitioner does not submit any additional evidence that might have been submitted in response to such a notice. The most expedient remedy for any failure to request evidence is to consider any evidence on appeal that would have been submitted in response to a request for additional evidence. In this matter, however, the petitioner submits no new evidence on appeal for us to consider. As such, we will adjudicate the appeal based on the evidence submitted initially. We note at the outset, however, that while some of the director's discussion is non-specific or misplaced, much of the evidence counsel accuses the director of ignoring is not a part of the record of proceedings or even referenced in prior counsel's initial cover letter.

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 industrial engineer. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international

acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. On appeal, counsel cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994), for the proposition that meeting three criteria is sufficient to establish eligibility. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, we do not contest that principle. Rather, we find that if the statutory standard of national or international acclaim is to have any meaning, the evidence submitted to meet a given criterion must be indicative of or consistent with such acclaim in that field. For example, while authoring scholarly articles is not inherent to the field of music and, thus, such articles by a musician would carry significant weight, authoring scholarly articles is inherent to the sciences. As such, evidence of the influence of those articles becomes necessary to set the alien apart from his peers.

Initially, the petitioner submitted his degrees, a list of his purported publications, a list of his purported patents, a list of his purported consulting jobs and "design applications," and reference letters. As will become clear in our discussion below, the petitioner did not submit much of the evidence counsel discusses on appeal. Initially, prior counsel discussed the petitioner's credentials and experience without explaining how the evidence submitted relates to the regulatory criteria. On appeal, counsel asserts that the petitioner meets the following criteria.<sup>1</sup>

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

The director concluded that the record lacked evidence relating to this criterion. On appeal, counsel asserts that the petitioner's "2003 Honda Initiation Grant for his project 'An Innovative Sheet Folding Technology for Weight and Vibration Reduction of Vehicles'" serves to meet this criterion. Prior counsel did not mention this grant in his initial brief and the record does not contain the grant or evidence of the significance of such grants. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, research grants simply fund an engineer's work. Every engineer 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, we concur with the director that the record contains no evidence that the petitioner meets this criterion.

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

*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.*

On appeal, counsel correctly notes that the director's discussion under this criterion relates to the petitioner's own articles, as opposed to published materials about him. We concur with counsel that this discussion does not appear related to this criterion. Nevertheless, counsel's assertion that the director failed to consider "the discussions of [the petitioner's] work in corporate reports and other published material," is not persuasive. The record lacks any corporate reports or "other published material." Moreover, corporate reports are not "published" materials.

In light of the above, while the director's discussion under this criterion was confusing, the record lacks evidence relating to this criterion that the director should have discussed. We concur with the director that the petitioner has not demonstrated that he meets this criterion.

*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.*

In the initial cover letter, prior counsel asserted that the petitioner had teaching experience and had "participated as a reviewer of the research of others engaged in the field of industrial engineering." The director concluded that the record contained no evidence relating to this criterion other than the petitioner's teaching duties at his current position. The director concluded that the petitioner's current duties were not indicative of national or international acclaim. On appeal, counsel asserts that the director failed to consider the petitioner's "role as manuscript reviewer for the International Journal of Materials and Product Technology."

Several of the petitioner's references attest to the courses he has taught and his supervision of students. The record contains no evidence that the petitioner has ever reviewed a manuscript for the *International Journal of Materials and Product Technology* or any other journal. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503.

Regardless, the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim. The inherent duties of an occupation are not indicative of or consistent with national or international acclaim. Supervising one's students is inherent to the occupation of teaching. Thus, it is not persuasive evidence to meet this criterion.

In addition, we cannot ignore 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. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

In light of the above, the petitioner has not established that he meets 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 petitioner's publication history and reference letters were insufficient to meet this criterion. On appeal, counsel asserts that the petitioner's publication record supports the claims made in the reference letters. Counsel asserts that the articles, which, according to counsel, appeared in "top ranked peer-reviewed journals . . . underwent a review by independent experts not prepared for this petition." (Emphasis in original.)

We concur with the director that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *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 evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

In the field of engineering research, 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 engineering, 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.

The petitioner initially submitted a list of five approved British patents from 1983 or earlier and three pending U.S. patent applications. The petitioner did not submit copies of the actual British patents or receipts from the U.S. Patent Office. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). Moreover, the petitioner did not comply with the regulation at 8 C.F.R. § 103.2(b)(2) to establish that such evidence is unavailable. The petitioner also submitted a list of "consulting" accomplishments and "design applications." Once again, this self-serving list of accomplishments is insufficient unless supported

by the record. Finally, patents from 1983 and earlier do not establish "sustained" acclaim and the more recent patent applications are not yet approved.

Even if the petitioner had submitted the patents, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. See *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* Thus, the petitioner would need to demonstrate that his patented technology is widely licensed or submit other comparable evidence of industry interest.

Regarding the petitioner's publication record, even if we accepted the petitioner's list of articles as evidence of his authorship of those articles, 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 will be discussed below, in addition to the lack of evidence of the articles themselves, the record lacks evidence that the petitioner's work has been cited.

The petitioner submitted a letter from a former colleague at the University of Birmingham, three letters from his current colleagues at the State University of New Jersey, Rutgers (Rutgers), a letter from the Amphibious and Expeditionary Systems Department at the Naval Facilities Engineering Service Center (NFESC), which sponsors the petitioner's research project, and a letter from MATECH/GSM, a company working on a joint project with Rutgers.

██████████ a professor at the University of Birmingham, asserts that the petitioner joined that university in 1977, where he performed research and worked as a lecturer. Professor ██████████ praises the petitioner's design of "a shearing tool for a novel cropping technique for production of billets, from bar stock of steel and other metals, which was patented." Professor Walton asserts that this tool "produced billets of superior quality, provided 300% reduction in shearing loads resulting in the use of smaller capacity presses, or the ability of shearing larger sections with existing press facilities." Professor ██████████ further references the petitioner's Worm Cropping Tool-set, a new technique for producing brass billets. "The new technique, which was also patented, enabled production of brass billets of superior quality by shearing the bar stock at a specific temperature, combined with high speed cropping which resulted in minimum energy and material waist." While Professor ██████████ asserts that the new technology provides "great economical potential for the forging industry," he does not name a single forging company that has licensed either technology discussed in his letter. Contrary to counsel's assertion on appeal, the record contains no licensure agreements. The record also lacks letters from industry leaders affirming the industry's use of the petitioner's patented technologies.

Dr. ██████████ Vice Chair of the ██████████ Department at Rutgers and Professor ██████████ ██████████ of Rutgers both attest to the petitioner's design of a polishing machine. Professor ██████████ characterizes the petitioner's unit as having "accurate and independent control in the Z-direction for achieving precise machining dimensions and tolerances, residue vacuum system to clean the polished surface

and eliminate contamination, fast temperature control through a rapid air heating/cooling cycle for precise inlay chip removal/machining integrity, and milling tool path designed to eliminate cross contamination for multi-material inlay application.” Neither reference identifies any industrial company interested in licensing this tool.

Professor ██████████ Director of the National Science Foundation (NSF) Industry/University Cooperative Research Center for Quality and Reliability Engineering, indicates that he obtained his undergraduate degree with the petitioner at Cairo University. Professor ██████████ then met the petitioner years later at a conference and invited him to join Professor Elsayed’s research team at Rutgers. According to Professor ██████████ the petitioner’s “exceptional ability as [an] innovative machine designer was first demonstrated during the design and construction of the continuous sheet folding machine, when [the petitioner] made a fundamental breakthrough in producing continuous folding of sheet material without the typical unavoidable sheet shredding defect.” Professor ██████████ further asserts that the machine is pending patent and “will be used for High Velocity of airdrop of large items.” Professor ██████████ references industry interest, but does not identify any specific potential customers except the U.S. Navy, to which the work has been submitted for redesign of aviator helmets. Professor ██████████ also discusses the petitioner’s work on a deep water sampler, a personal fire escape system, an automated storage/retrieval system and a rescue device from a well shaft. Once again, Professor Elsayed fails to identify any potential customers.

As evidence of the Navy’s interest in the petitioner’s folding machine, the petitioner submits a letter from ██████████ Ms. ██████████ indicates that she sponsors the petitioner’s research, but does not provide her own title at NFESC or issue the letter on NFESC letterhead. Ms. ██████████ explains that high velocity airdrops increase accuracy and reduce the chance of detection. Thus, the petitioner’s folding machine, enabling the production of cushioning with improved capabilities, is relevant to the Navy. In an attached e-mail, however, Ms. ██████████ advises the petitioner that “they” are “thinking” of testing the petitioner’s round cushioning in January 2003. The record lacks evidence that “they” agreed to the test and that the test was successful.

More significantly, ██████████ Vice President of Engineering at MATECH, Inc., discusses the importance of designing filters to meet European and U.S. clean diesel requirements. Mr. ██████████ asserts that MATECH will “integrate its proven UV curable pre-ceramic polymer chemistry with the Rutgers State University of New Jersey Innovative Continuous [S]heet Folding Processes developed by [the petitioner] and [an] associate, to provide a new high surface area filter with high tortuosity for maximum filtration effectiveness and minimum filter size.”

While the record suggests growing interest in the petitioner’s sheet folding machine, the record does not establish that the machine is widely seen beyond his immediate circle of colleagues as a contribution of major significance in the field.

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

The director did not discuss this criterion individually, rather, he referred to his discussion of the criterion set forth at 8 C.F.R. § 204.5(h)(3)(v) in which the director stated that published articles are inherent to the petitioner’s occupation. On appeal, counsel reiterates the petitioner’s claimed publication history and asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(vi) does not require any evidence other than that the petitioner has authored the articles. The director criticizes the lack of discussion regarding the rank of the journals that

allegedly published the petitioner's articles and the petitioner's ranking as author. We note that the petitioner did not submit the rankings of the journals that allegedly carried his articles. As such, it is difficult to comprehend how the director erred in failing to consider such evidence.

The petitioner submitted a list of 27 published articles and conference presentations. The petitioner, however, failed to submit the first page of these articles, a print out from a science index listing his authored articles or other primary evidence of these articles. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "evidence" of authorship of scholarly articles. Where the primary evidence required is unavailable, the regulation at 8 C.F.R. § 103.2(b)(2) requires evidence of the unavailability of that primary evidence and secondary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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 record contains no primary or secondary evidence that the petitioner has authored any scholarly articles.

Assuming that the petitioner has authored the 27 articles listed, we will not infer the influence of an individual article from the journal in which it appeared or the petitioner's rank as author. Moreover, while any article published in a peer-reviewed journal is "peer-reviewed," not every peer-reviewed article is destined to become a major influence in the field. Rather, when evaluating an alien's publication record in the sciences, we must consider the research community's reaction to the actual article. The record contains no evidence that the petitioner's articles have been cited or otherwise relied upon such that we can conclude that the petitioner's publication record is indicative of or consistent with national or international acclaim. Thus, we concur with the director's ultimate conclusion that the petitioner does not meet this criterion.

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

The director acknowledged the petitioner's experience in the field, but concluded that this experience did not set him apart from others in the field. On appeal, counsel asserts:

It appears once again that the adjudicator has misunderstood the criterion, as it is unclear how these statement[s] reflect on [the petitioner's] senior positions both within industry and academia. These include his position as a tenured professor in the Department of Mechanical & Production Engineering at Cairo University; tenured lecturer in the Department of Mechanical Engineering at Birmingham University; his role as Principal Investigator in studies funded by Honda Corporation, [the] U.S. Navy, Matech Corporation, and others; his position as the Undergraduate Director of Packaging Engineering Students; and his consultancies with a number of top engineering companies, including Matech, Inc., Aquafertilizer, and Eastern Tobacco, Co., Giza Textile, and others.

We have already considered the petitioner's contributions above. At issue for this criterion are the position the petitioner was hired to fill and the reputation of the entity that hired him. Moreover, as we have stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. at 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Further, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N

Dec. at 193). Thus, the petitioner must provide employment letters meeting the requirements set forth at 8 C.F.R. § 204.5(g)(1).

The record does not include letters from Cairo University, Honda, Aquafertilizer, Eastern Tobacco or Tize Textile. As such, we are unable to determine the nature of the petitioner's role with these entities. Professor Walton of the University of Birmingham asserts that the petitioner joined that university as a research fellow in 1977, subsequently working as a research fellow and then a lecturer. The petitioner appears to have worked as a visiting professor at Rutgers. None of these positions appear to be leading or critical for the universities as a whole, beyond the obvious need for a university to employ competent researchers and lecturers. Thus, 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 as an engineer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as an engineer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.