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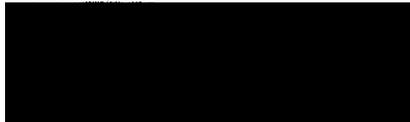
FEB 17 2005

FILE: WAC 01 258 50646 Office: CALIFORNIA SERVICE CENTER Date:

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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner then filed a motion to reopen and reconsider. After granting the petitioner's motion, the AAO affirmed its appellate decision. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will again be denied.

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 and the AAO determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

This petition, filed on July 5, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a "Chemical 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. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level. In the appellate decision and again on motion, the AAO found that the petitioner had not established that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The evidence presented by the petitioner on motion will be discussed below.

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

Counsel maintains that a "Certificate of Achievement" presented to the petitioner by Dr. George Goeke, Intellectual Asset Manager, Union Carbide Corporation (UCC), constitutes qualifying evidence under this criterion. The certificate states that the petitioner "completed all requirements for admission as an honorary member of the Pod Catalyst Skill Center." In the appellate decision and again on motion, the AAO found that this certificate represents institutional recognition rather than national or international recognition.

The petitioner submitted a letter from Dr. Goeke stating:

[The petitioner] spent a one-year sabbatical in my group in fiscal year 1993. During that period, I managed a group of about 16 Ph.D. chemists and an equal number of B.S. scientists conducting catalyst research in the general area of polyolefins.

[The petitioner] joined us under the auspices of a joint development program we sponsored with selected licensees. In this special program, highly qualified technical people were authorized to spend up to one year doing catalyst research in our section. The purpose of this program was to help train the candidates in how to conduct catalyst research and to foster good relations with our valued licensees.

[The petitioner's] rate of progress was extraordinary, which attests to his skill and drive and the many long hours he spent in the lab to lay the groundwork for proceeding through our gate commercialization process. He was awarded a "Certificate of Achievement" for his efforts at UCC, an honor reserved for those who demonstrate the highest level of performance.

Dr. Goeke does not indicate the percentage or number of trainees on sabbatical in his section that receive this type of recognition. Nonetheless, we do not find that successful performance in a UCC program designed "to help train the candidates in how to conduct catalyst research" is tantamount to a nationally or internationally recognized award for excellence in catalyst research or chemical engineering. Moreover, we cannot ignore that admission to the program was limited to employees of UCC "licensees" (such as Hanwha, the petitioner's employer at that time).

In this instance, the extent of the petitioner's recognition was clearly limited to the training program run by Dr. Goeke. We accept that Union Carbide is a well-known company, however, outside of Dr. Goeke's research section at UCC, there is no indication that the UCC "Certificate of Achievement" is a nationally or internationally recognized prize for excellence in the chemical engineering field, rather than simply an acknowledgment of the petitioner's successful completion of UCC's catalyst research training program for licensees. Pursuant to the statute, the petitioner must provide evidence to establish that the certificate presented to him enjoys significant national or international stature. Dr. Goeke's letter and the other documentation presented on motion are not adequate to establish that this certificate commands significant recognition beyond the petitioner's catalyst research trainers at UCC.

*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 AAO's prior decision stated:

Counsel contends that the petitioner meets this criterion based on his "honorary membership" in the POD Catalyst Skill Center as evidenced by his "Certificate of Achievement." The record contains no evidence that the POD Catalyst Skill Center in an association with the meaning of this criterion. . . . [Dr. Goeke] does not . . . state that the Skill Center is an association rather than a workplace unit of Union Carbide.

On motion, the petitioner submits general information about Union Carbide (now wholly owned by Dow Chemical as Univation Technologies) and materials related to a catalyst formulation study undertaken by the petitioner in 1991. This documentation is not adequate to overcome the AAO's earlier conclusions. It remains that the Pod Catalyst Skill Center was a particular research unit of Union Carbide, rather than a national or international association of engineering professionals. Moreover, the statute requires *sustained* acclaim and the record contains no evidence documenting the petitioner's activity as an "honorary member" of this unit since the early 1990's.

Counsel argues that Union Carbide, the "world's top edge organization evaluated [the petitioner's] ability and performance over a two-year period and granted 'honorary membership' to a foreign company's employee,

[the petitioner].” The record, however, contains no bylaws or official membership requirements for admission to “honorary membership” in the POD Catalyst Skill Center. We find no evidence to conclude that “honorary membership” in the POD Catalyst Skill Center is tantamount to membership in an “association” requiring outstanding achievements of its members, as judged by recognized national or international experts. In this case, there is no evidence showing that the petitioner holds membership in a highly exclusive association comparable to (for example) the U.S. National Academy of Sciences.

*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 AAO’s appellate decision stated:

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major media*. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but they qualify as major media because of significant national distribution, unlike small local community papers.

On appeal, counsel asserts that the scientific papers authored by the petitioner would satisfy this criterion. The petitioner’s authorship of scholarly articles will be addressed below under a separate criterion. This criterion requires the petitioner to submit published materials written by others about him or his work. In this case, the petitioner has offered no evidence showing that he has been the subject of sustained major media coverage.

The AAO’s March 17, 2004 decision added: “On motion, counsel submits copies of internal business correspondence and an internal evaluation study from Union Carbide. Not only is the petitioner not mentioned by name in these documents, internal company documents are not professional or major trade publications.”

On present motion, counsel argues: “For any international joint research program performed under a highly secretive agreement, it is forbidden to release the names of key members to the public. Only university professors occasionally release their names to the public.” Counsel fails to explain how the petitioner was purportedly able to achieve sustained national or international acclaim if his work consisted of closely guarded secrets. The record contains no evidence showing that the petitioner has been the primary subject of “published materials” in major media.

*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 a fax from “Evaluation and Management Division 3, Korea Administrative Institute of Industry Technology Evaluation” requesting that the petitioner “[e]valuate the propriety of the research proposals of 3 companies . . . and inform the result of select or reject.”

The AAO's March 17, 2004 decision stated:

We . . . note that the record does not contain evidence that the petitioner actually evaluated the proposals. The record does not reflect the basis for the petitioner's selection to perform the evaluations. The petitioner's selection to serve as judge of his peers must be indicative of his national or international acclaim in the field. . . . Furthermore, the evidence establishes that the petitioner was asked once to review and evaluate the work of others. This falls short of the extensive documentation required by the statute to establish that the petitioner meets this criterion.

On present motion, counsel states:

The result of the evaluation was sealed and mailed to the Korean Administrative Institute of Industry Technology. No copy was issued to [the petitioner] because if companies become aware that their top secret research project's information are [sic] released to their competitors, they will accuse and sue the Institute.

\* \* \*

[The petitioner] was asked to be a member of many panels for evaluation of other researcher [sic] of chemistry and chemical engineers in academic organizations . . . . However, . . . HANWHA did not allow him to join there. Instead, he worked as a member of a panel for the evaluation of national projects sponsored by the Korean government. The results of those evaluations were not permitted to be disclosed.

\* \* \*

The requirement of extensive documentation is to minimize the risk of misjudgment of a petitioner by officers of U.S. Citizenship and Immigration Services and the risk of allowing in an unqualified person. But, it may not be necessary if the petitioner was already evaluated by a group of persons or by an organization . . . .

Section 203(b)(1)(A)(i) of the Act requires "extensive documentation" of sustained national or international acclaim. Counsel's assertion that extensive documentation is unnecessary under certain circumstances is not supported by a plain reading of the statute, the regulations, or binding precedent. In regard to counsel's claim regarding the petitioner being "asked to be a member of many panels for evaluation of other researchers," we find no evidence in the record to support this assertion. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

In regard to counsel's claim regarding the secretive and therefore undocumented nature of the evaluation conducted by the petitioner for the Korean Administrative Institute of Industry Technology and his evaluation of national projects sponsored by the Korean government, we note that the burden of proof is on the petitioner to produce evidence to support his claims. The petitioner cannot avoid this burden simply by asserting that the evidence exists, but cannot be obtained or submitted because of its proprietary or secretive nature. If

knowledge of the petitioner's work is deliberately restricted, then by definition national or international acclaim is virtually impossible.

Without evidence that sets the petitioner apart from others in his field, such as (for example) evidence that he has reviewed an unusually large number of research proposals or received multiple independent requests for his services from a substantial number of national institutions, we cannot conclude 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.*

On present motion, counsel states:

In the field of [the petitioner's] endeavor, industrial polyolefin catalyst, it usually takes couple of decades to evaluate the direct contribution of a newly developed catalyst result from market. In chemical engineering, the research of polyolefin catalyst is considered as a long-term national industrial project. . . . It is almost impossible to pass those steps within a few years.

The duration of time for the impact of a polyolefin catalyst to be realized does not relieve the petitioner of the burden of demonstrating that the greater field views his scientific development as a contribution of major significance as of the petition's filing date. A petitioner must establish eligibility at the time of filing; a petition may not be approved based on speculation of future eligibility. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In this case, the petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals whose scientific contributions might eventually be recognized at some unspecified future time.

Counsel further states: "UCC was involved in a sequential joint venture with EXXON in 1997 and a merger with Dow Chemical in 2001. So the final step of commercialization of a new catalyst product is temporarily suspended. But, [the beneficiary] believes that it will be revived as soon as the Asian economy recovers." The petitioner's belief that commercialization of his catalyst will eventually occur at some unknown future date is entirely speculative and therefore not adequate to establish eligibility under this criterion. *See Matter of Katigbak* at 49.

The extremely narrow range of witnesses offering letters of support in this case does not demonstrate that the petitioner's reputation has traveled beyond his circle of acquaintances, let alone nationally or internationally as the statute requires. In conclusion, the documentation presented by the petitioner does not support a finding that his catalyst is nationally or internationally recognized by the greater scientific community as a major contribution.

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

On motion, rather than specifically identifying evidence adequate to satisfy this criterion, counsel instead argues that the petitioner's "research results are considered as tightly confidential." As previously observed, the burden of proof is on the petitioner to produce qualifying published materials. The petitioner cannot avoid

this burden simply by asserting that publication of one's work is not relevant to petitioner's field due to the proprietary or secretive nature of his work. Counsel's argument contradicts the evidence of record as the petitioner has indeed authored a few published articles. In its March 17, 2004 decision, the AAO stated that the petitioner submitted evidence of having published at least three articles in professional publications, but there was no evidence of citations to those articles. In its appellate decision, the AAO noted that frequent citation by independent researchers would demonstrate widespread interest in, and reliance on, a scientist's published work. The AAO further observed that an absence of citations to the petitioner's published articles suggests that his work has gone largely unnoticed by the greater research community. Although he has had ample opportunity to provide evidence of outside reaction to his published articles, the petitioner has failed to do so.

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

On present motion, counsel states that the petitioner "was the project owner of the joint development program" between UCC and Hanwha. In an earlier AAO decision, it has already been noted that Dr. Goeke "was the supervisor of the joint development program." In addressing counsel's claim that that the petitioner's participation in the joint development program satisfied this criterion, the AAO's appellate decision stated:

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

Counsel asserts that the petitioner performed in a leading or critical role through his participation in the joint development program at Union Carbide. We cannot ignore Dr. Goeke's statement that the purpose of this program was to "help train the candidates in how to conduct catalyst research." The petitioner's "one-year sabbatical" at Union Carbide from 1993 to 1994 shows that the petitioner conducted research at Union Carbide, but there is no evidence to suggest that he fulfilled a leading or critical role within the company, especially since he was not a direct employee and his work was only temporary and contractual. The record contains no evidence to show that the petitioner has ever supervised or overseen other individuals at Union Carbide nor does it indicate that he has consistently exercised substantial control over the company's research programs or business decisions. A simple review of Dr. Goeke's qualifications, for example, shows that his role and responsibilities at Union Carbide far exceeded those of the petitioner. Thus, the petitioner's impact on Union Carbide's research programs appears negligible.

Counsel states that the petitioner "was the principal scientist of Hanwha for 10 years." Exhibit 11 submitted with this motion includes a translation of a "Petition for sending [the petitioner]" from Hanwha to UCC as part of their joint development program. The petition was prepared by Hanwha's Department of Human Resources and indicates that the petitioner's title was "Senior Research Engineer." The petition, dated April 19, 1993, states:

- [The petitioner] was selected as a beneficiary of a post doctoral program of the Research Center and approved by the Group with a determined condition for supporting.
- But, the Department Business Plan got approval of the President (of HYCC [Hanwha]) for the Joint Research Agreement with UCC, which was propelled by the same person ([the petitioner]).

Submit this petition because Joint Development with UCC is different from the post doctoral program in terms of [black marked] . . .

For some unexplained reason, significant portions of the petition from Hanwha's Department of Human Resources and its accompanying translation are blacked out in the same manner as above. For example, information regarding the petitioner's salary in the postdoctoral position and the UCC joint research position has been withheld. In regard to postdoctoral program of the Research Center cited above, we cannot ignore that the petitioner's role in such a program is representative of scientific training for a future professional career in a field of endeavor. Furthermore, the petition from Hanwha, in describing the aspects of the petitioner's position, includes such phrases as "Learn advanced technology", "Study advanced research culture", and "Learn UCC research system and know-how." Such terms indicate more of a trainee-type role rather than a leading or critical role. While we accept that the petitioner has contributed to research projects at UCC and Hanwha, it has not been shown that his role is any more important than that of other researchers employed by those institutions. For the above reasons, we find that the petitioner's evidence falls short of establishing that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

Counsel provides information regarding the petitioner's salary for only two periods, May 1, 1993 to May 1, 1994 and 1997. We note, however, that the statute and regulations require the petitioner's acclaim to be *sustained*. The record contains no evidence showing that the petitioner has earned significantly high remuneration subsequent to 1997. In regard to the income that the petitioner claimed to earn in 1994 (\$49,000 salary plus bonus of \$31,000), counsel cites Exhibit 11, the Hanwha Department of Human Resources document, which blacked out the petitioner's salary and bonus. The record does not include the original version of this document or other first-hand evidence (such as tax forms or official employer correspondence) to establish that the petitioner actually earned these amounts in 1994. In regard to the income that the petitioner claimed to earn in 1997, the record contains a translation of a payroll document reflecting a salary of 42,207,629 Won or \$49,000. Counsel submits GNP (Gross National Product) data for Korea and states that the petitioner "received over 10 times of per capita GNP of his country." The petitioner, however, must submit salary information for chemical engineers rather than for all Korean occupations. Counsel asserts that the petitioner's salary was "two times of other excellent Ph.D. chemical engineers in his field" in Korea, but the record contains no statistical evidence to support this assertion.

The petitioner also submits salary data from the National Science Foundation indicating that in the U.S. "federal scientists and engineers with a Ph.D. degree reported a median annual salary of \$60,400 in 1993." The petitioner also provides data indicating that the median expected salary for a typical chemical engineer in

Los Angeles is \$56,954. We note here that the \$49,000 earned by the petitioner in 1997 is well below the median chemical engineer salary amounts cited from the U.S. Even if we were to accept that the petitioner earned \$80,000 in 1994 (which we do not), we find that counsel's reliance on "median" salary statistics is seriously flawed. The petitioner must offer evidence that his salary places him at the very top of his field, not simply in the top half. Local prevailing wage figures for chemical engineers in Los Angeles do not meet this standard. Without comparative evidence showing that the petitioner is among the highest paid chemical engineers at the national or international level, we cannot conclude that the documentation presented is adequate to satisfy this criterion.

Counsel asserts that the petitioner's business contacts, potential sales volume of his catalyst, and contract of partnership with counsel constitute comparable evidence under 8 C.F.R. § 204.5(h)(4). That regulation allows for the submission of comparable evidence, but only if the ten criteria "do not readily apply to the petitioner's occupation." Therefore, the petitioner must demonstrate that the regulatory criteria are not applicable to the alien's field. Of the ten criteria, at least eight readily apply to the petitioner's occupation. Where an alien is simply unable to meet three of the regulatory criteria, the wording of the regulation does not allow for the submission of comparable evidence.

On motion, counsel requests that his "office be permitted to present oral arguments to the [AAO]." The regulations provide that the requesting party must adequately explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel has identified no unique factors or issues of law to be resolved. Counsel states only that "[a] direct personal appearance will provide [the petitioner] a fair opportunity to accurately present the facts surrounding his application." Aside from this general statement, counsel has set forth no specific reasons why oral argument should be held. We find that the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. Here, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. As the evidence presented does not overcome the grounds for the previous decision of the AAO, and it has not been shown that that decision was based on an incorrect application of law, the previous decision of the AAO will be affirmed.

In conclusion, we find that the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The AAO's decision of March 17, 2004 is affirmed. The petition is denied.