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U.S. Citizenship
and Immigration
Services

PHOTOCOPY

JUN 10 2005

[Redacted]

FILE: [Redacted]
LIN 03 137 51460

Office: NEBRASKA 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:

[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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner entered the United States on June 6, 2000. He was approved for asylum in the United States on February 1, 2001 and was thereafter eligible to work in the United States. He filed the instant petition on March 26, 2003. Initially, the petitioner submitted no evidence that he was working in his field. In response to the director's request for additional evidence, the petitioner submitted a "Career Plan Statement." In that statement, the petitioner listed several research projects he wished to pursue. He did not, however, identify any potential sources of funding for this research or potential employers. The director concluded that the petitioner's statement outlining "the areas he intends to research" failed "to identify any prospective employers or any prearranged commitments for employment."

On appeal, counsel asserts that the petitioner's statement of intent is sufficient as an alternative to identifying prospective employers or documenting prearranged commitments for employment. The regulations do permit a personal statement in lieu of letters from prospective employers or prearranged commitments for employers. The regulation quoted above, however, does not merely permit a statement of general intent, which would be fairly meaningless. Rather, the statement must detail "how" the petitioner intends to continue in his area of employment. We find that a statement detailing the areas of research the petitioner would like to pursue is not an explanation of how he would be able to do so. Even if we were to conclude that the petitioner's statement is sufficient evidence of his intent to pursue employment in his area of expertise, the petitioner's apparent lack of ability to secure employment in his field during the two years he has been in the United States with employment authorization prior to filing the petition (and subsequently) is inconsistent with an alien of extraordinary ability in the sciences. It is also inconsistent with the statutory requirement that the petitioner enjoy "sustained" acclaim. Nevertheless, we will consider the specific evidence of the petitioner's accomplishments in his field below.

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 a food scientist. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.¹

Documentation of the alien's 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.

Initially, the petitioner submitted evidence that he is a "specialist member" of the China Food Science and Technology Society (CFSTS) and a member of the China Economic Forest Association (CEFA). In response to the director's request for additional evidence, the petitioner submitted an August 7, 2003 certificate confirming his senior membership in the Chinese Institute of Food Science and Technology (CIFST). The petitioner submitted the membership requirements for senior members, which include supporting the articles of the institute, desiring to join the institute, holding a certain professional title, a certain number of years of experience, and one of the three following requirements:

1. Having acclaim for important contributions in the food science and technology field,
2. Recipient of national-level awards for achievements in food science and technology, or
3. Having published in top journals at home or abroad.

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

The petitioner also submitted evidence that CIFST is a member body of the International Union of Food Science and Technology.

In addition, the petitioner submitted a certificate confirming his membership in the China Cash Forest Association (CCFA) as of 1997. The certificate asserts that the petitioner was accepted for membership based on his “outstanding achievements in respects of [sic] wild edible plant resource development, protection, utilization and its processing method, and [a]fter full-scale qualification auditing.” The actual membership requirements, in addition to upholding the association’s articles and having a desire to join, are that the individual “must have great impact on and has [sic] an important position in the area of national cash forest industry.” The materials further provide:

Individual members consist of professionals, manager and scholars who represent development of studies of economic forest species and who also have long experiences in scientific research of economic forest species or in operation and management of [the] cash forest industry.

The director concluded that the petitioner had not established which criteria he had met in order to join these associations. On appeal, counsel reiterates the membership information discussed above.

While we concur with the director that the petitioner does not meet this criterion, we phrase our concerns somewhat differently. It is not relevant which criteria the petitioner met to join the associations. Rather, according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the relevant question is whether outstanding achievements are required of all members. One of the possible means of establishing eligibility for membership in CIFST is publication in top journals. We do not find that publication in a top journal is an outstanding achievement. Thus, CIFST does not require outstanding achievements of all its senior members.

The materials provided regarding membership in CCFA are far too vague to allow us to determine whether CCFA requires outstanding achievements of its members. Specifically, the materials do not provide how a “great impact on” the field is measured² or what positions constitute “an important position” in the area of national cash forest industry. We note that the paragraph quoted above, identifying the types of members in CCFA, does not suggest that these members represent the top individuals in the field or those with outstanding achievements in the field. Similarly, the English-language materials submitted by the petitioner provide that CCFA “is a nationwide, non-profit institution, consisting of professionals, managers and scholars from different regions of the country. Most of them are specializing in economic tree species and working in a voluntary basis.” These materials make no reference to exclusive membership requirements.

In light of the above, we concur with the director that the petitioner has not established that he meets this criterion.

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.

² For example, if CCFA considered publication to be evidence of a “great impact,” we would not consider CCFA membership to be qualifying, as publication of one’s work is not an outstanding achievement.

Counsel notes that the petitioner's brief biography has been included in the following directories:

The Dictionary of Contemporary Chinese Experts in Science and Technology,
The China Index of Contemporary Individuals with Extraordinary Expertise,
Who's Who in the World (Chinese Edition),
Who's Who in China's Agricultural Industry,
Who's Who in Contemporary China, and
The Dictionary of China Extraordinary Scientists and Researchers.

The petitioner submitted letters confirming the inclusion in these directories and copies of the biographies themselves. The last dictionary listed above included the petitioner in the [REDACTED] section. In response to the director's request for additional evidence, which noted that the petitioner had been included "along with thousands of other researchers' names," the petitioner submitted materials about the China Index of Contemporary Individuals with Extraordinary Expertise (CICIEE). The materials indicate that CICEE is the only directory supported by the Chinese Academy of Sciences and that it was created to "recognized and honor the small percentage of Chinese scientists and engineers who have risen to the very top of their field for their achievements in their respective fields and for their contributions to the well-being of the People's Republic of China or the broader world." Nominees must have:

A) [D]istinguished achievements that have made a major contribution of significance and been recognized by eminent national or international prizes awards, such as the National Science and Technology Achievement Awards, medals from ACM Association for Computer Machinery), IEEE (Institute of Electrical and Electronics Engineers), and CSME (Chinese Society of Mechanical Engineers), or B) Significant science and engineering contributions or services that have benefited the professional and economy world in the national scope or beyond.

The director reiterated that the petitioner was one of thousands appearing in these directories and concluded that the biographies did not appear in "qualifying media." On appeal, counsel asserts that the petitioner meets this criterion in his conclusion but fails to address the director's concerns.

The contents page listing the petitioner's inclusion in CICEE indicates that the listings are alphabetical. The petitioner appears with three others on page 396. As such, it is evident that the petitioner does appear in this directory with over a thousand other individuals. This office consistently holds that appearing as one of thousands or even hundreds in a frequently published directory is insufficient to meet this criterion. Thus, we concur with the director that the petitioner has not established 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.

The petitioner submitted evidence that he was an editor of the *Journal of Jilin Grain College*. In his request for additional evidence, the director stated that if this editorial position was a collateral duty as a professor at that college, it could not serve to meet this criterion. In response, counsel asserts that the editorial duties were not collateral duties as a professor. The petitioner submits materials for the *Journal of Jilin Grain College*. These materials reflect that the journal is a natural science journal circulated domestically and internationally. A certification from the journal provides:

This work is not part of his collateral duties as a professor at the college. His professor job is to deal with the professional scientific research and teaching.

The "Articles" for the journal indicate that an editor must be an expert who has made important contributions and has had a significant impact in the field as demonstrated through receipt of a national level award, serving as a principal investigator for a national research project, or other equivalent qualifications.

The petitioner also served on the Jilin Provincial Government New Product Appraisal Committee. The other members all appear to be affiliated with Jilin institutions. According to one of the petitioner's references, the petitioner edited two books, one of which "is the only specialized teaching material in this field in China."

The director concluded that the evidence did not establish the significance of the petitioner's role with the journal. On appeal, counsel references the evidence discussed above.

None of the above duties are indicative of any acclaim outside of Jilin Province. The journal is published by the petitioner's employer at the time. Similarly, the same university published the books purportedly edited by the petitioner. Finally, the produce appraisal committee appears local and staffed with local members of the field. As the petitioner's evaluation duties are not indicative of or uniquely consistent with national or international acclaim, the petitioner has not demonstrated 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 petitioner initially submitted four reference letters. [REDACTED] a computer science professional at Tobin International, Inc., summarizes the petitioner's career. [REDACTED] that the petitioner "is" a professor at the Jilin College of Food Industries. We note that [REDACTED] letter is dated September 25, 2002. The petitioner entered the United States in June 2000 and applied for asylum soon after. The petitioner received asylum in 2001. As such, the petitioner does not appear to still be employed in China. Thus, [REDACTED] credibility is somewhat diminished. Regardless, [REDACTED] unsupported assertions that the petitioner has received a 1997 research award, 1993 and 1994 paper awards and a 1992 teacher award are insufficient. 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, [REDACTED] letter indicates that he left China in 1986. As such, it is not clear how he would have first hand knowledge of the petitioner's awards in the 1990's.

[REDACTED] asserts:

[The petitioner] developed several new food and nutritional products in the last decade, some of which show great potentials for commercialization. His teaching activities include many courses, just to name a few, Technology of Food Processing, Soft Drinks, Nutrition Sciences, and Fruit Preservation. He has extensively published his results not only in his native country but also more recently in some well-recognized international peer reviewed journals. Also, his number of publications per year is very impressive. Indeed, he keeps an excellent publication record in various refereed journals. Some of these papers were cited by **Chemical Abstracts**,

which is viewed as the sole authoritative journal in recognition of significant breakthroughs in food sciences.

(Emphasis in original) The brief summary of [REDACTED] achievements at the end of his letter does not establish that he is a food scientist. As such, the record does not explain [REDACTED] qualifications to evaluate the petitioner's contributions to that field. We acknowledge that *Chemical Abstracts* has included abstracts of the petitioner's work. The materials for this journal submitted by the petitioner, however, indicate that the journal endeavors "to publish adequate and accurate abstracts of all scientific and technical papers containing new information of chemical or chemical engineering interest and to report new chemical information revealed in the patent literature." Any thesis or research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. Thus, the materials from *Chemical Abstracts* are not persuasive that inclusion in that publication is indicative of a contribution of *major significance*.

The petitioner also provided a letter from Lanying Liu, a professor of food biochemistry and Dean of the Molecular Biology Department at Jilin University Life Scientific College. [REDACTED] discusses the importance of food sciences to China, a large and populous country. The importance of the petitioner's field is not in contention. According to [REDACTED] the petitioner developed edible land algae, fiber and wild fruit. As one means of this development, the petitioner processed the deodorized astringency of raw materials.

[REDACTED] a professor at Shanghai Normal University, asserts that the petitioner "won the national prize from [the] China Scientific Association." As stated above, neither counsel nor the petitioner claim that the petitioner has won any national awards and the record contains no such awards. As such, [REDACTED] credibility is somewhat diminished. [REDACTED] explains that nutrition is lost from wheat flour during processing. He continues:

The adoption of [the petitioner's] expansion technology allows the processing of sorghum and millet; while the adoption of his new wet grinding technology allows the processing of soybean fiber, corn fiber and wheat fiber without significant nutrient loss. [The petitioner] developed comprehensive processing technology, such as elaborately divided fiber and biological enzyme engineering, in order that cellulose is strengthened and phytic acid chelating minerals are removed. These minerals impede the absorption of nutrients into the human body.

[The petitioner] also researched and developed many nutritious local delicacies, such as a new generation of whole-wheat high fiber cakes and millet convenience gruel.

Professor Wang asserts that the petitioner won a national award, not documented in the record, for this last accomplishment. [REDACTED] concludes that the petitioner's "new project is reforming traditional wheat flour used in bread, cakes, and noodles, with other grains."

[REDACTED] Secretary-General and Managing Director of the Jilin Food Society, provides similar information, asserting that the petitioner's results "were cited by authoritative specialized publications at home and abroad." Such a claim should be readily verifiable, such as through the submission of a citation index or at the relevant portion of the articles that cite the petitioner's work. The record, however, contains only a single citation beyond the less than notable abstracts in *Chemical Abstracts*.

The petitioner received three regional Certificates of Scientific Technology Achievement from the Jilin Provincial Science and Technology Committee. He also authored several articles and book chapters. The petitioner submitted several certified “summary translations” purporting to document the use of these books, the petitioner’s contribution to these books, and the petitioner’s participation in the editing of these books. While these “translations” purport to be “an accurate summary translation of the document attached,” the only attached documents are the books themselves. Thus, the “translations” appear to be descriptions of the books and their use as opposed to a translation of the information printed in the books. The translator does not attest to any firsthand knowledge as to how these books are used. As such, the claims in these translations have little evidentiary value.

The director did not contest that this criterion had been met in his request for additional evidence. Thus, the petitioner did not continue to address it in his response. The petitioner did, however, submit evidence purporting to demonstrate the impact of his published articles.

Specifically, the petitioner submitted materials from the Information Service, Library of Chinese Academy of Sciences. These materials indicate that the petitioner’s work has been accepted for publication and abstracted. The only citation, however, is a single citation of the petitioner 1998 article in *Food and Science*.

In addition, the petitioner submitted letters from a food manufacturer who has applied the petitioner’s results and food retailers who have sold food developed by the petitioner. All of the letters are from Jilin Province.³

The director concluded that the petitioner meets this criterion based on “several testimonial letters from experts in the field as well as numerous citations.” The testimonial letters are from the petitioner’s colleagues, members of the food industry in Jilin Province, and an individual who appears to be a computer science expert. We find evidence of no more than a single citation beyond the less than notable abstracts appearing in *Chemical Abstracts*. Thus, we conclude that the petitioner’s contributions do not appear to have had any impact nationally in China or abroad. We note that the petitioner is a food scientist. It is inherent to his field to develop new processes for producing food. That he has developed processes that have been applied to some degree in Jilin Province is evidence of the petitioner’s competence, not necessarily a contribution of major significance. Thus, we withdraw the director’s finding that the petitioner meets this criterion. Even if we were to uphold the director’s finding, as stated by the director, it is only one criterion. A petitioner must meet three to establish eligibility.

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

As stated above, the petitioner has authored several papers and book chapters. As also stated above, a single article has cited the petitioner’s work. ██████ asserts that the petitioner’s book, “Design of Food Factory,” is the only specialized teaching material in this field in China. The “translation” submitted with the book asserts that it was published by Jilin University and ranked “on the list of top 8th [sic] in the universities of China.” As discussed above, however, the original foreign language document with this information does not appear to be in the record. More specifically, the “attached” documentation is the book itself and the “translator” does not explain how she has first-hand knowledge of this information.

³ Changchun City is the capital of Jilin Province and Changling County is located in the western portion of ██████

The director concluded that the petitioner had not demonstrated the impact of his published work. On appeal, counsel reiterates that the journals that published the petitioner's work were "core journals" in the field in China and that the articles were "abstracted" and "indexed" in various other journals and indices. Counsel concludes that the letters from the food industry also demonstrate the impact of the petitioner's published work.

We will not presume the influence of an article from the journal in which it appeared. Rather, we look for evidence of the impact of the article itself. As stated above, the abstracts of the petitioner's work do not appear to be significant; *Chemical Abstracts* attempts to abstract all new work in the field. A single citation is not indicative of national or international acclaim. Moreover, as also stated above, letters all from within Jilin Province are not indicative of national or international acclaim. The most notable evidence relating to this criterion includes the petitioner's books, especially "Design of Food Factory." Not every professor who authors or edits a textbook, however, enjoys national or international acclaim. The petitioner must demonstrate the significance of these books. Without evidence regarding the number of copies sold and evidence from universities around China affirming their use of these texts, the petitioner has not met his burden of demonstrating the significance of these books.

In light of the above, the petitioner has not demonstrated 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 a food scientist 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 a food scientist, 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.