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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 24 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, 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.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on November 29, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a mechanical engineering researcher. The petitioner specializes in fluid engineering and engineering thermophysics. At the time of filing, the petitioner was working as a Research Associate in the Department of Mechanical Engineering at the University of Maryland.

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.

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

We note here that the plain wording of this criterion requires "nationally or internationally recognized" prizes or awards for excellence in the field. Competition for an award may be open to candidates from throughout a particular country, but this factor alone is not adequate to establish that the award is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

The petitioner submitted a Certificate of Award for first prize issued by the State Education Commission of the People's Republic of China (a.k.a. Education Ministry) dated April 1996 for a project entitled "Modeling Techniques for a Large-scale Electronic Glass Furnace." The original translation for this "Science and Technology Advancement Award" states that the petitioner was the "4th Participant" and the most recent translation (provided on appeal) states that he was the "4th Contributor" (out of an unknown number total participants/contributors on the Electronic Glass Furnace project who were similarly recognized). There is no indication that the petitioner, who had earned his doctorate one month before receiving this award certificate, was the primary or lead researcher for this project. On appeal, the petitioner submits information printed from the internet showing that 51 projects were awarded first prize, 281 projects were awarded second prize, and 364 projects were awarded third prize for Science and Technology Advancement in 1996. Additional information states: "In 2002, the number of National Award of Ministry of Education of Science and Technology will be decided [sic] to award 250 programs after final evaluation." According to the petitioner's exhibit S-28, in addition to the above "Education Ministry Science and Technology Advancement Award," there exists a National Science and Technology Advancement Award, a National Invention Award, and a National Natural Science Award. The difference between the "Education Ministry Science and Technology Advancement Award" and the "National Science and Technology Advancement Award" has not been adequately explained. In this instance, there is no indication that the petitioner's project team faced competition from research institutions from throughout the greater field, rather than simply among "universities and colleges directly under the charge of the Ministry of Education."

The petitioner also submitted the following:

1. June 25, 1996 Certificate for "First Prize as an excellent paper" presented to the petitioner and his two co-authors at the Chinese Silicate Society National Glass Technology Conference
2. June 25, 1996 Certificate for "Second Prize as an excellent paper" presented to the petitioner and his two co-authors at the Chinese Silicate Society National Glass Technology Conference
3. May 5, 1997 Certificate of Award for "Excellent Paper" presented to the petitioner and his three co-authors at the Electronic Glass Production Technology Conference
4. September 1996 Certificate for "Third Prize as an excellent paper" in the "Paper Submission Contest" to celebrate the 20th anniversary of the publication of *China Glass* (presented to the petitioner and his two co-authors)
5. November 1994 Certificate indicating that the petitioner received a "1993-1994 Excellent Student Scholarship," Tsinghua University
6. November 8, 1996 Certificate indicating that the petitioner received a "1996 Excellent Graduate Student Scholarship" commending the petitioner's "hard work and excellent grades"

In regard to items 1 through 4, we note that the significance and importance of these “excellent paper” awards are not self-evident. The petitioner offers no supporting evidence showing that these certificates constitute top honors in the engineering field at the national level. It should be emphasized that the petitioner must submit documentary evidence showing the degree of recognition accorded to his awards. In regard to items 1 through 3, the evidence provided does not indicate the total number of best paper awards presented at each conference, the percentage of papers at each conference that were recognized, the criteria used in determining recipients, or the level of national attention or media coverage associated with the award presentations.

In regard to items 5 and 6, we note that university study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. According to the information provided by the petitioner, items 5 and 6 were presented not to established scientists with active professional careers, but rather to students in pursuit of an educational degree. We cannot artificially restrict the petitioner’s field to exclude all those professionals who had long since completed their educational training and therefore did not compete for such scholarships.

We note here that section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. Pursuant to the statute, the petitioner must provide adequate evidence to establish that the certificates presented under this criterion enjoy significant national or international stature. Simply alleging that an award is nationally recognized cannot suffice to satisfy this criterion. In this case, the petitioner has not shown that his awards are widely recognized beyond the organizations that presented them.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The petitioner submitted evidence of his membership in the American Society of Mechanical Engineers, the International Microelectronics and Packaging Society and Educational Foundation, and the American Association for the Advancement of Science. The record, however, contains no evidence of the bylaws or admission requirements for these organizations. Without such evidence, we cannot conclude that membership in these organizations required outstanding achievement in the petitioner’s field or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that the preceding organizations require outstanding achievement of their members in the same manner as highly exclusive associations such as 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.

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 or international distribution.

The petitioner submitted a letter notifying him of his listing in the 57th edition of *Marquis' Who's Who in America*. The record, however, contains no evidence of the actual published material about the petitioner appearing in the 57th edition, or evidence indicating that the 57th edition had been published as of the petitioner's filing date. A petitioner, however, must establish eligibility at the time of filing. See *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Furthermore, we do not find that having one's biographical sketch included in a vast directory of thousands of professionals constitutes qualifying published material relating to work in the petitioner's field.

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.

We concur with the director's finding that the evidence presented by the petitioner is adequate to satisfy this criterion.

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

The petitioner submitted several letters in support of the petition. We cite representative examples here.

[REDACTED], Consultant, ThermTech International, states:

I met [the petitioner] during my tenure as a Visiting Professor at . . . the University of Maryland in 2001 when [the petitioner] was a postdoctoral fellow. Since then, I have been in close contact with him to advance further our joint work.

[The petitioner] is a promising researcher in the field of thermal management of electronic equipment. Thermal design of electronic equipment . . . is a complex task, requiring the synthesis of computational analysis, experiments, and insights to be exercised by human experts. [The petitioner] has proved during his research work that he possesses the talent, intellectual capacity, and energy to tackle complex thermal problems.

In the same manner as that of [REDACTED] the majority of the initial letters of support discuss the petitioner's general research background, educational achievements, and experimental skills, but they provide little or no information regarding how the petitioner's specific research contributions have significantly impacted the greater field. The issue here is not the petitioner's research expertise or his diversity of scientific

training, but, rather, whether any of his past research accomplishments would qualify as a contribution of “major significance” in the engineering field.

Unlike many of the initial letters of support, the letters from [REDACTED] Director, Research Center for Advanced Manufacturing on Nanoscale Science and Engineering, National Institute of Advanced Industrial Science and Technology (NAIST), Japan, and Mitsuo Ataka, Group Leader, Protein Fine Structure Research Group, NAIST, do offer some observations regarding the petitioner’s specific research contributions. [REDACTED] notes that the petitioner worked in his laboratory in 1998 as a visiting scholar. [REDACTED] further states:

[The petitioner] quickly established a mathematical model to study Magnetoaerodynamic mechanism and develop [sic] a novel method to control air flow which has potential application in improving energy efficiency in automotive engine and reducing exhaust gas pollution. Moreover, he also [sic] involved in developing a new method to control effective gravity. This novel technology was successfully applied in CREST (Core Research for Evolutional Science and Technology) project for high quality protein crystal growth. His research was published in several top international journals

Many of the individuals offering letters of support cite the petitioner’s published articles as evidence of his original contributions. Published work, however, falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner’s published works and citations under the next criterion.

We accept that petitioner’s published work has yielded some useful and valid results; however, it is apparent that any journal article, in order to be accepted in for publication or presentation, must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication or presentation has made a major contribution in his field. The record contains no evidence showing that the petitioner’s methods are widely utilized in industry or hailed by leading manufacturers as a major contribution.

All but one of the petitioner’s initial letters of support were from his research supervisors and collaborators. This fact indicates that while the petitioner’s work is valued by those close to him, others outside his immediate circle are largely unaware of his research and do not attribute the same level of importance to his work. With regard to the personal recommendation of individuals from institutions where the petitioner has worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner’s reputation is mostly limited to those institutions, then he has not achieved national or international acclaim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

On appeal, the petitioner provides additional letters of support.

██████████ Professor and Deputy Director, Institute of Refrigeration and Cryogenics Engineering, Shanghai Jiao Tong University, China, notes that the petitioner's work has been presented at international conferences and published in various international journals. The record, however, contains no evidence showing that such activities are unusual for scientists in the petitioner's field. In regard to the petitioner's conference presentations, we note that many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of attention in comparison to the other conference participants, or that the petitioner has served as a keynote speaker. In the fields of science and engineering, acclaim is generally not established by the mere act of presenting one's work at a conference.

██████████ Provost, Rensselaer Polytechnic Institute, states: "[The petitioner] and his co-authors in Japan have developed a novel method to control convection and bubble motion using magnetic forces. This work has the potential to create virtual microgravity for biological study on earth and has specific application to the field of protein crystal growth."

In the same manner as ██████████ many of the witnesses of record discuss what may, might, or could one day result from the petitioner's work, rather than how his past efforts rise to the level of a contribution of major significance. In the present case, we cannot conclude that petitioner's past contributions far exceed those of established researchers in his field. For example, the record contains no evidence showing that the petitioner holds a patent for his innovations or that his particular methodologies are licensed to various industry manufacturers.

██████████ Director, Consortium of Researchers for the Emergence of Advanced Technologies, French National Center for Scientific Research, states that he became aware of the petitioner's work "because a competition existed (and still exists) between [the petitioner's] laboratory in Japan and our laboratory in France." ██████████ further states:

[The petitioner] has been an important player in some very original experiments, such as the bubble motion in microgravity combined with magnetic field in a drop tower. These experiments need to be cleverly prepared. . . . In fact their experiments were usually successful in getting original results in this difficult field.

The plain wording of this criterion requires not only that the petitioner's scientific results be "original," as noted in ██████████ letter, but that they are of "major significance in the field." We accept that the petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish him from other competent researchers. Without extensive documentation showing that the petitioner's findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of *major* significance. The visa classification sought by the petitioner is intended for aliens already at the top of their respective fields, rather than for those individuals progressing toward the top at some unspecified future time. A simple comparison

of the petitioner's achievements with those of his witnesses shows that the petitioner has not amassed a record of accomplishment placing him at the very top of his field.

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

The petitioner submitted evidence of his authorship of articles appearing in publications such as *Glass & Enamel*, *Journal of Crystal Growth*, *American Institute of Aeronautics and Astronautics Journal*, and the *International Journal of Heat and Mass Transfer*.

On appeal, the petitioner submitted citation indices showing that his articles have been cited by other researchers. When judging the influence and impact that the petitioner's published work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. In this case, however, the number of cites to the petitioner's articles demonstrate an acceptable degree of interest in, and reliance on, his work. Based on the citation indices provided on appeal, we find that the petitioner meets this criterion.

In this case, we find that the evidence satisfies only two of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. 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.