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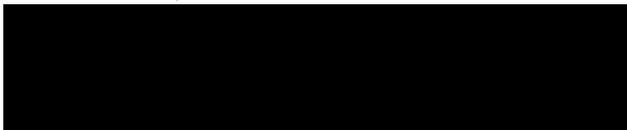
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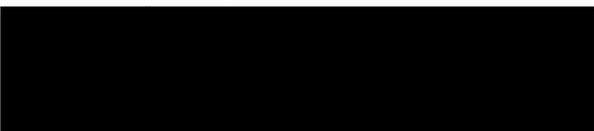


FILE: WAC 03 105 53946 Office: CALIFORNIA SERVICE CENTER Date: JUN 24 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

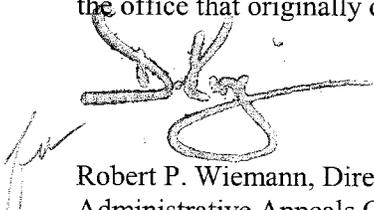
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, California 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 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 researcher and lecturer in computational science. 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

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

The petitioner submitted evidence that he was an "Excalibur Scholar" for the 1993-1994 academic year. The program, initiated by the British government and supported by British industry, provides scholarships in Great Britain for "second degree students from Central and Eastern Europe and the former Soviet Union." The petitioner also received honors recognizing his presentations at young scientist or student conferences.

The director concluded that the petitioner had not established the significance of the award and noted that they appeared academic in nature. The petitioner does not challenge this conclusion on appeal.

We concur with the director. Scholarships and honors limited to students or young scientists cannot serve to meet this criterion. Experienced experts in the field are not seeking scholarships and do not compete for student or young scientist honors. Thus, such recognition cannot establish that a petitioner is one of the very few at the top of his field. Thus, the petitioner has not established that he meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted evidence establishing his membership in the Society for Mining, Metallurgy and Exploration; the Canadian Institute of Mining, Metallurgy and Petroleum and the Institution of Mining and Metallurgy. The petitioner also submitted evidence that he was a speaker at a conference hosted by the Mineral Economics Society.

The director concluded that the petitioner had not established that the above associations were exclusive rather than open to all professionals in the field. The petitioner does not challenge this conclusion on appeal. We concur with the director. The record lacks evidence that any of these associations require outstanding achievements of their members. Thus, 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.

The petitioner submitted a list of 11 articles that cite a book authored by Julius Rubenstein who, in the preface, acknowledges the petitioner's participation in writing five of the 11 chapters. The petitioner also submitted a review article that cites the petitioner's 1986 article. The director concluded that articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. On appeal, counsel notes that the petitioner's work reported in the 1986 article was characterized as "substantial" in the review article. Counsel continues:

However, it is critical to add that citations of works of [the petitioner] by other scientists proves the works are not just useful, but are the basis for further research and, therefore, have made a significant contribution in the area. Citation of a scientist's work is widely recognized in the scientific community as major evidence of the importance of the scientific results. Further, the language of the 8 C.F.R. § 204.5(h)(3) does not explicitly state that citations must be accompanied by evidence demonstrating national or international renown; implicit in the citations is the value of [the petitioner's] work to other scientists as they pursue their own research.

We do not contest the value of citation evidence. Frequent citation is certainly evidence of the influence of the cited material and will be considered below as it relates to other criteria, but it cannot serve to meet the plain language of this criterion. While the regulation cited by counsel may not require additional evidence demonstrating national or international renown, it does explicitly require that the published material be "about the alien." We concur with the director that articles that cite the work of others are not primarily about the work cited. Moreover, the petitioner only "participated" in the writing of five out of 11 chapters in the book for which citations are provided. The record does not establish that the works cite the chapters to which the petitioner contributed.

Regarding the review article, it summarizes the advances reported in at least 13 articles. The review devotes a single paragraph to the petitioner's work. Thus, it is not published material primarily about the petitioner. Moreover, published in 1987, it reports on work published by the petitioner in 1986, nearly 17 years before the filing of the petition. As such, it is not evidence of the petitioner's sustained acclaim as of the date of filing.

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.

██████████ Head of the petitioner's research group at the Complex Research and Design Institute of Solid Fossil Fuels Preparation, affirms that the petitioner "supervised, directed and reviewed about twenty graduate students during his eight years of work as Senior Research Fellow." ██████████ the petitioner's former coauthor² and an associate editor of the *International Journal on Mineral Processing* affirms that the petitioner "assisted ██████████ in reviewing some papers submitted to this most prominent journal in the field." The petitioner submitted Russian language abstracts that purportedly review the work of others. The translations accompanying these abstracts are not certified. The director concluded that the petitioner's reviews serve meet this criterion.

The evidence submitted to meet any given criterion need not establish national or international acclaim by itself, but still must be evaluated as to whether it is indicative of or uniquely consistent with such acclaim. Duties that happen to relate to a criterion but are inherent to the alien's occupation are not persuasive evidence to meet that criterion.

As noted above, the petitioner and ██████████ have coauthored two articles. Being asked to review articles by a coauthor is not indicative of national or international acclaim. Moreover, 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. The record lacks 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.

In addition, supervising, directing and reviewing theses at an institution where the individual is already employed is not necessarily indicative of national or international acclaim. Nevertheless, directing theses is not inherent to the occupation of senior research engineer. Thus, the petitioner's direction of theses is more persuasive in this position than it would be for a professor.

² Dr. Lev's appellate letter attempting to disassociate himself from the petitioner will be discussed below.

The petitioner, however, left the Institute of Solid Fuels Preparation in 1993. The record does not establish the period during which the petitioner reviewed articles for the *International Journal on Mineral Processing*. As such, it is not clear that these duties are indicative of national or international acclaim as of the petition's filing date in 2003.

Finally, none of these duties relate to the petitioner's current field of computational science. In light of the above, the evidence relating to this criterion is weaker than implied by the director's decision. Even if we were to affirm the director's conclusion that the petitioner meets this criterion, for the reasons discussed above and below, the petitioner does not meet at least three criteria.

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

The petitioner relies on his patents, letters of recommendation, entries in the Encyclopedia of Separation Science and his participation with the book authored by Dr. Rubenstein to meet this criterion. The director concluded that the letters were from the petitioner's immediate circle of colleagues and that the petitioner's patents resulted from collaboration with others.

On appeal, counsel asserts that the curriculum vitae of the petitioner's references establish their expertise in the field and challenges the director's conclusion that all of the references were from the petitioner's immediate circle of colleagues. The petitioner submits a letter from ██████████ asserting that the petitioner was the lead scientist for his patented innovations and a coauthor of ██████████ book. The petitioner also submitted unsigned letters from ██████████ and ██████████. As these letters are unsigned, they have no evidentiary value. Finally, the petitioner submits letters from three other references affirming that they have never collaborated or worked with the petitioner. ██████████ now claiming to have never worked in the same institution as the petitioner, does not explain his prior assertion that he had "worked in close cooperation with [the petitioner] since his undergraduate and graduate research in Moscow, Russia, where we had a successful collaboration in the development of the dispersion model of column flotation." We further note that ██████████ has coauthored articles with the petitioner. That said, the reference letters warrant further discussion.

██████████ Vice President of Technology for Enventure Global Technology, asserts that the petitioner "was the first to apply the fractal geometry principles to solve [the] universal problem of wide variations in metallurgical results separating materials with similar chemical and mineralogical composition." This work relates to mineral flotation and the separation of particles based on their surface properties. ██████████ further asserts that the petitioner "has also [made] remarkable contributions to [the] environmentally important topic of deep cleaning of oil-contaminated wastewater using flotation technology in combination with conventional treatment stages."

██████████ an associate professor at Concordia University, asserts that the petitioner "is one of the few people in the world who have clear and detailed knowledge of the physical aspects of particle-bubble attachment and dynamics of phase separation in collection and cleaning zones of column cells of different designs." Dr. Povitsky explains that these processes "comprise the basis of flotation, the cornerstone for coal preparation, mineral processing, and water treatment." In addition, these processes "are also becoming widely used in other areas such as materials recycling, pharmaceutical and food industries." Dr. Povitsky continues:

[The petitioner] was the first in the world to successfully apply and numerically solve dispersion equations to describe dynamics of multiphase mass transfer for several components (free and attached particles, bubbles, entrained fines, etc.) in a flotation cell at low-intensity turbulence. He also made a substantial impact into research of flotation rate distribution and its effect on overall separation curve of complex flowsheets containing multiple recycles and conditioning/regrinding stages.

Dr. G. Krasnov of the Institute of Complex Development of Mineral Resources asserts:

[The petitioner] was the first to use finite difference and finite element methods to calculate flow of all components in column floatation cells under various initial and boundary conditions. This opened a new way to optimize geometrical parameters of the apparatus and prove that traditionally used tall columns are not the optimal solution for a wide range of applications.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The record establishes that the petitioner patented his innovations in the field. While we acknowledge that science and technology are collaborative fields and we withdraw the director's concerns regarding the collaborative nature of the patents, the petitioner must demonstrate the significance of his 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.* Some of the petitioner's references describe his innovations as "novel flotation devices," but do not provide examples of their use in the field. The record does not indicate that anyone has licensed or marketed the petitioner's patented devices. Thus, the impact of the devices is not documented in the record.

In addition, several references attest to the significance of "Column Flotation: Processes, Designs and Practices" as the first comprehensive text on this technology. They affirm its use as a textbook by several graduate institutions. These references further note that the book has been published in English, Russian and Spanish. The record supports this claim. The author of this book, however, is identified as Julius Rubenstein. The 11 chapters are not individually credited to different authors. Rather, the end of the preface provides:

I am especially grateful to [the petitioner] who participated in writing a number of chapters (2,4,7-9) and L. Bogomolova for preparing the English version of the manuscript.

On appeal, [redacted] credits the petitioner as a coauthor of the book. [redacted] does not explain why the petitioner is not formally credited as a coauthor and is merely the subject of an acknowledgement at the end of the preface. We note that authorship credit on the cover of a book or on the contents page garners significantly more recognition in the field than a one-sentence dedication at the end of the preface.

Ultimately, the record contains little in the way of specific evidence to show what major improvements the petitioner has wrought in his field of endeavor. While the petitioner has published useful research and

patented his inventions, it can be argued that the petitioner's field, like most science, is research-driven, and there would be little point in publishing research which did not add to the general pool of knowledge in the field. The record lacks evidence that the petitioner's articles are widely and frequently cited. As stated above, the record lacks evidence that the 11 articles that cite [REDACTED]'s book cite chapters in which the petitioner participated. Similarly, it is not clear that everyone who holds a patent for a useful invention has inherently made a contribution of *major significance* to the field.

In addition to his research in the field of flotation, the petitioner also established a consulting company. Richard [REDACTED] a Central Eurasian Mineral industry specialist with the U.S. Geological Survey, asserts that the petitioner founded and managed Research Group Infomine and authored "the first in-depth industry reports of base and precious metals supply and demand in Eastern Europe and Central Eurasia." [REDACTED] further asserts that the petitioner's reports "are widely used by leading metal analysts and mining and investment companies worldwide in analyses of metal and industrial mineral markets and defining investment opportunities." Mr. [REDACTED] concludes that the petitioner "has a unique combination of in-depth knowledge of metallurgical technologies, broad data analysis skills using modern computer-based methods, and a good understanding of economic principles."

[REDACTED] professor at the Moscow Steel and Alloys Institute, provides additional information regarding Research Group Infomine. Specifically, while there, the petitioner "created and maintained [a] database of technical and economical information on mining, energy and metallurgical companies in the former USSR. The group is widely recognized by Western commodity market analysts as a leading provider of independent studies of Russian base industries."

[REDACTED] further explains that the petitioner's "broad computer skills allowed [him] to create and maintain the complicated database of [a] huge collection of heterogeneous geological, technological, production and trade information having complex multi-layer relations."

[REDACTED], a managing consultant with Resource Strategies, attests to the quality of the mineral reports he received from Research Group Infomine. Similarly, [REDACTED] Director of Roskill, asserts that Roskill "continues to use [the petitioner] and Infomine as a source of accurate and detailed information relating to metal and minerals in the [Commonwealth of Independent States]."

These letters establish that the petitioner formed a successful company that produced accurate original reports and data for the mining industry. The record is not persuasive that the petitioner's ability to form a company capable of producing accurate reports and satisfying its customers is necessarily a contribution of major significance to the field. Moreover, the petitioner indicated on his curriculum vitae that his association with the company ended in 1993, nearly ten years before the petition's date of filing. As such, his association with this company cannot be considered evidence of sustained acclaim as of that date.

Finally, while the encyclopedia to which the petitioner contributed entries appears to be a comprehensive tool for the field, the petitioner has not established that every entry constitutes a contribution of major significance to the field.

More significantly, the petitioner does not seek to enter the United States to continue his work in mining engineering. The petitioner works for the University of California, San Diego. His first project with the university was to work on the design of a database for the National Partnership for Advanced Computational

Infrastructure (NPACI) and the Computation Science Resource Community (CSRC). The database serves as a repository for gathering information where members can add and peruse a collection of educational subject matter. The information included in the database includes assignments that can be accessed by students and other materials and comments. The petitioner is currently working in the Student Information Management Systems/Relational (SIMS/R) Department researching and developing “relational database solutions for the student information system including the degree Audit Reporting System (DARS).

Only one reference attempts to relate the petitioner’s previous engineering work with his current computer science work. Specifically Dr. Rubinstein states:

His extensive computer experience made logical his transfer into the area of computational science, an emerging field at the edge of computer science, fundamental science and applied mathematics. I have always noticed his inclination and rare ability of “popularization” of complex scientific and engineering problems. I feel his work at [the] Education Center on Computational Science and Engineering is a good match for his set of extraordinary skills and interests.

While the petitioner has clearly used his computer skills to advance his work in mineral engineering, we do not find that computational science is the field in which he has made the most contributions.

In light of the above, we find that the petitioner has not demonstrated contributions of major significance, and even if we concluded that his contributions were of major significance, they were not in the field in which he now seeks employment.

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

The petitioner has documented authorship of 19 articles and three entries in the Encyclopedia of Separation Science and his “participation” in the writing of five chapters of a popular textbook. All of the English-language articles, encyclopedia entries and the book focus on mining and flotation physics/engineering. The petitioner also presented his work at several conferences. Only one of the conference presentations related to computational science.

The director’s analysis under this criterion is confusing, first concluding that the petitioner meets this criterion, but then stating that the publication of scholarly articles “may have little value” if inherent to the field. The director once again expressed concern that the articles resulted from collaborations. Finally, the director concluded that conference presentations cannot serve to meet this criterion.

On appeal, counsel notes that collaboration is routine in the field of science and Dr. Rubenstein’s letter in which he affirms that the petitioner was the lead author for his articles. The petitioner submits evidence that a publisher has agreed to publish his new book. Publication after the date of filing is not evidence of the petitioner’s eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971).

We concur with counsel that collaboration itself does not diminish the petitioner’s published work. We further note that the petitioner is the sole author of some of the articles. Moreover, we typically view conference

presentations as comparable evidence relating to this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Of more concern is the lack of evidence of the impact of the petitioner's published work. We concur with the director that publication is inherent to the field of research. Thus, we must consider the reaction in the field to the petitioner's articles.

The record satisfactorily establishes that [REDACTED] book has been well received. As discussed above, however, the petitioner is not a credited author of the book or any of the chapters in the table of contents. While [REDACTED] describes the petitioner as a coauthor, that characterization is not persuasive in light of the lack of authorship credit in the book itself. We find that the book is far more persuasive evidence of Dr. [REDACTED] stature in the field. While the petitioner contributed to the book, we will not infer the petitioner's own acclaim from his affiliation with a renowned member of the field.

Further, as stated above, the record lacks evidence of the impact of the petitioner's articles. Specifically, the record lacks evidence that the petitioner's articles have been widely and frequently cited.

Finally, the petitioner's publication record is far more extensive in the field of mineral engineering than computational science, the field he proposes to pursue in the United States.

In light of the above, we withdraw the director's finding that the petitioner meets this criterion.

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

The petitioner has never claimed to meet this criterion and the director did not address it. We simply note that the petitioner's references, and the petitioner on his curriculum vitae, attest to the petitioner's founding and management of Research Group Infomine. Several of the petitioner's references also attest to the success of this company. Independent assessments of the company, such as journalistic coverage of it, would be more persuasive evidence of the company's distinguished reputation than the attestations of satisfied clients.³ Moreover, according to his curriculum vitae, the petitioner ended his affiliation with the company in 1993, nearly 10 years prior to filing the petition. As such, his role with this company is not evidence of sustained acclaim as of the date of filing and, thus, cannot serve to meet 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 computational 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 flotation and mineral engineer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his proposed field of employment, computational

³ While the record does contain an article referencing Research Group Infomine, the article contains no byline and was included in the record as an article authored by the petitioner. The petitioner's coverage of his own company cannot serve to establish the distinguished reputation of that company.

science. 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.