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U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 02 247 53562

Office: VERMONT SERVICE CENTER

Date: MAY 17 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.

Mari Johnson

R 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 July 22, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a scientist. The petitioner earned his Ph.D. in Chemistry from [REDACTED] 1995. At the time of filing, the petitioner was working as a Visiting Scientist in the laboratory [REDACTED] Principal Research Scientist and Executive Director. [REDACTED]

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.

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 petition was accompanied by correspondence from the Associate Editor of the *Journal of the American Chemical Society* and the Senior Editor of *The Journal of Physical Chemistry* reflecting that the petitioner was requested to review an aggregate total of three manuscripts.

On appeal, the petitioner submits two e-mails from September and October of 2002 reflecting that he reviewed an additional manuscript for *The Journal of Physical Chemistry*. This evidence came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. The appellate submission also included an undated letter from [REDACTED] Program Officer, [REDACTED] letter, which requests evaluation of a research proposal, is addressed "Dear Colleague" and does not specifically identify the petitioner. The record contains no evidence showing that the petitioner completed this research proposal evaluation as of the petition's filing date.

In regard to the three manuscripts reviewed by the petitioner as of the petition's filing date, we must note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of this kind does not automatically demonstrate that the petitioner has earned sustained national or international acclaim at the very top of his field.¹ Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers.

Without evidence that sets the petitioner apart from others in his field as of this petition's filing date, such as evidence that he has peer-reviewed an unusually large number of manuscripts for publication in various scientific journals, received multiple independent requests for his services from a substantial number of journals, or served in an editorial position for a distinguished journal (in the same manner as Professor [REDACTED] for example, who states that he is a member of the "editorial board" of three leading journals), we cannot conclude that the petitioner meets this criterion.

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

The initial letters of support consisted entirely of individuals from [REDACTED]. With regard to letters of support from the petitioner's close colleagues, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated institution. If the petitioner's reputation is limited to [REDACTED] then he has not achieved national or international acclaim.

¹ According to the [REDACTED] "[r]eviewing manuscripts is recognized as a professional obligation of scientists who publish themselves in the literature. Authors who repeatedly decline requests to review will be asked to submit their own manuscripts to other journals."

On appeal, the petitioner submits letters of support from several prominent witnesses outside of his circle of acquaintances.

[REDACTED] and [REDACTED] Professor in the School of Chemistry and Biochemistry at the [REDACTED] and Elected Member of the U.S. National Academy of Sciences, states:

[The petitioner] has distinguished himself from others working in synthesis of very high surface area, nanoporous silicas. His nanoporous silica materials reached 1700m per gram surface area which is the highest area surface of which I am aware. His work has tremendous application value in several areas. He has been credited with the first to demonstrate silica hybrid structure of porous and lamellar. . . . This work will have great applications such as drug delivery materials, hydrogen storage materials and additives for personal care and cleaning products.

[REDACTED] Professor and Director, Center for Catalytic Science and Technology, Department of Chemical Engineering, [REDACTED] states:

I have neither a personal or professional relationship with [the petitioner]. I am familiar, as are scientists in this field, with his work on zeolite encapsulated metal catalysis and solid acidic catalysts. [The petitioner's] work in the field of catalysts . . . has been recognized as forming the basis for the development of new products in chemical and petroleum industries. His work with new high surface area, nanoparticle catalysts including zeolite encapsulated transition metals and copper/zinc oxide catalysts resulted in high activity for hydrogenation and dehydration inside zeolite which can replace precious Pt catalyst in hydrogenation in full cell and dehydration catalysis.

[REDACTED] Professor of Chemistry, [REDACTED] states: "[The petitioner] is a recognized authority in the area of nanoporous and nanoparticulate materials. He has been credited with the first to demonstrate silica hybrid structures with both porous and lamellar structures."

[REDACTED] Professor, Department of Chemical Engineering, [REDACTED] states that the petitioner's work is internationally acclaimed and has been recognized as forming the basis for the development of new products in the chemical and petroleum industries.

[REDACTED] Associate Professor of Geochemistry, [REDACTED] states that the petitioner's "silicas exhibited excellent thermal stability and biocompatibility."

The petitioner also submits citation indices showing that his published work has been cited more than one hundred times. Numerous independent citations (such as those submitted on appeal) show that other researchers have been influenced by the petitioner's work and are familiar with it. The petitioner's citation indices bolster the witnesses' observations that his findings are of major significance to the chemistry field. The record adequately demonstrates that the petitioner's contributions are important not only to the research institutions where he has worked, but throughout the greater field. Based on the documents presented on appeal, we find that the petitioner's evidence is adequate to satisfy this criterion.

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 *Journal of Physical Chemistry B*, *Journal of Materials Chemistry*, *The Journal of Physical Chemistry*, *Inorganic Chemistry*, and *Journal of Chemical Physics*. The petitioner also submitted citation indices showing that his published articles have been widely cited by numerous independent 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 the present case, however, the significant number of citations of the petitioner's published articles demonstrates widespread interest in, and reliance on, his work. These citations show that many other researchers have acknowledged the petitioner's influence and found his work to be significant.

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

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. The petitioner in this case has failed to demonstrate 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.

Review of the record does not establish that the petitioner has distinguished himself as 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 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.