

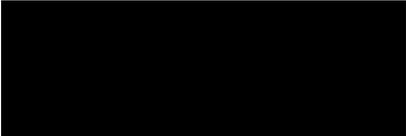
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U.S. Citizenship  
and Immigration  
Services

PUBLIC INFORMATION

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FILE: WAC 03 146 53936 Office: CALIFORNIA SERVICE CENTER Date: NOV 18 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:

SELF-REPRESENTED

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*

2 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. Specifically, the director concluded that the petitioner meets only two of regulatory criteria, of which an alien must meet three to be eligible for the classification sought.

On appeal, the petitioner asserts that the director did not understand the importance of the evidence submitted. We uphold the director's decision for the reasons discussed below. Specifically, while we disfavor withdrawing favorable determinations by the director, we cannot conclude that the petitioner meets any of the regulatory criteria.

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 postdoctoral researcher. Postdoctoral research positions are typically entry-level training positions for recent Ph.D. graduates. While the regulations do not preclude eligibility for an alien in the initial stages of his career, the petitioner must compare with the most experienced and acclaimed members of his field. 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.<sup>1</sup>

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

The petitioner asserts that his election as an outstanding researcher by the Marubun Research Promotion Foundation (MRPF) in Japan serves to meet this criterion. The petitioner asserts that "the award is given to the researcher who has risen to the top of his field and who is expected to lead international research effort[s] in his field." 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)).

The petitioner submits a letter from [REDACTED] of MRPF, asserting that the foundation was "established in order to extend financial assistance to young researchers, irrespective of their nationalities, who are engaged in industrial and technological research activities in Japan." The foundation "provides awards to those who have attained or are attaining remarkable and outstanding achievements in their research and academic exchange." Finally, [REDACTED] asserts that the petitioner was "elected as an outstanding researcher in March 13, 2001 because his achievements were highly evaluated in the field of microelectronics and his research . . . was evaluated to contribute to the industrial and technological fields."

In response to the director's request for additional evidence, the petitioner submits evidence that MRPF issues Academic Awards, Marubun Research Awards and Marubun Research and Encouragement Awards. The petitioner, and ten other individuals, won a Marubun Research and Encouragement Award. The materials reflect that, unlike the Research Awards, the Research and Encouragement Awards are limited to those under 35 years of age.

The director concluded that this financial assistance aimed at young researchers could not serve to meet this criterion. On appeal, the petitioner resubmits evidence already in the record and submits evidence that the work that resulted in this award has been cited and is the basis for a patent application.

Our focus under this criterion is whether the award is nationally or internationally recognized such that it is indicative of or consistent with national or international acclaim. As stated above, the award received by the petitioner is limited to those who are 35 years or younger. Members of the petitioner's field do not typically begin their postdoctoral careers much before turning 35 years old. As such, it is clear that the award is limited to those just beginning their postdoctoral careers. This conclusion is confirmed by the entry-level positions listed for almost all of the winners. As the petitioner did not compete with the most experienced and renowned members of his field for this award, we cannot conclude that it can serve to meet this criterion.

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

*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 that he is a member of the Materials Research Society (MRS) and the Electrochemical Society. The original materials reflect that MRS membership is open to individuals “actively engaged in work relating to the research and development of advanced materials or materials processes” and that the Electrochemical Society is a “professional” membership of 7,000 which requires members to be “interested in electrochemistry or allied subjects and possess a Bachelor’s degree or its equivalent, in engineering or natural science.” In response to the director’s request for additional evidence, the petitioner submitted evidence about the societies, but nothing reflecting that either society requires outstanding achievements of its general membership. Thus, the director concluded that these memberships could not serve to meet this criterion.

On appeal, the petitioner asserts that outstanding and noteworthy contributions are required for membership in the Electrochemical Society. The petitioner also notes that he has presented his work at MRS conferences. The petitioner’s assertion that the letter from the Electrochemical Society reflects that it requires outstanding and noteworthy contributions is not corroborated by the letter itself. As stated above, the letter only indicates that an interest in the field and an undergraduate degree are required. These are not outstanding achievements. Moreover, while the petitioner may have presented his work at MRS conferences, the issue is the membership requirements of MRS. As stated above, membership in MRS is open to those actively engaged in the field. Once again, this is not an outstanding achievement.

In light of the above, the petitioner has not established that he meets this criterion. We note that some of the petitioner’s references are “fellows” of various associations, suggesting that the top of the petitioner’s field is a level far above the level he has achieved.

*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 has consistently asserted that citations of his work serve to meet this criterion. While the director’s discussion includes an evaluation of the citations themselves, the director specifically stated that citations are not about the cited author’s work. On appeal, the petitioner challenges the director’s evaluation of the citations as descriptive rather than evaluative.

Regardless of whether the citations evaluate the petitioner’s work, the citing articles are not primarily about the petitioner’s work. Rather, they are about the citing author’s work. Thus, they cannot serve to meet 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 director concluded that the petitioner meets this criterion. While we try to accord some deference to the director’s favorable findings, as the petitioner has not been put on notice of problems we raise for the first time, we cannot uphold the director’s finding regarding this criterion.

The petitioner submits a form letter from the *Journal of Applied Physics* addressed to “Dear Colleague” requesting the petitioner’s interests to maintain in their “reviewer file.” The petitioner also submits two e-mail requests from [REDACTED] the petitioner’s supervisor, requesting reviews of manuscripts. The petitioner also submits two of her reviews.

Being requested to review an article by one’s own supervisor 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. Without 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 (as several of the petitioner’s references do) 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 petitioner relies on his published articles and patents to meet this criterion. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) provides a separate criterion for authorship of scholarly articles. We acknowledge the nexus between this criterion and the scholarly articles criterion; original contributions in science are typically published in scholarly articles. As stated below, the director found that the petitioner meets the scholarly articles criterion. To conclude, however, that meeting one of these two criteria presumes meeting the other is to negate the regulatory requirement that an alien meet at least three criteria and the statutory requirement that an alien present extensive documentation. Moreover, for the reasons discussed below, we withdraw that favorable finding by the director.

The petitioner’s field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner’s work.

The petitioner submitted eight published articles, three abstracts and conference programs listing the petitioner as a presenter. The petitioner also submitted articles that cite his work. The petitioner has established that seven articles have cited his 1998 article in the *Journal of the Electrochemical Society*. The petitioner has not established that any of his other articles have been cited more than once. This citation record is not consistent with the publication of work that is a contribution of major significance.

We acknowledge that the petitioner’s work, published in 2001 in the *Journal of Applied Physics*, was the basis of the recognition from MRPF. In his initial letter, the petitioner quoted language asserting that this work “may change the established concepts of Si deposition technology” and “is the first attempt to apply TPCVD for the deposition of Si films for solar cells.” The petitioner also quotes language asserting that the “success of this research will lead to the development of commercially viable technology.” This original source of this language, however, is the petitioner’s own article. It is not an independent evaluation of the work. The

petitioner also submitted evidence that he has applied for a patent for this technology in Japan. This office, however, has previously stated, in a precedent decision, 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.* While Professor ██████████ a former visiting professor at the University of Tokyo, asserts that this work demonstrated “the commercial viability” of Si films for solar cells and that this work “has been highly valued by the industry” the record lacks letters from the solar cell industry confirming their interest in licensing or otherwise applying this technology. The record does not contain any independent citations for the petitioner’s article on this subject in the *Journal of Applied Physics*.

The petitioner also discussed his work with Chemical Vapor Deposition (CVD) processes. The petitioner asserts that his work improves on traditional “trial-and-error” methods, which are “difficult to apply to the design of a reactor with complex geometry for large-diameter wafers.”

The petitioner submitted several letters from his immediate circle of colleagues. We will consider these letters below. We note, however, that the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner’s curriculum vitae and work and provide an opinion based solely on this review.

██████████ Deputy Director of Combustion and Industrial Technologies at Sandia National Laboratories, discusses the petitioner’s work at that laboratory. ██████████ notes that the postdoctoral position held by the petitioner is very competitive and that the petitioner has proven to be an “exceptional and talented researcher in the field of Chemical Vapor Deposition (CVD), which is a very important processing technique used in the semi-conductor- and glass-manufacturing industries.” ██████████ praises the petitioner’s ability to work within a team and asserts that the petitioner’s “work has been used as a foundation for a subsequent project in our department.” ██████████ concludes that the petitioner’s “work could potentially lead to very significant improvements in the glass- coating fields.” ██████████ does not explain how the petitioner’s work has already impacted the field beyond the typical progression inherent to the sciences.

██████████ in whose laboratory the petitioner works at Sandia National Laboratories, asserts that he became aware of the petitioner’s work through the petitioner’s thesis advisor. ██████████ asserts that the

petitioner's "approach to using a small-diameter tubular reactor to determine reaction mechanisms is considered to be of major significance and has opened new research directions." [REDACTED] provides no examples of research teams pursuing these new research directions. As discussed above, the petitioner's published research has not been extensively cited. [REDACTED] further asserts that at Sandia National Laboratories, the petitioner "has been instrumental in establishing a new experimental facility for the study of chemical vapor deposition" and that "this work will soon be submitted for a publication in a major scientific journal and will no doubt be a very significant contribution to the field." Work that has yet to be published and disseminated to the field for analysis and duplication cannot be deemed to have already impacted the field such that it can be considered a contribution of major significance. While we do not question [REDACTED] concluding statements regarding the importance of the petitioner's area of research, the importance of an area of research does not create a presumption that all original work in that area are contributions of major significance.

Professor [REDACTED] explains that while a visiting professor at the University of Tokyo, he met the petitioner and coauthored an article with him in *Science and Technology of Advanced Materials*. Professor [REDACTED] continues:

For the first time, [the petitioner's] work studied the important effect of supercooling on the deformation and solidification processes involved in [the] impact of molten drops under plasma spraying conditions. Supercooling is an important phenomenon in this problem and until [the petitioner's] research, its effects had not been considered by the thermal spray coating community. [The petitioner] modified an existing model which assumed equilibrium conditions for solidification and introduced the supercooling effect. This approach led to [a] much improved understanding of [the] process.

The final two letters from professors at the University of Tokyo provide general praise of the petitioner without explaining the specific impact his work has had in the field.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. The record does not establish that the petitioner's work, while original, rises to the level of a contribution of major significance consistent with national or international acclaim. Thus, the petitioner has not established that he meets 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 director concluded that the petitioner meets this criterion. As noted above, however, the petitioner's citation history, typically indicative of the influence of a given article, is minimal. Only one of the petitioner's articles has been cited more than once, and even that article, published in 1998, has only been cited seven times. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is

expected, to publish the results of his or her research or scholarship during the period of the appointment.” Thus, this national organization considers publication of one’s work to be “expected,” even among researchers who have not yet begun “a full-time academic and/or research career.” This report reinforces our position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community’s reaction to those articles. Given the minimal citation of the petitioner’s articles, we cannot conclude that his publication record is indicative of or consistent with national or international acclaim. As such, we find that the petitioner has not established that he 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 claims to have played a leading or critical role for Sandia National Laboratories. The petitioner initially relied on a letter from [REDACTED] and an employment letter confirming his “temporary” employment as a postdoctoral appointee with Sandia. Subsequently, the petitioner submitted an internal newsletter of Sandia National Laboratory, the *Combustion Research Facility News*, listing the petitioner as a member of the “Sandia team” that is “led by [REDACTED].” We have considered the petitioner’s alleged contributions while at Sandia above. At issue for this criterion is the position the petitioner was hired to fill. While Sandia National Laboratories may have a distinguished reputation, we cannot conclude that every postdoctoral researcher who plays an important role on a government funded project in one of a distinguished institution’s laboratories plays a leading or critical role for the institution as a whole. Thus the petitioner has not established 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 researcher 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 postdoctoral researcher, 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.