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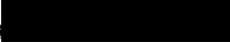
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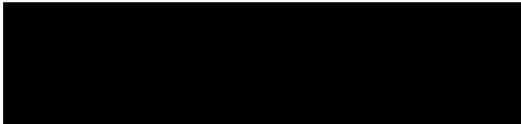
BZ

FILE:  Office: CALIFORNIA SERVICE CENTER Date: **SEP 07 2005**

IN RE: Petitioner: 
Beneficiary: 

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 preference visa petition was initially approved by the Director, California Service Center. In connection with the petitioner's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). Finally, the realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Id.*

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. 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.

On appeal, counsel asserts that insufficient time was provided to respond to the notice of intent to revoke. Counsel, however, does not request additional time to supplement the appeal and does not provide any new documentation in support of the appellate brief. We will consider counsel's additional assertions below. We note, however, that the petitioner filed the petition on March 6, 2000. The petitioner must establish that he enjoyed sustained acclaim at that time. In addition, the petitioner must establish his eligibility as of that date. Thus, our analysis below will not consider any accomplishments after that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971).

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 an intellectual property law specialist. 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.

Initially the petitioner submitted several awards issued by the Chinese State Science and Technology Commission and student scholarships. The petitioner no longer asserts that the scholarships constitute awards for excellence in his field of endeavor on appeal, and this office consistently holds that they do not. The most recent award is from 1998 and appears limited to Hubei Province. The record includes China's National Regulations on Encouragement of Science and Technology that address five national science and technology awards. The petitioner's awards addressed by these regulations include his 1994 and 1995 second place Science and Technology Advancement Awards. The record reveals that the State Council² issued 169 and 150 second place Science and Technology Advancement Awards in 1996 and 1997 respectively. The petitioner did not submit similar data for 1994 or 1995.

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

² The regulations reveal that the State Council issues Science and Technology Advancement Awards. The petitioner has not established that the State Science and Technology Committee is the same entity as the State Council. Thus, there remains some question as to whether the petitioner's Science and Technology Advancement Awards are the same awards discussed in the regulations.

The director concluded that the record lacked evidence of the previous winners and the criteria used to nominate award candidates and select awardees. On appeal, counsel asserts that the petitioner's State Science and Technology Advancement Awards are lesser nationally recognized awards in the petitioner's field.

We fail to comprehend the relevance of the names of previous winners of these awards. The director does not explain how the names of Chinese winners would be meaningful to U.S. adjudicators. Thus, we withdraw the director's negative inference from the petitioner's failure to submit that information. Nevertheless, the fact that the State Council issued 150 or more of these awards in 1996 and 1997 diminishes the significance of these awards. Typically, notable awards or prizes are bestowed to first, second and third place candidates, with one winner in each category.

Moreover, the petitioner's national awards were bestowed in 1994 and 1995, four and five years prior to the filing of the petition. While a petitioner need not establish sustained acclaim in each criterion he meets, we note that awards issued four and five years prior to the filing date of the petition are not evidence of sustained acclaim as of that date.

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 of his membership in the Chinese State Science and Technology Law Association. He also submitted evidence of his appointment as a director of the Science Dissemination Committee of the Fifth Representatives Conference of the Chinese State Science and Technology Information Association (CSSTI). The record includes information about CSSTI, including membership requirements for a "Director Member." Specifically, a "Director Member" must be a member who has "outstanding academic achievement in scientific and technological information or related field." Finally, the petitioner submitted evidence that he joined U.S. bar associations after the date of filing.

The director concluded that bar associations did not require outstanding achievements. The director did not contest that CSSTI requires outstanding achievements for some classifications of membership, but concluded that the petitioner had not demonstrated his membership in CSSTI. On appeal, counsel notes that the director did not contest that CSSTI requires outstanding achievements for some members and concludes that the petitioner has, therefore, met this criterion.

Contrary to counsel's assertion on appeal, the director did not find that the petitioner meets this criterion. As stated above, the director noted the lack of evidence of the petitioner's membership in CSSTI. Counsel does not address that conclusion on appeal. We concur with the director. Serving as a director for one of the association's conferences does not necessarily demonstrate that the petitioner is a "Director Member" of the association. Moreover, we withdraw the director's conclusion that CSSTI requires outstanding achievements of "Director Members." Such members must demonstrate outstanding *academic* achievements. This office consistently holds that academic achievements, such as class standing or grade point average, are not outstanding achievements in a field. Moreover, the record lacks evidence as to how the association defines "outstanding." For example, if the association considers typical achievements such as publication to be "outstanding," we would not agree that such achievements are outstanding as contemplated by the regulation.

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

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

The record is inconsistent regarding when the petitioner obtained his Master of Laws degree from Peking University, School of Law. The degree itself reflects a date of January 1998. The petitioner's transcript lists no exams after January 1996. [REDACTED] Deputy Chief of Secretariat, Ministry of Science and Technology in China and Chief of the Secretariat, Ministry of Science and Technology in China, asserts in his reference letter that the petitioner obtained the degree in 1996. The petitioner, however, lists 1994 on his curriculum vitae. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved the inconsistencies in the record regarding the date he received his degree.

[REDACTED] further asserts that the petitioner began working for the Department of Science and Technology Policy Regulation and System Reform as a policy analyst in July 1993. The petitioner, however, indicates on his curriculum vitae that he began such work in July 1992. [REDACTED] continues that the petitioner was one of the "principle drafters of the first basic law of China for science and technology development," which was passed by the People's Congress in March 1994. Subsequently, in 1996, the petitioner translated the United States' "White Paper" on intellectual property issues and published a "significant paper" on the subject in the "top technological law review." The petitioner then joined "the Intellectual Property Task Force in the Leading Group for China's National Information Infrastructure [(NII)] under the State Council of P. R. China." [REDACTED] concludes that because the petitioner "did the first analysis report to systematically probe intellectual property in cyberspace, he has played a significant role in the establishment of China's NII."

[REDACTED] further asserts that the petitioner "has enjoyed tremendous publicity." This assertion is not persuasive in light of the petitioner's concession in these proceedings that there is no published material about him.

The petitioner's law advisor, [REDACTED] asserts that the petitioner's thesis, which carried out proposals for the government, is "considered as China's first systematic report in the area." In the same letter, dated October 18, 1998, Professor [REDACTED] asserts that the petitioner was, at that time, a senior policy analyst. On his curriculum vitae, however, the petitioner indicates that he left this position in June 1998 and began working as a Deputy Director for the High-tech Development Center of China. As will be discussed in more detail below, however, the record contains insufficient confirmation of that appointment.

In a subsequent letter, Professor [REDACTED] attests to the petitioner's contributions to Chinese intellectual property law. All of the specific work that Professor [REDACTED] discusses in support of that conclusion, however, occurred prior to 1996, when the petitioner appears to have obtained his degree in the field. Moreover, it all occurred several years prior to the date of filing the petition. [REDACTED] Deputy Chief of Secretariat at the Ministry of Science and Technology in China, provides a similar letter.

While the petitioner's work is no doubt of value, we cannot conclude that every policy analyst working on a government sponsored project that results in new policy has made a contribution of major significance to the field. 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 petitioner submitted twelve articles in support of this criterion. The petitioner is merely the translator for one of those articles. Translating is not authorship. Six of the remaining articles appeared in *China Soft Science*, *China Computer World*, *Forum on Science and Technology in China* and a collection of these entitled *China Information Legal Framework Forum*. The petitioner was also an author of a chapter in the book "Fundamental Knowledge of Contemporary Science and Technology" and, according to two letters in the record, a portion of the textbook "Science, Technology and Law." A third reference asserts that *Science, Technology and Law* is actually a law journal. The copy of *Science, Technology and Law* contains a volume number, suggesting the publication is a law journal, not a textbook. None of the books or articles that appeared in the above publications were published after 1997, three years prior to the filing date of the petition.

The petitioner also submitted evidence of conference and workshop presentations. The only two conferences after 1998 were at the Boalt School of Law at the University of California, Berkeley, where the petitioner was a visiting scholar. Presenting one's work at the school with which one is affiliated is not indicative of or consistent with national or international acclaim. The petitioner presented an abstract at a workshop in [REDACTED] in 1996. In 1998, the petitioner gave a talk at the "International Symposium of the Protection of Intellectual Property for the 21st Century" jointly organized by the China Intellectual Property Society and the American Intellectual Property Law Association in Beijing. The petitioner attended the remaining workshops as a representative of China's State Science and Technology Commission.

[REDACTED] asserts that "Fundamental Knowledge of Contemporary Science and Technology" was a bestseller. A certificate from the National Committee of Science and Technology provides similar information, indicating that the petitioner authored a single chapter in that book. Both [REDACTED] and the certificate assert that the law journal that published the petitioner's article was actually a textbook.

The director concluded that, without citations to the petitioner's published works, he could not establish the significance of this work. On appeal, counsel asserts that citations were not originally required and that the petitioner is of the opinion that the evidence already submitted is sufficient to meet this criterion.

Unlike researchers, where publication of one's results is inherent to the field, the practice of law is not similarly dependent on publication and building on the results of others, as reflected by citations. That said, we are not persuaded that mere authorship of a law review article, textbook or workshop presentation is indicative of or consistent with national or international acclaim. The record lacks confirmation of the sales data of the "Fundamental Knowledge of Contemporary Science and Technology" from the publisher of that book. The petitioner failed to submit course curricula from colleges or law schools establishing that a textbook the petitioner is purported to have coauthored is widely used. In fact, the "textbook" appears to be a law journal.

The petitioner's presentations have been at institutions with which he is affiliated or at workshops as a representative of his government agency. It appears that participation at these workshops was one of the petitioner's job responsibilities, typical of midlevel bureaucrats.

The certificate from the National Committee of Science and Technology, however, purports to confirm the national circulation of the publications that carried the petitioner's work. As the committee is the publisher of

China Soft Sciences, we will accept this certificate as evidence of the circulation of that publication. Thus, the petitioner has established that this publication is internationally circulated.

While not all of the evidence submitted to meet this criterion carries the weight claimed by the petitioner, we are persuaded that the petitioner minimally meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

While the petitioner initially asserted that his conference presentations served to meet this criterion, he does not challenge the director's conclusion that such presentations do not constitute artistic exhibitions or showcases. We concur with the director's conclusion that this criterion does not apply to the petitioner's field.

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

We note that we have already considered the petitioner's alleged contributions to the field of intellectual property law above. The analysis under this criterion involves whether the role the petitioner was hired to fill was leading or critical for an entity with a distinguished national reputation. The petitioner submitted evidence that he was a director of the Science Dissemination Committee of the Fifth Representatives Conference of the Chinese State Science and Technology Information Association in 1998, appointed to preside over a "key research project" by the State Science and Technology Commission and the Justice Department of the People's Republic of China in 1997, represented the State Science and Technology Commission at a number of international workshops, and was a "visiting scholar" at the Boalt Hall School of Law from August 15, 1998 to September 14, 1998.

The above responsibilities are not persuasive. Serving in a leading or critical role for a single conference sponsored by an entity is not evidence that the petitioner played a leading or critical role for the sponsoring entity as a whole. While the certificate from the National Committee of Science and Technology asserts that the petitioner's work on the "national-class vital project" resulted in his national 1995 award, hundreds of projects received first, second and third place awards. As discussed above, the record is not persuasive that the petitioner's participation in workshops was beyond that expected of midlevel bureaucrats. Finally, one month performing research as a visiting scholar is not a critical or leading role for the law school as a whole.

asserts that the petitioner "took part in" the drafting team headed by that drafted China's first science and technology basic law and trade negotiations headed by on Sino-U.S. intelligence property rights "that attracted the world's attention." appears to have been primarily responsible for both the drafting and negotiations. He does not indicate how many government employees were part of the drafting and negotiation teams. Thus, the petitioner has not established that his role for the Chinese government was leading or critical beyond the obvious necessity for a negotiating team familiar with intellectual property law.

The program for the workshop attended by the petitioner in Ankara lists his job title as Senior Program Officer for the State Science and Technology Commission. On appeal, counsel asserts that this is a leading or critical role for the commission. The record does not contain an organizational chart or other evidence confirming counsel's assertion. The record does not establish how many senior program officers serve on the commission or to whom they report.

Finally, counsel asserts on appeal that the petitioner's role as Deputy Director for the High-Tech Development Center in the Ministry of Science and Technology in China serves to meet this criterion. The only evidence that the petitioner held this position is a letter from [REDACTED] Director General of the Executive Office of Intellectual Property Conference. The record does not contain an official appointment letter or confirmation from the High-Tech Development Center.

In light of the above, we concur with the director that 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 an intellectual property law specialist 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 an intellectual property law specialist, 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.

Beyond the decision of the director,³ the record does not establish that the petitioner sought to enter the United States to work in his area of expertise. Rather, the petitioner was an LLM student. While the petitioner has now obtained his LLM and his JSD from Boalt Hall School of Law, at the time of filing he had not done so. The petitioner was admitted to the New York State Bar on January 23, 2001, after the date of filing. The record does not reflect that he is admitted to any other U.S. state bar. Thus, at the time of filing, the petitioner was not even licensed to engage in the proposed area of employment. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. at 49.

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.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).