

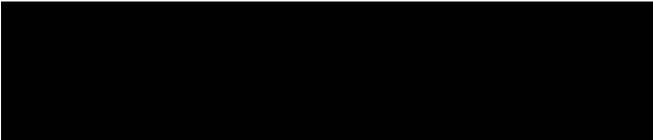


U.S. Citizenship
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FILE:



Office: NEBRASKA SERVICE CENTER

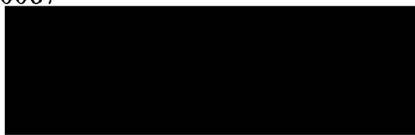
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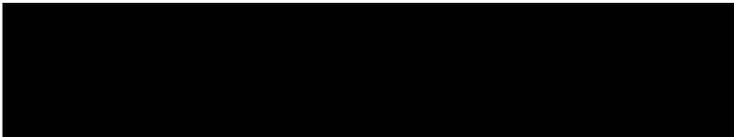
Petitioner:

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 immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established that he qualifies as an alien of extraordinary ability in his field of endeavor.

On appeal, the petitioner, through counsel, submits a new letter discussing the petitioner’s role with the National Automation Research Institute State Power Corporation of China (NARI) and evidence of NARI’s reputation in China. We are persuaded that the petitioner has overcome the director’s concerns regarding his acclaim in China and that, since entering the United States he continues to work in his area of expertise at a level of national impact.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in Citizenship and Immigration Services regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary 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 transmission engineer. The regulation at 8 C.F.R. § 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

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

The director acknowledged that the petitioner is listed as an inventor on two patents and that he made a significant contribution to commercially successful products, but concludes that the record lacks independent evidence that the petitioner's impact and influence on the field are indicative of having made contributions of major significance. On appeal, counsel notes the prestige and independence of the experts providing letters and that the Central Government of China has recognized the products developed by the petitioner through national awards. The petitioner submits a new letter and additional evidence regarding the importance of the projects on which the petitioner worked.

██████████ Vice President of NARI, explains that the petitioner "was one of [the] core members of the research [team] that initially conceived the fundamental technology for our award-winning LFP-900 series products – a computer based model that simulates and analyzes enigmatical signals of power systems." More specifically, the petitioner "was the primary architect and author of the computer software that executes and implements power system signal detecting and analyzing technology for ultra high voltage power transmission lines." According to Mr. ██████████ the petitioner's software is currently running in transmission relay devices deployed in 70 percent of the primary voltage transmission lines in China. The petitioner's team developed LFP-900, the first computer-based transformer relay devices based on dead-angle waveform restraint in the world and among the most advanced and effective. The petitioner also developed HELP-90, a patented automatic test instrument for protective relays. HELP-90 reduces testing time from one day to 30 minutes and generates \$80 million in sales for NARI every year.

Finally, Mr. ██████████ asserts:

[The petitioner] was actively involved in reviewing and establishing technical standards for China's electric power relay industry. His expertise was often called upon by China's electric power highest authority for advice and opinions on technical issues of power system protection and maintenance.

██████████ a professor at NARI provides similar information. More significantly, Dr. ██████████ Chairman of the Board of Directors for ██████████ asserts that he has relied on the petitioner's work and reiterates that the LFP-900 are deployed throughout China and represent "the most advanced technology trend in the system automation and protective relay industry world wide." Dr. ██████████ further asserts that HELP-90 has "revolutionized the relay equipment testing method in the manufacturing [sector] as well as in field maintenance." ██████████ Regional Sales Manager for ██████████ Engineering Laboratory, Inc., provides similar accolades. Finally, the petitioner's colleagues in the United States concur with the importance of the petitioner's work in China.

We concur with the director that letters, while having evidentiary weight, are more persuasive when supported by objective evidence that predates the preparation of the petition. As noted by counsel, however, such evidence is part of the record.

The Minister of National Science and Technology in China and the National Electric Power Ministry of China both awarded the petitioner first class national awards based on his work with LFP-900. Only 10 projects and 15 individuals received the Science and Technology prize in 1999. The National Science and Technology Ministry of China also awarded the project itself a "First Class Excellent Project" award. Moreover, as evidence of the commercial use of the petitioner's work, the petitioner submitted an official certificate issued by the Protective Relay Committee of the Chinese Society for Electrical Engineering confirming that, as of the end of May 2002, LFP-900 series protective relays have 65 to 70 percent market occupation percentage in the primary voltage lines in China and a 10 percent overall market occupation percentage. The certificate further indicates that there are "about 1500 sets of HELP-90 automatic test instruments sold in China."

As further evidence of the significance of these products, the petitioner also submitted brief notations in Chinese science newspapers announcing the awards received for these products, discussed above. In addition, a news article lists the petitioner as one of five developers of HELP-90 receiving a Third Class Science and Technology Progress Award issued by Jiangsu Province. The award itself is also in the record.

The petitioner also submitted the Electric Power Standard of China: General Specifications for Microprocessor-based Generator-Transformer Unit Protection Equipment listing the petitioner as one of eight "major authors for this standard." The petitioner is also listed as a member of the Large Generator-Transformer Protective Relay Working Group.

The director does not adequately explain why the above documentation does not constitute objective evidence supporting the assertions made by preeminent members of the petitioner's field in China. Moreover, on appeal, the petitioner submitted evidence that, after the date of filing, the United Nations chose NARI as its supplying vendor for protective relays. As the petitioner contributed to this project prior to the date of filing, we can consider this information as evidence of the continued success of the petitioner's project.

In light of the above, we are satisfied that the petitioner's work on LFP-900 and HELP-90 constitute contributions of major significance. Moreover, since entering the United States, the petitioner continues to work on significant projects. Professor [REDACTED] of Washington State University asserts that the petitioner developed an effective model for the control and analysis of the use and development of Distributed Energy Resources, small generating units, such as microturbines or fuel cells, dispersed close to power consumers. Professor [REDACTED] characterizes the petitioner's model as "unprecedented." In addition, [REDACTED] the petitioner's supervisor at Midwest Independent Transmission System Operator, Inc. (MISO), discusses several contributions the petitioner has made while at MISO, including the development of an automatic process for updating a flowgate monitoring file, which reduced a multi-day manual task to an hourly automatic process. Thus, the petitioner 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 initially submitted evidence that he has authored 12 articles in peer-reviewed journals or the proceedings of international and national conferences. The petitioner also submitted evidence that independent researchers in the field had cited his work.

The director concluded that publication is inherent to the field and that the petitioner had not demonstrated that his work was “extensively” cited or otherwise recognized in the field. On appeal, counsel asserts that publication is not inherent to inventors and developers.

While the director’s concern is understandable, counsel’s response is reasonable. The record must be reviewed as a whole, with consideration given to the alien’s occupation. The petitioner was working as an engineer and director of research and development in China. Counsel is persuasive that publication of one’s work is not necessarily inherent to industrial engineers, as opposed to research engineers in academia. Given this consideration, the petitioner’s publication and citation record is notable. Moreover, we cannot ignore that the petitioner has been the recipient of awards from ministries of the Chinese Central Government based on his work that appeared in these published articles and, more significantly, we must consider that this work has been widely adopted into the electrical system in China. Thus, given the record as a whole, we are satisfied that the petitioner meets this criterion. Moreover, upon entry into the United States, the petitioner continued to publish his work in peer-reviewed prestigious journals.

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

Initially and in response to the director’s request for additional evidence, the petitioner asserted that he served as Director of Research and Development for protective relays at NARI. Mr. [REDACTED], however, only stated in his initial letter that the petitioner was “one of [the] core members” of the LFP-900 research team and a “primary architect” of the software. Subsequently the petitioner “headed up the protective relay research group.” Mr. [REDACTED] then refers to the petitioner’s “leadership” of his research team. The evaluations of LFP-900 and HELP-90 list the petitioner as a “Main Developer” in that he designed the software for both projects. Mr. [REDACTED] is credited with the “General scheme design.”

Regarding NARI as a company, the petitioner submitted information from the company’s website reflecting that the company has 14 research institutes, 15 sub-companies and an integration facility factory. NARI employs 1,100 research engineers. Protective relay is one of 15 “research aspects” NARI is pursuing.

The director concluded that the duties and scope of the “Director” position had not been “conclusively established.” The director also concluded that the petitioner had not demonstrated NARI’s distinguished reputation nationally.

On appeal, the petitioner submitted a new letter from Mr. [REDACTED] and newspaper articles about NARI. Mr. [REDACTED] now expressly states that the petitioner succeeded Mr. [REDACTED] as “Director of our Protective Relay R&D Department.” Mr. [REDACTED] further states that NARI “has been the primary sources [sic] for technology advancements in the power system protective relay, Energy Management System (EMS), and other power automation technologies in the country.” Mr. [REDACTED] notes that NARI is now organized as a stock company with a group of subsidiaries.

The petitioner submits a report from China's Electrical Power Facility website revealing that NARI's power system relay protection subsidiary is among China's top 100 software companies. Only two of NARI's other subsidiaries made the list.

Given the record before him, which did not expressly support the petitioner's claim to have served as "Director" and did not include evidence of the reputation of NARI's protective relay department, the director's concerns were valid. Nevertheless, we find that the petitioner has overcome those concerns. The petitioner has now established that he served as Director of NARI's Protective Relay Department. While the record does not establish that this is a leading role for NARI as a whole, which has numerous other projects, the remainder of the record satisfactorily establishes that the department is critical to NARI. Moreover, as a subsidiary, the protective relay segment of NARI appears to have attained its own national reputation. As the petitioner played a leading or critical role for the protective relay segment of NARI, we are satisfied that he meets this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.