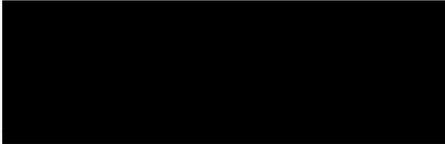


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FILE: [REDACTED]
WAC 03 191 53905

Office: CALIFORNIA SERVICE CENTER

Date: JAN 10 2006

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.


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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, the petitioner resubmits evidence previously presented, submits a printout from the website of U.S. News and World Report regarding the ranking of the petitioner's alma mater, and claims the director did not properly evaluate the evidence submitted and misinterpreted the statute and regulations. The petitioner's contentions and the evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed for the reasons discussed below.

Section 203(b) of the Act states, in pertinent part:

(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 into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences as a postdoctoral researcher in the field of chemical engineering with a focus on target-specific and personalized drug delivery. The record shows that the petitioner received his doctorate in chemical engineering with a

designated emphasis in biotechnology from the University of California, Davis in September 2002. This petition was filed on June 13, 2003 with supporting evidence. Finding the documents initially submitted insufficient to establish the petitioner's eligibility, the director issued a Request for Evidence (RFE) on October 26, 2004. The petitioner timely responded with a letter and copies of documents previously submitted. We address the petitioner's claims and the evidence submitted initially and on appeal in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not discussed below.

A one-time achievement (that is, a major, internationally recognized award).

The petitioner did not initially claim eligibility under this criterion. However, in his RFE response, the petitioner claimed to meet this criterion through his doctoral degree in chemical engineering with a designated emphasis in biotechnology awarded by the University of California, Davis in 2002. On appeal, the petitioner repeats his claim that the "University of California is one of the most influential research university system [sic] in the world" and that relatively few doctorates are awarded in his field. Specifically, the petitioner estimates that "you might have a good chance to come across 1 person with a PhD in Chemical Engineering with a Designated Emphasis in Biotechnology if you meet 200,000 people who have at least a Bachelor [sic] degree." The petitioner submitted a printout from the website of *U.S. News and World Report* which ranks University of California, Davis as number 38 on a list of the top engineering schools in the United States. The petitioner did not, however, submit evidence to corroborate his statement that only 13 doctoral degrees were awarded in chemical engineering in the United States in 2002. The record also contains no evidence to support the implication that the relatively small number of doctorates awarded in the petitioner's field is due to the difficulty or competitiveness of doctoral studies in that field. Simply going on record without supporting documentary evidence is not sufficient to meet 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)).

Even if properly documented, however, the relatively small number of doctoral degrees awarded in the petitioner's field is not evidence that the petitioner's doctorate is a major, internationally recognized award. Even when obtained from prestigious universities, doctorates do not in and of themselves demonstrate national or international acclaim and a doctorate alone is not evidence that the awardee has risen to the very top of his or her field. Rather, doctoral degrees are recognized in the sciences as a qualification or a requirement for certain advanced positions. Academic institutions award doctoral degrees to their own graduate students upon successful completion of a course of study. Doctorates do not result from national or international competition or an independent nominative process outside of the degree-granting institution. Accordingly, the petitioner does not meet this criterion.

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

The petitioner claims to meet this criterion through his receipt of: 1) a travel award to attend the American Institute of Chemical Engineers (AIChE) annual meeting in November 2000, 2) two Jastro-Shields Graduate Research Awards from the University of California, Davis from 1999 to 2001, and 3) the *Yi Li Da* scholarship from the Chinese Academy of Sciences in 1995. The submitted evidence does not satisfy this criterion. The petitioner's awards were all received when he was a graduate student. Fellowships, research grants and scholarships awarded to support an alien's graduate studies in the sciences reflect the alien's scholastic

achievements, but do not indicate that the alien has been recognized in his or her field as an established scientist who has achieved the requisite sustained acclaim.

In his RFE response, the petitioner claimed that he was “ONE of 3 people awarded [a] Travel Fellowship by the Bioinformatics and Genomics Topical Conference at the AIChE annual meeting in November 2000 from over 10,000 of [sic] chemical engineering graduate students nationwide and worldwide.” (emphasis in original). While the record documents the petitioner’s receipt of an AIChE travel grant, the petitioner submitted no evidence to corroborate that over 10,000 other graduate students applied for the travel grants. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N at 158. Even if documented, however, the selectivity of the AIChE travel grants would not establish that they meet this criterion. Only other graduate students – not established scientists at the top of their field – compete for such grants.

The petitioner submitted documents attesting to his receipt of two Jastro-Shields Graduate Research Awards from the University of California, Davis from 1999 to 2001 and the *Yi Li Da* scholarship from the Chinese Academy of Sciences in 1995. While these honors may indicate that the petitioner was an outstanding graduate student, they do not demonstrate sustained national or international acclaim as a scientist at the top of his field. Again, only other students compete for such funding. Although the petitioner is relatively young, he must still demonstrate his eligibility as one of that small percentage of individuals – regardless of age – who have risen to the very top of his field. The petitioner’s scholastic honors attest to his accomplishments as a graduate student, but they are not nationally or internationally recognized prizes or awards that demonstrate sustained national or international acclaim in his field. Accordingly, the petitioner does not meet this criterion.

(ii) 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.

In his RFE response, the petitioner claimed to meet this criterion through his membership in the American Chemical Society (ACS) and AIChE. The record includes a copy of the petitioner’s American Chemical Society (ACS) membership certificate. In his RFE response, the petitioner cited the ACS website and stated that ACS members must have a graduate degree or a bachelor’s degree from an ACS approved program in a chemical science, or a bachelor’s degree from a non-approved program with three years work experience or other significant achievement in a chemical science. The petitioner did not submit a printout from the ACS website or any other corroborative documentation of these membership criteria. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Even if these membership criteria were properly documented, however, they are not outstanding achievements in the petitioner’s field.

The petitioner submitted no documentation to corroborate his claim that he is a “Senior Member” of AIChE. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Id.* In his RFE response, the petitioner cites the AIChE website and states that senior membership in the Institute requires a bachelor’s or graduate degree in chemical engineering and between two and six years of experience in chemical engineering practice, but submits no documentation to verify these requirements. Yet even if documented, these membership requirements are not outstanding achievements in the petitioner’s field. Accordingly, the petitioner does not meet this criterion.

(iv) *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.*

As evidence of his eligibility under this criterion, the petitioner initially submitted copies of his invitations to serve on a University of California grant review panel and to submit a paper and organize an invited session at two conferences in his field between 2002 and 2003. The petitioner submitted no evidence that he accepted these invitations and actually reviewed the grant proposals or conference manuscripts of other scientists in his field. The record is also devoid of any evidence that his service would have reflected sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

The petitioner claims to meet this criterion through his invention of a "personalized drug delivery system and tunable imaging agents." As evidence to support this claim, the petitioner cites a U.S. patent application with this title that lists him as the inventor. The record contains no evidence that this patent was granted at the time this petition was filed. Even if obtained, however, a patent alone would not satisfy this criterion. To establish eligibility under this category by virtue of patents, a petitioner must not only show that his work has been granted a patent, but that the patented invention constitutes a scientific contribution of major significance in his field. The significance of the patented invention must be determined on a case-by-case basis. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm. 1998).

Other evidence in the record does not show that the petitioner's work has been recognized as making major contributions to his field. The petitioner submitted an article entitled "Improving the Evaluation of New Cancer Treatments: Challenges and Opportunities" that was published in *Nature Reviews Cancer* and another article entitled "Systems Biology" that was published in *C&EN*. These articles do not identify the petitioner or discuss or cite his work. While they may show the relevance and timeliness of the area of the petitioner's research, the articles do not indicate that his work has been recognized as making a major contribution to his field.

To further support his claim, the petitioner cites an electronic mail message from [REDACTED] Assistant Professor of Chemical Engineering at Northwestern University. This message informed the petitioner of his receipt of a travel grant to attend the 2000 AIChE annual meeting. Professor [REDACTED] states, "There was a lot of student interest in this program and so we congratulate you on your achievements to date which are helping to move the chemical engineering profession into bold new areas of study." This comment, while complimentary, does not establish that the petitioner has made a major contribution to his field in a manner consistent with the requisite sustained acclaim. As discussed above under the first criterion, the AIChE travel grants were awarded to students, not established scientists in the petitioner's field. Moreover, the record contains no evidence that the petitioner was a featured speaker at the conference, that his work was especially well received, or other evidence that his presented work had a major impact in his field.

As further evidence of his eligibility under this criterion, the petitioner refers to an electronic mail message from [REDACTED] Director of Research at the *Laboratoire de Lipolyse Enzymatique, Centre National de la Recherche Scientifique* in France. Dr. [REDACTED] thanks the petitioner for sending him a copy of the petitioner's manuscript (based on the petitioner's doctoral dissertation) and states, "I enjoyed very much reading the discussion and your data showing that the specific area of the mixed micelles, as well as the area per PC molecule, are dependent upon the ratio triton/PC." Dr. [REDACTED] then notes, "I remember a long time ago (in the

years 1975 [sic]) a discussion on this matter with [REDACTED] during a Gordon Research Conference in Meriden (New Hampshire). I still remember my argument, based on no experimental evidence at that time, that the 'interfacial quality' of a mixed micelle could be strongly dependent upon the ratio triton/PC."

The petitioner claims that Dr. [REDACTED] comment shows that his dissertation research "solved a 30 year old dispute." The record fails to support this alleged significance of the petitioner's work. The only other evidence that the petitioner claims supports his eligibility under this category is one request for a copy of the petitioner's article from a professor in Italy and two invitations for the petitioner to apply for faculty positions at the University of Connecticut and Harvard Medical School. There is no evidence that the petitioner has received a substantial number of reprint requests for his work or that the significance of his work helped him actually obtain a faculty position at a university or other research institution. The record shows that at the time of filing, the petitioner had published only one article in a scientific journal in 2001. The petitioner submitted no evidence that this article has been widely cited or otherwise recognized by other scientists as making an original contribution of major significance to his field.

The record also contains two recommendation letters from professors at the University of California, [REDACTED] who met the petitioner when he was a student in their classes: [REDACTED] Professor of Ophthalmology and Molecular and Cellular Biology and [REDACTED] Professor of Agronomy and Range Science and Biological and Agricultural Engineering. We note that Professor [REDACTED] letter is dated 2001, addressed to the Director of the Institute for Systems Biology and written as a reference letter for the petitioner's job application to the Institute. Professor [REDACTED] praises the petitioner's motivation, enthusiasm and skills. In his letter, Professor Plant explains that the petitioner "is one of the few scientists to combine the disciplines of bioinformatics and chemical engineering." While these letters reflect the authors' high opinion of the petitioner, they do not establish that he has made original contributions of major significance to his field in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. As frequent publication of research findings is inherent to success as an established research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent research teams or other proof that the alien's publications have had a significant impact in his field.

In this case, the record shows that the petitioner is the lead author of one article published in *Biotechnology and Bioengineering* in 2001. The record is devoid of any evidence that this article has been consistently cited by independent researchers in the petitioner's field or has otherwise had a significant impact in his field. On appeal, the petitioner states that *Biotechnology and Bioengineering* is "a major biotech journal with SCI Journal Factor greater than 2 [sic]," but submits no evidence to corroborate this claim. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

As further evidence of his eligibility under this criterion, the petitioner submitted a copy of an abstract of which he is the co-author that was presented at a Federation of American Societies for Experimental Biology meeting

in 2003 and three unpublished reports. In his RFE response, the petitioner claimed that he is the lead author of a paper that was presented at the 2001 AIChE annual meeting. A letter from Professor [REDACTED] of the University of Connecticut notes that the petitioner was scheduled to give a talk at the 2001 AIChE meeting, but the record contains no evidence of the petitioner's actual presentation or the publication of his manuscript. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

The petitioner also submitted evidence that he wrote a poem that was scheduled to be included in "The Sound of Poetry" compact disc recording produced by *poetry.com*. The record is devoid of any evidence that the petitioner's poem was actually published. Regardless, the petitioner's poetry is not within his claimed field of extraordinary ability and is of no relevance to his petition.

The record shows that the petitioner has published just one scholarly article in his field, which has not been cited by other researchers. This publication record does not demonstrate sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

The petitioner initially claimed to meet this criterion through his presidency of the Chinese Student and Scholar Fellowship (CSSF) at the University of California, [REDACTED] from 1999 to 2000. The submitted printout from the CSSF website states that the organization's goals are to promote cultural, academic, scientific and technological exchange between China and the United States and to provide social activities and services for students, scholars and their families who are from China. While admirable, the petitioner's past CSSF presidency is not relevant to this case. The petitioner claims to be an alien of extraordinary ability in the sciences as a postdoctoral researcher in the field of chemical engineering with a focus on target-specific and personalized drug delivery.

As further evidence of his eligibility under this criterion, the petitioner submitted a copy of his half-page proposal submitted to the University of California, [REDACTED] Center. The record is devoid of any evidence that his proposal was accepted or that the petitioner held a leading or critical role for the Genome Center. Accordingly, the petitioner does not meet this criterion.

On appeal, the petitioner intimates that the director was biased against him due to his nationality and that the director's adjudication of the petition was unfair. We find nothing in the director's decision to support the petitioner's contentions. The petitioner contends that the director misstated the year the petitioner received his doctoral degree, but we have noted the correct year in this decision. Apart from this harmless error, the petitioner does not identify any other factual or legal error made by the director in conducting his review of the petition. Nor has the petitioner demonstrated any resultant prejudice such as would constitute a due process violation. See *Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence submitted in this case shows that the petitioner was an excellent graduate student. However, the record does not

establish that the petitioner has achieved sustained national or international acclaim as a scientist placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.