

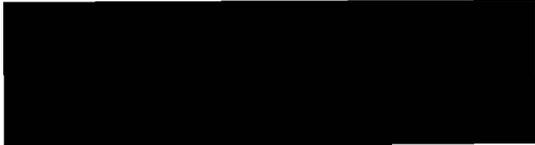


U.S. Citizenship
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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 15 2006
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IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which 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 the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and additional evidence. While we concur with most of the legal principles discussed by the director, we find the director gave insufficient weight to some of the evidence submitted. Specifically, the director failed to give sufficient weight to the petitioner’s review of research proposals for independent institutions, his contributions to his field as demonstrated by independent letters and frequent citation and his influential scholarly articles.

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 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 researcher. 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 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 petitioner initially submitted evidence that he had refereed articles for *Physical Review Letters* and *Physical Review B*. In response to the director's request for additional evidence, the petitioner submitted evidence that he had also reviewed an article for *Optics Express*. The director concluded that such reviewing responsibilities are typical in the field. On appeal, counsel notes the submission of letters from the editors of these publications confirming that they seek highly qualified reviewers and cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994). The decision in *Buletini* held that 8 C.F.R. § 204.5(h)(3)(iv) does not require that participating as a judge was the result of having extraordinary ability. *Id.* at 1231.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, we do not find that it violates the reasoning in *Buletini*, 860 F. Supp. at 1231, to examine the evidence submitted as to whether it is indicative of or inconsistent with national or international acclaim. The court in *Buletini* was concerned that an alien would need to first demonstrate "extraordinary ability" in order to meet this criterion. We are not following this "circular exercise" that troubled the court. Rather, we are looking at the type of review responsibilities inherent to the field and what review responsibilities might be indicative of or at least consistent with national acclaim. Specifically, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. According to the letter from Editorial Director [REDACTED] the journals of the American Physical Society receive over 25,000 manuscripts that must be peer reviewed. 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, we cannot conclude that the petitioner meets this criterion.

Nevertheless, the record also reveals that in March 2002, an independent foundation, the Netherlands Foundation for Fundamental Research on Matter, FOM, which funds one-third of the research at academic institutions in physics in that country, directly solicited from the petitioner a review of a research proposal. A follow-up letter confirms that the petitioner completed this review. In addition, [REDACTED] the feature editor of the *Journal of the Optic Society B*, confirms that, based on the petitioner's well-cited research, Professor [REDACTED] requested the petitioner to review a manuscript for a special issue on "Localization, multiple-scattering, and lasing in random nanomedial." These requests appear to go beyond the typical review requests typical in the field. As such, we are persuaded 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.

Once again, we agree in principle with the director's legal analysis under this criterion. Specifically, we agree that reference letters, while important, cannot serve as the sole foundation of a successful claim of eligibility. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner's most significant contribution, according to the record, is the fusion of two unrelated fields of physics, coherent light amplifications and the physics of disordered media, to propose and develop a mirrorless laser while studying for his Ph.D. in India. Specifically, the petitioner replaced the mirrors with a disordered scattering medium in the amplifying system. This work is significant for the production of cheap lasers. Dr. [REDACTED] the petitioner's postdoctoral supervisor at the University of California, Los Angeles (UCLA), asserts that the petitioner's ideas on this type of laser have been experimentally verified and have motivated other work in this area. Contrary to the director's concern over the lack of objective corroboration of the significance of this work, we note that one the petitioner's articles in this area had been cited 49 times as of the date of filing. The authors citing this work, while primarily writing about their own work, explicitly credit the petitioner with motivating their work.

At UCLA, the petitioner proposed one of the first quantum computer designs based on external laser controlled quantum dynamics of mesoscopic quantum dots. As a visiting researcher at the Massachusetts Institute of Technology (MIT), the petitioner continued in this area of work, showing that there is a limitation on the precision of a qubit, the basic building block of a quantum computer, when it is being operated fast.

At Northwestern University, the petitioner is pursuing overcoming this limitation with qubits through the use of a rubidium atomic system as a qubit. Dr. [REDACTED], Director of the Electronic Material Research Institute at Northwestern University, asserts that the petitioner is performing “the first experiments to be performed in these types of disordered and chaotic systems.”

Finally, according to Dr. [REDACTED] the petitioner performed microwave experiments with disordered and chaotic cavities. Dr. [REDACTED] asserts:

[The petitioner] has described in a fundamental way certain classical resonances called Ruell-Pollicot resonances. These resonances were measured experimentally in microwave experiments. They play a significant role in determining the conductivity or transport of mesoscopic quantum dot systems, or in general wave communications through restricted disordered media. In this work, he has shown also several interesting properties of chaotic systems. To stress the significance of this work for both fundamental and applied science, please note that this work was published in the Proceedings of the “Nobel Symposium on Quantum Chaos Y2k, Sweden.”

Dr. [REDACTED] explains that this work at Northwestern University allowed observance of resonances that were previously only known theoretically.

Significantly, the independent references, Dr. [REDACTED] a Senior Physicist at Ames Laboratory and Fellow of the Optical Society of America, and [REDACTED], a professor at Queens College of the City University of New York, are not simply responding to a request for a review of the petitioner’s curriculum vitae. Both experts had been previously aware of the petitioner’s reputation through his publications and presentations. Dr. [REDACTED] asserts that he cited the petitioner in one of his own presentations and is currently planning a future collaboration with the petitioner regarding mirrorless lasers.

Given the evidence discussed above and the remaining evidence of record, we are persuaded that the petitioner has produced results that have been duplicated and heavily relied upon in the field. Indeed, he appears to be recognized as one of the pioneers of mirrorless lasers. As such, we are persuaded that 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 submitted evidence of 13 published articles and 17 presentations. The petitioner also submitted evidence that he has been consistently cited, the highest citations for any article being 49. Finally, the petitioner submitted the actual citing articles. Some of the citing authors confirm the petitioner’s theoretic predictions or acknowledge that their work “was motivated” by the petitioner’s work. A 1997 review article in *Physics World* discusses the significance of the petitioner’s work and the work of another group in Hong Kong towards the eventual development of a coherent random laser.

The director concluded that authorship in and of itself did not distinguish him from others in his field. On appeal, counsel notes the submission of the petitioner's citation record. While we concur with the director that the publication of one's results is inherent to the field of research, we find that the director failed to give sufficient weight to the petitioner's citation record. While we do not agree with counsel that these citations rise to the level of published material about the petitioner pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii), we do find them relevant to the significance of the petitioner's publications in the field. We are satisfied that the petitioner's publication record, including the citations to his work, is sufficient to meet 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.