

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B2



FILE: [REDACTED]  
EAC 05 222 52909

Office: VERMONT SERVICE CENTER

Date: APR 20 2007

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.

*for*  
*Naura Deadrick*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which 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.

On appeal, the petitioner submitted a statement and additional evidence. The petitioner has not overcome the director's concerns.

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.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). 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 the following 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.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (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;
- (iii) Published material 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;
- (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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

Initially, the petitioner submitted a personal statement chronicling her work experience. On December 14, 2005, the director issued a notice of intent to deny the petition, advising the petitioner of the ten criteria and requesting evidence that the beneficiary meets at least three of those criteria. In response, the petitioner submitted a manuscript bearing no indicia of publication, a provincial certificate of merit and an appointment letter for a research position in China.

The director noted that the petitioner's certificate of merit was not a national award or prize and that the manuscript did not appear to have been published and concluded that the petitioner had failed to submit evidence of her sustained national or international acclaim.

On appeal, the petitioner submitted a statement asserting that she is "well reputed" in the field of agriculture in China. She further asserts that a first grade provincial prize is equivalent to a second or third grade national prize and, due to China's strength in the field of agriculture, national prestige in China is equivalent to international prestige.

The petitioner submits a letter from [REDACTED] an agricultural researcher at the Changle City Research Institute of Agricultural Science and Technology. The letter is not on official letterhead. Mr. [REDACTED] asserts that he and the petitioner worked for two divisions of the Fujian Provincial Department of Agriculture and that the petitioner produced abundant experimental data. Finally, the petitioner submitted Mr. [REDACTED] membership identification for the Fujian Provincial Society of Agriculture.

The statute requires *extensive* documentation to establish eligibility for this classification. The regulations require that an alien of extraordinary ability be able to demonstrate *sustained* national or international acclaim. The record does not reflect that she has attained any national acclaim in her field or that she had sustained acclaim as of the date of filing in 2005.

First, the petitioner has not established the significance of her award. As it was issued by a provincial authority, it does not appear to be a national award. While the petitioner implies that the award has international prestige, 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 record lacks evidence that the selection of the awardees garners international or even national media coverage. The petitioner has not submitted evidence regarding the number of similar awards issued by the Fujian Provincial Department of Agriculture or the pool of competitors. Without such evidence, the petitioner cannot establish that this certificate of merit is a nationally or internationally recognized prize or award which the most renowned members of the field aspire to win.

Second, the petitioner claims to have cultivated a new species of cotton. The petitioner must support this assertion. *Id.* The only evidence of the petitioner's contributions in the field is the letter from Mr. [REDACTED], a colleague at the Fujian Provincial Department of Agriculture, who makes no reference to a new species of cotton. Regardless, this type of letter cannot establish the petitioner's recognition beyond her immediate circle of colleagues. Moreover, 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. 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. *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* at 165.

In evaluating the reference letters, we note that letters containing 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 her reputation and who have applied her work are the most persuasive. Ultimately, 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.

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. 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 record contains no evidence that the petitioner's "abundant experimental data" has been widely influential in the field or that she has garnered acclaim at the national level (by definition beyond Fujian Province) for her new species of cotton.

Third, as stated by the director, the manuscript submitted bears no indicia of publication, such as a journal title or pagination. The petitioner makes no attempt to rebut this conclusion on appeal, and we concur with the director. Thus, the petitioner has not established that she has authored scholarly articles in major or professional trade publications or other major media pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

Fourth, while the petitioner claims to have been promoted to "vice-director" of the Fujian Provincial Academy of Agricultural Science, the appointment letter is only for the position of "researcher." We concur with the director that the petitioner's appointment as a researcher for the Fujian Provincial Academy of Agriculture cannot serve to meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The record lacks evidence that this appointment is for a leading or critical position beyond the obvious need for the academy to employ competent researchers. In other words, this appointment does not set the petitioner apart from others in her field of research.

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 herself as a plant physiologist to such an extent that she

may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. Specifically, for the reasons discussed above, she has not submitted extensive documentation establishing that she meets at least three of the ten regulatory criteria.

Moreover, the statute requires *sustained* acclaim. According to the petitioner's Form G-325A, Biographic Information, submitted in support of her Form I-485, Application to Register Permanent Residence or Adjust Status, the petitioner has not worked as a researcher since May 2003, over two years before filing the instant petition. Thus, any notoriety the petitioner may have enjoyed in the field in 2003, and the record contains no evidence of such notoriety, was not sustained two years later when the petition was filed.

Finally, beyond the decision of the director, the petitioner has not established that she is coming to the United States to continue work in her area of expertise. 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).

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner did not submit any of the possible types of evidence required under this regulation. Moreover, she has not established that, after a two-year absence, she is still qualified to conduct research in a field that is presumed to be constantly growing in new knowledge.

For the above stated reasons, considered both in sum and as separate grounds for denial, 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.