



U.S. Citizenship
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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: DEC 27 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.

Robert P. Wiemann
f Robert P. Wiemann, Chief
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 dismissed.

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, the petitioner asserts that the director ignored certain evidence and misapplied the regulatory standards. For the reasons discussed below, while we withdraw the director’s finding that the petitioner has not made contributions of major significance, we uphold the director’s ultimate conclusion that the petitioner has not established his overall eligibility through meeting at least three of the regulatory criteria. Our finding is consistent with a review of the evidence in the aggregate.

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 into 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, 60898-99 (Nov. 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 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 a research associate. 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.

The petitioner has never claimed to meet this criterion and the director concluded that the record lacked evidence that the petitioner meets this criterion. We acknowledge, however, that the record contains a certificate confirming the petitioner's receipt of a Welch Foundation Graduate Fellowship "in recognition of outstanding academic achievements in the College of Science at Texas A&M University, 1995-1996." The petitioner also submitted a 1995 certificate from McDonald's recognizing the petitioner's work as an "Outstanding Graduate Assistant – Teaching."

Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Commr. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien's eligibility for this more exclusive classification. Thus, the petitioner's student fellowship recognizing outstanding *academic* achievements cannot serve to meet this criterion.

Moreover, the pool of competitors for the McDonald's award appears limited to graduate assistants. As the most experienced and renowned members of the field do not compete for this award, it cannot set the petitioner apart from others in the field as one of the small percentage who has risen to the top of the field, including those who have completed their education.

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

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.

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

Once again, the petitioner has never claimed to meet this criterion and the director concluded that the record lacked evidence that the petitioner meets this criterion. We acknowledge, however, that the petitioner submitted evidence of his membership in American Chemical Society (ACS). As the petitioner has not submitted any evidence that ACS requires outstanding achievements of its members, the petitioner has not established that he meets this criterion.

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.

Initially, the petitioner submitted a "News and Views" article in *Nature Materials* that reviews the petitioner's article in that same issue and a review highlighting recent science literature in *Science* that includes a two-paragraph review of one of the petitioner's articles in the *Journal of the American Chemical Society*. The petitioner also submitted a photocopy of a letter from Dr. [REDACTED] the Brockhouse Chair in the Physics of Materials at McMaster University in Canada and the author of the "News and Views" article. In a request for additional evidence, the director inquired as to whether *Nature Materials* typically reviews the articles it is publishing in the same issue.

In response, the petitioner asserts that *Nature Materials* only highlights breakthroughs in the **physical sciences**. The petitioner submitted the original letter from Dr. [REDACTED] who asserts that he was asked by the Editor of *Nature Materials* to write the "News and Views" article and that he was happy to do so. He discusses the significance of the petitioner's article that appeared in the same issue of *Nature Materials* that was the subject of his review. The petitioner also submitted evidence that *Nature Materials* has an impact factor that places it "not only first among materials science journals but also across all the primary research journals in physics and chemistry."

The director concluded the petitioner was not the primary subject of the section of *Science* that included a brief synopsis of his recent article and that the "spotlight" of the petitioner's article in the same issue of *Nature Materials* that carried his article could not serve to meet this criterion. On appeal, the petitioner asserts:

In justifying his finding, the Director inserts an arbitrary criterion on whether the mentioned top journals normally highlight exceptional research by top scientists. Such an additional, arbitrarily-created extra burden of proof is not a part of the Title 8 CFR. Nor does a plain, straightforward reading of the Code justify even a speculative possibility that such extra burden was intended by the authors of the Code.

It is insufficient, however, to merely submit evidence that relates to a given criterion; the evidence must be indicative of or consistent with sustained national or international acclaim as one of the small percentage at the top of the field if that statutory standard is to have any meaning.

The review in "News and Views" is more akin to a promotion of the petitioner's article by the publisher than independent journalistic coverage of the petitioner and his work. It does not garner him any recognition in the field beyond those already reading the issue of *Nature Materials* in which his article appears. The review in *Science* is from a more independent source but we concur with the director that this brief synopsis of the petitioner's article does not rise to the level of published material about the petitioner indicative of sustained national or international acclaim as one of the small percentage who has risen to the top of the field.

While the reviews are relevant to both the petitioner's claim to have made contributions of major significance and the significance of his scholarly articles, they cannot serve to meet this criterion.

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.

Initially, Dr. [REDACTED], a professor at the Massachusetts Institute of Technology (MIT) who worked with the petitioner there from 1998 through 2004, asserts that the petitioner has "recently" been requested to review manuscripts "regularly" for the *European Journal of Inorganic Chemistry*. Dr. [REDACTED] asserts that the petitioner has already completed one review and "will be asked to review more articles in the future on a regular basis." Dr. [REDACTED] further asserts that he asked the petitioner to review "a number" of manuscripts for leading scholarly journals. The petitioner submitted two electronic mail requests, one from the *European Journal of Inorganic Chemistry* and the other from the *Journal of Luminescence*. Both requests ask that if the petitioner is unable to complete the review that he provide the name and address of another member of the field who might be able to do the review instead.

In response to the director's request for additional evidence, the petitioner submitted a letter from Dr. [REDACTED], the Editor of the *European Journal of Inorganic Chemistry*, who confirms that the petitioner is serving as a peer reviewer for that journal and that his comments have been prompt and appropriate, providing unambiguous information as to the suitability of a manuscript and its potential for improvement. The petitioner also provides a similar letter from Dr. [REDACTED], Editor-in-Chief of the *Journal of Luminescence*, who asserts that the journal only asks experts with a proven track record to review manuscripts and that Dr. [REDACTED] considers the petitioner among the "top researchers who are well suited to evaluate work of other scientists in our field."

The director concluded that the petitioner merely documented his participation in the peer-review process, which the director concluded was not unusual for a published researcher. On appeal, the petitioner asserts that the regulation does not exclude peer reviewers from qualifying under this criterion.

As stated above, the evidence submitted to meet a given criterion must be evaluated as to whether it is indicative of or consistent with national or international acclaim as one of the small percentage who has reached the top of the field if that statutory standard is to have any meaning.

Regarding the review requests directly from Dr. ██████████, being requested to review an article by one's own colleague is not evidence of national or international acclaim. Regarding the more independent requests, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field and is not indicative of sustained national or international acclaim as one of the small percentage at the top of the field. Without evidence that sets the petitioner apart from others in his field as a researcher with national or international acclaim as one of the small percentage at the top of the 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.

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

The petitioner obtained his Ph.D. from Texas A&M University in 1997. From 1998 through 2004, the petitioner worked as a postdoctoral research associate under the direction of Dr. ██████████. In 2004, the petitioner began working as a research associate under the direction of Dr. ██████████ where he remained when the petition was filed. According to a letter that supplements the appeal, the petitioner is currently working for the Dow Chemical Company.

The petitioner submits several support letters discussing the significance of his work at the various institutions listed above. Dr. ██████████ asserts that the petitioner's Ph.D. research produced a number of important discoveries regarding the properties of uranyl phosphonates and "developed new synthetic methodologies for the synthesis of extended inorganic materials, which were based on the hydrothermal synthesis, and applied them for the first time to uranyl phosphonates. Dr. ██████████ further asserts that, at MIT, the petitioner "was responsible for a number of major accomplishments in the area of spin-frustrated magnetism." Dr. ██████████ explains that spin-frustrated magnetism has important real-life applications, including its relevance to superconductivity. The novel aspects and significance of the petitioner's work are discussed by Dr. ██████████, Chair of the Chemistry Department at Princeton University and a member of the National Academy of Sciences, and Dr. ██████████, an adjunct professor at the University of Maryland. On appeal, the petitioner submits letters from Professor A. B. Harris of the University of Pennsylvania and Dr. ██████████, a research geophysicist at the U.S. Department of the Interior, who not only praise the petitioner's work but explain how it has influenced their own work. Notably, Dr. ██████████ states:

Having got so much help from [the petitioner's] publications, I contacted [him] earlier this year, and pressed him for more help, which he willingly gave. His insights and expertise have provided what I consider to be the final piece of the jarosite spectroscopic puzzle. I am now ready to present this spectrothermometer technique to the planetary community at the NASA-sponsored Lunar and Planetary Institute's

Sulfates Workshop in Huston [sic] this coming October. I cannot think of a scientist - whose expertise helped me more with my spectroscopic research.

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. Citizenship and Immigration Services (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 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.*

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and 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 his reputation and who have applied his work are the most persuasive. Ultimately, however, 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.

As discussed above, the record contains support letters that provide specific information regarding how the petitioner has influenced the field, including letters submitted on appeal from independent members of the field who have been influenced by the petitioner's work. Moreover, these letters are supported by the petitioner's impressive publication record, which includes several articles that are widely and frequently cited and an article that was noted in *Science*. Thus, 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 director concluded that the petitioner meets this criterion and, given the number of the petitioner's published articles, the fact that he is consistently widely and frequently cited and the fact that one of his articles has been singled out in *Science*, we concur with the director.

For the reasons discussed above, we find that while the petitioner meets two of the regulatory requirements, he has not established that he meets a third. A petitioner must meet at least three of the regulatory criteria to establish eligibility for the classification sought. 8 C.F.R. § 204.5(h)(3).

Moreover, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a research associate, relies on his well-cited publication record, letters of support from other members of the field and his manuscript review duties. While this may distinguish

him from other research associates, we will not narrow his field to others with his level of training and experience. Rather, the field includes department chairs, those who serve on editorial boards and elected fellows of professional associations.

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. Section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i); 8 C.F.R. § 204.5(h)(2).

Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher 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 a research associate and has some degree of national or international exposure, but the evidence 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.

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.