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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 21 2007
SRC 02 273 53438

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:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Texas Service Center. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on October 19, 2005. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-140, Immigrant Petition for Alien Worker, was filed on September 23, 2002. 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. The director determined the petitioner had not established that he qualifies for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner meets the required criteria for classification as an alien of extraordinary ability.

Section 205 of the Act, 8 U.S.C. § 1155, states: “The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 582, 590. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

The Form I-140 petition was initially approved on December 10, 2003. According to a June 14, 2005 memorandum from the United States Embassy in Moscow, Russia, subsequent to the petition’s approval, the petitioner appeared before a consular officer for his immigrant visa interview. At that time, it was determined that the petitioner did not meet the criteria for classification as an alien of extraordinary ability and that his petition had been approved in error. The petition was then forwarded to the Texas Service Center for revocation of the approval of the petition.

On August 16, 2005, the director of the Texas Service Center issued a Notice of Intent to Revoke the approval of the petition. The notice of intent to revoke informed the petitioner that the evidence presented did not satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On September 15, 2005, the Texas Service Center received the petitioner's response to the Notice of Intent to Revoke and it was incorporated into the record of proceeding.

On October 19, 2005, the director of the Texas Service Center properly revoked the approval of the petition. In *Matter of Ho*, 19 I&N Dec. at 582, 590, the Board found that, pursuant to section 205 of the Act, CIS may revoke the approval of a petition "at any time for good cause shown." For reasons to be addressed below, we find that the petition was initially approved in error and that *Matter of Ho* supports the director's October 19, 2005 decision revoking the approval.

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 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 earned 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 professor and teacher of mathematics. At the time of filing, the petitioner was working as an Associate Professor at the Moscow Aviation Institute and as a mathematics teacher at Moscow Secondary School #879.

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 pertaining to the following criteria.

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

The petitioner submitted a September 2000 diploma issued by the "Government of Moscow, Moscow Committee of Education" stating that he was "the winner of Competition of the International Soros Science Education Program (ISSEP) in Moscow City." The petitioner also submitted listings appearing in the *Soros Education Journal* identifying him among hundreds of recipients for this award in 1998, 1999, and 2000 in Moscow. We find that this award reflects local recognition rather than national or international recognition.

The petitioner submitted two certificates stating:

International Soros Science
Education Program
In . . . appreciation of outstanding contributions to science education at the high school level,
[The petitioner]
is selected and named as a
SOROS HIGH SCHOOL TEACHER

Along with the preceding Soros High School Teacher certificates, the petitioner submitted information accessed at <http://www.issep.rssi.ru/grants/teacher/index.htm#header9> which states:

There was carried out mass interrogation of students, who were first three years in the Universities.

* * *

Each student was offered to name the best teacher, by their opinion, known for him from mathematics, physics, chemistry and biology – one by each subject (students named two teachers on average).

* * *

Students have named 196,687 teachers during four years.

Selection of winners was carried out on number of mentions of the teacher by students.

* * *

Interrogation of students was carried out in February – April 2000. Interrogation passed in 83 cities and in 268 Institutes and Universities. There was brought 87,483 students' questionnaires in a database. Totally, students have named 226,208 teachers.

According the documentation submitted by the petitioner, multiple teachers from multiple localities have received Soros High School Teacher awards. Awards regularly bestowed upon a large number of recipients are of minimal evidentiary weight. We note that the petitioner received this award based on a tally of votes from former high school students at Moscow Secondary School #879. While the petitioner's receipt of a Soros High School Teacher award reflects that he was admired by his former pupils at the local level, there is no evidence showing that this award sets him significantly above almost all others in his field at the national or international level. We cannot ignore that the petitioner's award resulted from a local selection process by his former high school students rather than a national evaluation process by his peers. Further, we do not find that making "contributions to science education at the high school level" is an indication that the petitioner "is one of that small percentage who have risen to the very top" of the mathematics field. See 8 C.F.R. § 204.5(h)(2). We find that the preceding factors diminish the significance of the petitioner's Soros High School Teacher awards.

The petitioner submitted a Certificate of Honor issued by the Moscow Aviation Institute stating: "Winner of competition on a rank "The Best Lecturer" 1986-1987 academic year, [the petitioner], Senior Lecturer (Associate Professor) of faculty 703 for fruitful pedagogical work." We find that this award from the petitioner's immediate employer reflects institutional recognition rather than national or international recognition.

In response to the director's request for evidence, the petitioner submitted evidence of his receipt of two "Grant of Moscow" awards presented to him by the municipal government of the city of Moscow and the Department of Education of the city of Moscow in October 2002 and October 2003. These awards were presented to the petitioner subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, the AAO will not consider these awards in this proceeding. Nevertheless, we find that these awards reflect local recognition rather than national or international recognition

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

Published materials 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.

In order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication or from a publication in a language that most of the population cannot comprehend. Some newspapers, such as the *New York Times*, nominally

serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

Initially, the petitioner did not claim eligibility under this criterion. In response to the director's notice of intent to revoke, counsel submitted a September 6, 2005 letter stating:

The book entitled *Moscow Aviation Institute from A to Z* is a professional publication. We submitted evidence to the TSC [Texas Service Center] indicating that Moscow Aviation Institute (MAI) publications are sold worldwide as indicated by the website called: www.worldretailstore.com. Textbooks are professional publications

The record, however, includes no evidence showing that material appearing in *Moscow Aviation Institute from A to Z* is about the petitioner. The petitioner's authorship of a textbook is not relevant to the "published materials about the alien" criterion at 8 C.F.R. § 204.5(h)(3)(iii) and will be addressed later under the "authorship of scholarly articles in the field" criterion at 8 C.F.R. § 204.5(h)(3)(vi). The petitioner has not established that he 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 submitted evidence showing that he is the co-inventor of a U.S.S.R. "Copyright Certificate (Patent)" filed in 1976. The title of the petitioner's invention, however, is not identified. There is no evidence showing that this invention qualifies as a contribution of "major significance" in the petitioner's field. For example, there is no evidence showing substantial commercial interest in this invention or evidence of its widespread utilization. The granting of a patent demonstrates only that an invention is original. It does not necessarily follow that an approved patent represents a contribution of major significance in one's field. For purposes of this criterion, far more important than the existence of an approved patent is the significance of that invention to the greater field. In this case, there is no evidence that the petitioner's patented invention has attracted a substantial level of interest beyond the petitioner's employer. Without evidence of its substantial national or international impact, we cannot conclude that the petitioner's patented invention meets this criterion.

The petitioner also submitted three letters of support from his superiors at the Moscow Aviation Institute and Moscow Secondary School #879.

According to a translated letter, Professor Vitali Polkovnikov, Dean of Faculty for Robotic and Intelligent Systems, Moscow Aviation Institute, states:

[The petitioner] is one of the leading teacher of the faculty which I'm supervising.

¹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

* * *

When [the petitioner] was hired as Senior Lecturer (Associate Professor), and he began read two major courses of dean to students, he has perfectly performed the new task and became the winner of institute competition on a rank "The Best Lecturer" 1987 by results of interrogation of the students. At the same year, he wrote and published first student academic manual "Operations Research", and in 1989 he was awarded Academic Rank of Senior Lecturer (Associate Professor). For fruitful pedagogical work by the order of the rector, the gratitude on institute repeatedly appeared to Senior Lecturer [the petitioner].

However, pedagogical talent of [the petitioner] was showed especially clearly during last years. He had been working in combination as the mathematics teacher in high school, and quickly achieved level of leading teacher. He became the Winner of competition International Soros Program of Education in the field of the exact sciences (ISSEP) three times - in 1998, 1999 and 2000, received thus a rank "Soros Teacher of the High School." In my professional opinion, it testifies about achievement of [the petitioner] high quality teaching of mathematics and a skill level which placing him in small percentage of the best mathematics teachers of high school.

While the petitioner's employment as a Senior Lecturer and high school teacher may have benefited the students under his tutelage, there is no evidence showing that this work rises to the level of a contribution of major significance in the mathematics field. The petitioner has not shown how the academic or mathematics field has changed as a result of his work.

Professor [redacted], Honored Scientific and Technical Research Worker, Moscow Aviation Institute, states:

I knew [the petitioner] since he was student. I was academic supervisor of his degree project at that period. He was one of the best students of our academic faculty, had excellent defense of the degree's project and received an honors diploma. He became an employee on our academic faculty "Efficiency of onboard systems on jet aircraft," after he successfully graduated from the institute, and where he worked up until now. His researches in the field of synthesis of optimum control of the jet aircrafts, and his evaluation of efficiency of onboard complexes of equipment of the aircrafts, always had a novelty.

The copyright certificate on the invention in 1976 and successfully completed Master's Thesis for receiving Ph.D. in 1982 - worthy end of the first phase of his fruitful work. After receiving Ph.D., he had new actual tasks in the field of the analysis and synthesis of complex systems and ended up with the same, brilliant results!

* * *

When in 1985 [the petitioner] was hired for position as Senior Lecturer and his duty was to read two major subjects of faculty to students, he has carried out this new task excellently, as always, and according to student elections, became the Winner of the competition and has received honorable

name - "The Best Lecturer of year 1987." The same year, he wrote and published the first methodical manual for course "Operations Research," and, as a result, deserved the academic rank of Senior Lecturer in 1989. However, great pedagogical talent of [the petitioner] especially clearly has been shown during last several years. Working as mathematics teacher in high school, in combination with the lecturing in our Institute, he quickly became the leading expert. And was elected and named "Soros High School Teacher" three times, as a Winner of competition International Soros Science Education Program in the field of the exact sciences (ISSEP) in years 1998, 1999 and 2000.

Professor Grishin mentions the petitioner's research regarding the "synthesis of optimum control of the jet aircrafts" and "his evaluation of efficiency of onboard complexes of equipment of the aircrafts" and states that the petitioner's findings "always had a novelty." While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the academic community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge or who studies the efficiency of systems designed by others has inherently made a contribution of major significance to the field as a whole. In this instance, there is no evidence showing that the petitioner's work attracted a significant level of attention beyond the Moscow Aviation Institute.

Principal Moscow Secondary School # 879, states:

[The petitioner's] pedagogical skills, creativity, innovation in teaching and responsibility have always resulted in his pupils' constant successes in passing final exams in mathematics advanced course at school and entrance exams in the main higher educational institutions of Moscow, such as Moscow State University, Moscow State Technical University, Moscow Engineering Physics Institute, Moscow Aviation Institute and some other technical institutes and colleges.

* * *

[The petitioner] has achieved splendid results in teaching, and this fact can be accounted for his wide outlook, constant willingness to work creatively and make research work, and the profound thoughtful approach to selecting forms and methods of teaching mathematics at school, constant aspiration for encouraging school students and making learning more effective. Besides being efficient and professional he is pedagogically sensitive and gives learners confidence in their ability to learn, revealing and developing their individual talents and taking into consideration their personal merits.

We accept that the petitioner is a talented mathematics teacher who is admired by his colleagues and students, but there is no evidence establishing that his accomplishments rise to the level of a contribution of major significance in his field. With regard to the personal recommendation of individuals from institutions where the petitioner has worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim outside of his affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then he has not achieved national or international acclaim. Without extensive documentation showing that the petitioner's work has

been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of major significance.

In a September 16, 2002 letter accompanying the petition, counsel asserts that the petitioner's ISSEP awards and Moscow Aviation Institute Certificate of Honor meet this criterion. The petitioner's awards, however, have previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). In a December 3, 2003 letter responding to the director's request for evidence, counsel argues that published materials authored by the petitioner (a 2003 textbook entitled *Numerical methods of nonlinear optimization: algorithms and programs* and a 2003 paper entitled "On the problem of global optimization of a multivariable function") also meet this criterion. The petitioner's publications, however, relate to the "authorship of scholarly articles in the field" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards, original contributions of major significance, and authorship of scholarly articles, CIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Further, regarding the petitioner's paper and textbook from 2003, we note that this material was published subsequent to the petition's filing date. **A petitioner, however, must establish eligibility at the time of filing.** 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. at 45. Accordingly, the AAO will not consider the 2003 publications in this proceeding.

In light of the above, the petitioner has not established that he 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 a document entitled "List of Proceedings" which listed a total of 32 articles, scientific reports, conference materials, and student manuals prepared by him. However, no actual copies of the published material from this list were submitted. The plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires "Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." The petitioner's listing of his publications and scientific reports does not meet this requirement. Simply 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)).

In response to the director's request for evidence, the petitioner submitted a manual (textbook) entitled *Numerical methods of nonlinear optimization: algorithms and programs*. This manual bears text stating "Authorized at session of Editorial Advice November 28, 2002" and "Moscow Publishing House MAI 2003." The petitioner also submitted a paper entitled "On the problem of global optimization of a multivariable function" bearing a date of January 22, 2003. On appeal, the petitioner submits evidence showing that his paper "To a problem of global optimization of functions of many variables in MATLAB environment" was included among numerous papers accepted for a May 2004 scientific conference. All of this evidence was published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time

of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 45. Accordingly, the AAO will not consider this evidence in this proceeding.

The record includes no evidence showing that the petitioner has authored scholarly articles in professional or major trade publications or other major media as of the petition's filing date. Nor is there is evidence of the field's reaction to the petitioner's articles in the form of citation indices showing that his articles are frequently cited by others in his field. Frequent citation by independent researchers would demonstrate widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of his work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that his published work is not nationally or internationally acclaimed.

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

In this case, we find that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

This petition should never have been approved, and the director, upon learning of this error, essentially had no choice but to revoke the erroneous approval. As stated previously, pursuant to section 205 of the Act, CIS may revoke the approval of a petition "at any time for good cause shown." The director's realization that a petition was incorrectly approved is good and sufficient cause for revoking the approval of an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 582. Therefore, we concur with the director's decision to revoke the approval of the petition.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "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 record includes no such evidence.

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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As always, the burden of proof in these proceedings rests solely with the

petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968), affirmed in *Matter of Esteime*, 19 I&N 450 and *Matter of Ho*, 19 I&N Dec. at 582, 590. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.