



U.S. Citizenship
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FILE: [REDACTED]
SRC 06 124 52983

Office: TEXAS SERVICE CENTER Date: OCT 11 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

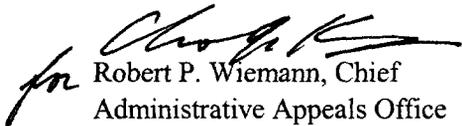
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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. 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 argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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). 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, filed on March 13, 2006, seeks to classify the petitioner as an alien with "extraordinary ability in social science" as a "Specialist in Evaluation and Test Development (Statistician)." The petitioner holds a Ph.D. in Measurement and Statistics from Florida State University (2005) and a M.A. in Educational Psychology from Michigan State University (1996). At the time of filing, the petitioner was working in the Department of Research and Evaluation at the School District of Palm Beach County, Florida.

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria.

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.

The petitioner submitted evidence of his membership in the American Educational Research Association (AERA), the Hierarchical Linear Modeling (HLM) Special Interest Group of the AERA, the American Statistical Association, the National Council on Measurement in Education, the American Evaluation Association, the Asian American Psychological Association, and the International Nepali Literary Society. The record includes general information about these organizations, but there is no evidence (such as membership bylaws or official admission requirements) showing that these associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's or an allied field. As such, the petitioner has not established that he meets 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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends 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). For example, evaluating the work of accomplished professors on a national panel of experts is of far greater probative value than evaluating the work of graduate or undergraduate students.

The petitioner submitted a November 22, 2005 letter from [REDACTED] Assistant Professor, Department of Counseling, Educational Psychology, and Special Education, Michigan State University, stating: "I am pleased to provide this letter of appreciation for [the petitioner] who successfully completed his work as a reviewer for [the] American Educational Research Association 2006 meeting, on behalf of the co-chairs of Division D. This

year he reviewed research proposals in [the] research area of hierarchical linear models (HLM).” As previously noted, the petitioner earned his M.A. in Educational Psychology from Michigan State University. In this instance, there is no indication that the petitioner’s acclaim as a statistician resulted in his being selected as a reviewer rather than his prior affiliation with Michigan State University or his general membership responsibilities within the HLM Special Interest Group of the AERA.

As further evidence of his work as a reviewer for the AERA 2006 meeting, the petitioner submitted an August 19, 2005 e-mail sent to him by the meeting organizers stating:

Thank you for agreeing to be a reviewer for the Districts in Research and Reform Special Interest Group. The proposal that you have been selected to review is titled “Randomization of schools: The balance between research rigor and collaborating with a school district.”

Log into the system . . . and access the proposal that has been assigned to you. Read the proposal, and then enter your scores and comments into the on-line system *for review by the program chairs*. *We will then evaluate the assessments provided by your review*. This is a very important function as these evaluation[n] scores and comments will guide *us in making decisions to accept or reject a proposal*. We have a lot of proposals this year

* * *

As you are reviewing the proposal, please remember to employ both appropriate tone and language, and be constructive in your assessment of the strengths and weaknesses of a submitted proposal.

[Emphasis added]

The documentation submitted by the petitioner indicates that he is not actually an AERA program chair, but rather was assigned the task of proposal review by others holding such responsibility. With respect to the petitioner’s work as a reviewer for the AERA 2006 meeting, the role played by him was clearly junior or subsidiary to that of the program chairs. Ultimately, the final authority for making the decision to accept or reject a proposal rested with the program chairs rather than the petitioner.¹ While not dispositive, the petitioner’s lesser role does not support a claim to being one of that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The petitioner’s initial submission also included an undated letter from [REDACTED], Director, Administrative and Noninstructional Staffing Services, Division of Human Resources, School District of Palm Beach County, stating: “[The petitioner] served as an interview team member for the Systems Programmer Specialist interviews which were held on November 10, 2005 . . . in Human Resources. The interviews lasted from 8:30 a.m. – 11:00 a.m.” The plain language of this regulatory criterion requires evidence of the petitioner’s “participation . . . as a judge of the work of others *in the same or an allied field of specification for which classification is sought*.” 8 C.F.R. § 204.5(h)(3)(iv) (Emphasis added). There is no evidence that “systems

¹ The evidence reflects that program chairs may accept or reject any reviewer’s comments in determining whether to accept or reject submitted proposals.

programming” is sufficiently allied with educational measurement and statistics. Further, the limited information provided in [REDACTED] letter is not adequate to establish that serving as an interview team member constitutes participation as a judge of the work of others for purposes of this criterion. We cannot conclude that the petitioner’s assistance with personnel functions for his immediate employer (which is a local or institutional function) is indicative of sustained national or international acclaim as an educational researcher or statistician.

The petitioner also submitted a November 22, 2005 letter from [REDACTED] Acting Principal, [REDACTED] Vidyapeeth High School, Kathmandu, Nepal, stating:

I am pleased to verify that [the petitioner] has worked as an evaluator during [the] 1997 – 98 school year in [REDACTED] Vidyapeeth High School He was involved in judging teachers’ performance through classroom observations, providing training and organizing workshop, analyzing and reporting test scores, and interacting with teachers individually and in-group. [The petitioner’s] expertise in evaluation work has become valuable and beneficial for the school in judging teachers’ academic performance and determining academic plans.

The record reflects that the petitioner worked as an independent evaluator for this high school from January 1997 to January 1998. We find that the above duties were inherent to the petitioner’s position as an independent evaluator for the school. There is no evidence that the petitioner judged the work of others in his or an allied field in a manner significantly outside the general duties of this position and consistent with sustained national or international acclaim. 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, or in a substantial proportion of positions within that occupation.² The petitioner’s involvement in evaluating teacher performance at the high school where he was employed is not indicative of national or international acclaim and does not fulfill 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 several recommendation letters in support of his petition. We cite representative examples here.

[REDACTED] Associate Professor, Department of Educational Psychology and Learning Systems, Florida State University, states:

[The petitioner] was a doctoral student in the Measurement and Statistics Major at Florida State University from August, 2000 to April, 2005. During this time, I taught three courses in his program

² This is true with all duties inherent to an occupation. For example, publication is inherent to the occupation of scientific researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim in that field. The petitioner must demonstrate that the articles have garnered national or international attention, for example, by being widely cited or are otherwise consistent with sustained national or international acclaim.

of study, supervised his work as a teaching assistant, and, as his major professor, directed his doctoral dissertation research.

* * *

Throughout his graduate program, [the petitioner] demonstrated initiative in seeking opportunities that would provide experience and skills important to his professional development.

* * *

[I]t was not surprising that [the petitioner] chose a HLM-related topic for his dissertation research. He prepared an expository work on the application of HLM to a situation that is still relatively rare in educational and social science research. Specifically, he analyzed NAEP (National Assessment of Educational Progress) data with a dichotomous outcome (i.e., he considered hierarchical generalized linear models of HGLM) with independent variables at three levels (students, teachers, and schools). During his dissertation work, [the petitioner] made considerable progress in becoming a capable scholar.

[REDACTED], Professor, Department of Childhood Education, Reading and Disability Services, Florida State University, states:

I served as a committee member in [the petitioner's] doctoral program from August, 2000 to April, 2005. Throughout this period, I monitored his program of study, taught a graduate level course, judged his works in written and oral preliminary examinations, and evaluated his doctoral dissertation.

* * *

As a doctoral program requirement, [the petitioner] accomplished his dissertation work in hierarchical linear model (HLM) research using binary dependent variable. In this research he used National Educational Assessment of Progress (NEAP) 2000 reading data for fourth graders. This data is a representative national sample for fourth graders in the United States (U.S.). Through this research, student reading proficiency was predicted using different predictors at student, teacher, and school levels. [The petitioner] spent more than two years to complete this original research work that provided [an] important contribution the field of social science.

* * *

[The petitioner's] research contribution in HLM will definitely be beneficial for the social science researchers in the U.S. The simple effect approach demonstrated through his dissertation work, for example, will allow researchers not only to describe student, teacher, and school level predictors' individual and interaction effects but also help interpret such effects in a simpler fashion.

██████████ Associate Professor, Department of Educational Psychology and Learning Systems, Florida State University, states:

During [the petitioner's] doctoral program, I taught him in three courses, supervised his work as a teaching assistant, and, served on his doctoral dissertation committee.

In his doctoral dissertation, [the petitioner] demonstrated a three-level hierarchical generalized linear model (HGLM), a nonlinear branch of hierarchical linear model (HLM), in a context of educational research. He didactically demonstrated a step-by-step technique of three-level HGLM, and extended HGLM to the description of simple effect and ANOVA [analysis of variance] -like approaches. My own area of research is in HLM and HGLM in educational and social science research. Therefore, I know that [the petitioner's] work provided an important contribution to the field.

██████████ Assistant Professor, Middle and Secondary Education, Florida State University, states: "[The petitioner's] dissertation work provides a substantial contribution to the quantitative research in social science as there have been a limited number of works in [the] HLM area."

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 scholarly 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 has inherently made a contribution of major significance in the field. 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. While the preceding individuals credit the petitioner with performing original HLM research using NAEP data, there is no supporting evidence that this research constitutes a contribution of major significance in his field consistent with sustained national or international acclaim.

Several of the individuals offering letters of support cite the petitioner's published and presented work as evidence of his original contributions. The journal articles and conference presentations authored by the petitioner, however, are more relevant to the "authorship of scholarly articles" 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 authorship of scholarly articles and original contributions of major significance, CIS clearly does not view the two 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. We will fully address the petitioner's published and presented work under the next criterion.

██████████ Project Director, Middle School Teacher Preparation and Student Achievement, Department of Teaching and Learning Principles, University of Central Florida, states:

I know [the petitioner] as a research collaborator and statistical expert in the area of hierarchical linear models (HLM), an advanced statistical analysis technique. I worked with him in the capacity

of project leader. . . . Specifically, he collaborated in project that produced two outcomes: a final research report and a paper that was presented in National Evaluation Institute (Memphis, Tennessee) meeting in July 2005.

In the published research report and paper, [the petitioner's] input in HLM analysis, interpretation, and write-up provided an innovative, useful, and practical approach of presentation of findings. These publications employed two-level HLM with student socioeconomic status (at level-1), teacher's degree, teacher's experience, and teacher's certification status (at level-2) as predictors to predict student mathematics achievement in middle schools. In sum, this study not only measured the effects of student and teacher level predictors but also examined the variation across teachers in student average mathematics achievement. I am sure that the important findings of this study not only benefit the local school districts in shaping their policies but also be [sic] useful for United States federal agencies in meeting their important goals related to No Child Left Behind (NCLB).

The record, however, includes no evidence showing that local school districts have actually shaped their policies based on the above study or that U.S. federal agencies such as the U.S. Department of Education have relied upon these findings in meeting their goals.

In this case, the letters of support submitted by the petitioner's professional contacts are not sufficient to meet this criterion. The director noted that letters of support from those who have worked with the petitioner do not establish that his reputation extends beyond his circle of colleagues. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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.* 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. *See id.* at 795-96. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an educational researcher who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential or highly acclaimed throughout his field, we cannot conclude that his work rises to the level of contributions of major significance. As such, 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 submitted evidence of his authorship of articles appearing in publications such as *International Education Journal*, *The Journal of Social Studies Research*, *Teachers' Journal*, *Journal of Nepalese Studies*, and *Education and Development*. We take administrative notice of the fact that authoring scholarly articles is inherent to educational research. For this reason, evidence showing the influence of the petitioner's articles becomes necessary to set him apart from others in his field. When evaluating the impact of the petitioner's research articles, a citation history is a reliable gauge for determining the significance of his published work

to the field. Numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few or no citations of an individual's work may indicate that his work has gone largely unnoticed in his field. In this case, there is no evidence that the petitioner's work has been cited by others in his field. We accept that the petitioner has authored some published papers over the last several years, but the weight of this evidence is diminished by a lack of citations or other evidence showing these articles were particularly influential in a manner consistent with sustained national or international acclaim.

The petitioner also submitted evidence showing that he has authored research papers and reports for presentation at conferences such as the annual meeting of the National Evaluation Institute in Memphis, Tennessee (2005). The record includes no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top educational research statisticians. The record also includes no evidence distinguishing the petitioner from others in his field in a manner consistent with sustained national or international acclaim, such as documentation showing that his conference presentations had significantly higher rates of attendance when compared to those of the other conference participants or that the petitioner has served as a keynote speaker at a national or international educational research conference.

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

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

On appeal, the petitioner argues that he has "presented or displayed [his] works in the field of HLM at different conferences or exhibitions." The petitioner's field, however, is not in the arts. The plain language of this criterion indicates that it applies to artists rather than to statisticians or educational researchers such as the petitioner. The petitioner's presented papers have already been addressed under the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

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

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

The petitioner submitted letters of support indicating that he worked at the Florida Department of Education, Florida State University, the School District of Palm Beach County, Tribhuvan University (Nepal), Trungram International Academy (Nepal), and [REDACTED] Vidyapeeth High School (Nepal). The evidence of record adequately establishes that the Florida Department of Education, Florida State University, the School District of Palm Beach County, and Tribhuvan University have distinguished reputations. However, there is no evidence demonstrating how the petitioner's role differentiated him from other workers holding similar positions in these educational institutions, let alone from more senior employees within the organizations. For example, we note that the petitioner's role at Florida State University from 2000 to 2005 was that of a graduate student. This subordinate role is intended to provide training for a future professional career in one's field. There is no evidence showing that the petitioner's work as a graduate student was equivalent to performing a leading or

critical role for the university as a whole or was of significantly greater importance than that of the other researchers employed there (including professors [REDACTED])

In addressing the evidence for this criterion, the director's decision stated: "The evidence submitted does not indicate that the petitioner has played a leading or critical role for an organization with a distinguished reputation." We concur with the director's finding for this criterion. On appeal, the petitioner does not challenge this finding.

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

In this case, we concur with the director's determination 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 national or international acclaim necessary to qualify as an alien of extraordinary ability. 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. 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.

³ The professional standing of professors [REDACTED] indicate that the top of the petitioner's field is a level far above his own level of achievement.