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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
LIN 06 014 51705

Office: NEBRASKA SERVICE CENTER

Date: JAN 18 2008

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) 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 submits a personal statement addressing some of the director’s concerns. For the reasons discussed below, however, we uphold the director’s well-reasoned decision.

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, 60898-9 (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 an “acting instructor.” 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 initially asserted that his position as an associate professor at Jilin University in China and his Japanese patent serve to meet this criterion. The petitioner did not explain how a job, even a competitive job at a prestigious institution, constitutes a prize or award for excellence. In addition, patents are issued to the inventors of original processes or devices that are useful. No evaluation as to the significance of the invention is made.² A patent is a property right, not an award for excellence. We note that this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Commr. 1998). If a patent is not sufficient to establish eligibility for a lesser classification, the national interest waiver for aliens with exceptional ability or advanced degree professionals, it is certainly not evidence of national or international acclaim for purposes of a higher and more exclusive classification. In response to the director’s request for additional evidence and again on appeal, the petitioner no longer asserts that his job at Jilin University or his patent serve to meet this criterion and, for the reasons discussed in this paragraph, we find that they do not.

In addition to the above claims, the petitioner submitted evidence that in 1997, he received a 1997 Japan Science and Technology Corporation (JST) Science and Technology Association (STA) Fellowship. In 1999, the petitioner received a Science and Technology postdoctoral fellowships sponsored by the Japan Society for the Promotion of Science (JSPS). The record contains reference letters, some of which attest to the prestigious nature of the fellowships and that they are limited to outstanding young scientists.

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

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

² While the U.S. requires that the invention be “useful,” the Merriam-Webster Dictionary 759 (1974) defines “useful” as “capable of being put to use: advantageous.” The same dictionary defines “excellence” as “the quality of being excellent,” defined as “very good of its kind: first-class.” *Id.* at 250. Thus, recognition of the development of a novel and useful process is not a competitive award for excellence in the field.

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. 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*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The petitioner did not initially submit any materials regarding the JST STA Fellowship. In response to the director's request for additional evidence, the petitioner submitted evidence that STA established the fellowship in order to offer "opportunities for promising young foreign researchers" to conduct research in Japan. Fellows must have a doctorate or have an equivalent qualification and be no older than 35 "in principle."

The petitioner initially submitted evidence that the main functions of JSPS are to foster young researchers, promote international scientific cooperation, to award Grants-in-Aid for Scientific Research, to implement the research for the future program, to support scientific cooperation between the academic community and industry and to collect and distribute information on scientific research activities. The Internet materials provided include a list of programs including both the postdoctoral fellowships for foreign research that he received and awards for eminent scientists. In response to the director's request for additional evidence, the petitioner submitted additional Internet materials about the JSPS postdoctoral fellowship for foreign researchers. The fellowship's purpose is to "provide opportunities to young postdoctoral researchers from foreign countries to conduct, under the guidance of their hosts, cooperative research with leading research groups in universities and other Japanese institutions." Fellows must hold a doctorate received within six years prior to the date of the fellowship. The applications must be filed by the host scientist and there are rigorous requirements for these applicants. The materials reflect that in Fiscal Year 2000, there were 451 applications filed by prospective host scientists in the Chemical Sciences and only 87 of those were accepted.

The director concluded that the fellowships were limited to young researchers and could not serve to meet this criterion. On appeal, the petitioner asserts that "young" does not mean inexperienced. He reiterates the requirements for the fellowships.

While the postdoctoral fellowships are competitive and prestigious, they are not awards or prizes recognizing past excellence. Rather, they are designed to promote future research cooperation. Moreover, we concur with the director that fellowships limited to those scientists who have obtained their Ph.D. in the last six years and for which the most experienced and renowned members of the field cannot compete are not indicative of or at least consistent with national or international acclaim as one of the small percentage at the top of the field.

In light of the above, we concur with the director that 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.

The petitioner initially asserted that his membership in the American Chemical Society (ACS) serves to meet this criterion. The petitioner asserted in his initial statement that ACS is the largest scientific society with 163,00 members that include Nobel Laureates and distinguished scientists. The petitioner's supervisor provides similar information. One of the petitioner's references, [REDACTED], a former visiting professor in the laboratory where the petitioner now works, asserts that ACS membership requires recommendations and a review of the applicant's professional accomplishments. The petitioner did not submit the society's official membership criteria. 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 (Commr. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The petitioner submitted no evidence relating to this criterion in response to the director's request for additional evidence and no longer claims to meet this criterion on appeal.

The record lacks evidence that ACS requires outstanding achievements of its members. That the membership includes Nobel Laureates does not imply that an achievement on this scale is required for membership. In fact, a large membership, as claimed by the petitioner, suggests that ACS is not exclusive. Finally, securing recommendations from one's colleagues is not an outstanding achievement.

In light of the above, we concur with the director that the petitioner has not demonstrated 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.

The petitioner relies on citations to meet this criterion. On appeal, the petitioner notes that some of the citations remark on the nature of the petitioner's work. While the brief reference to the petitioner's work in the context of a larger article that cites several past articles in the field may be favorable, we concur with the director that articles which cite the petitioner's work are primarily about the author's own work or constitute a review of recent work in the field by many researchers. The articles citing the petitioner's work are not "about" the petitioner. As such, the articles cannot be considered published material about the petitioner and cannot serve to meet this criterion. That said, they are relevant to the significance of the petitioner's scholarly articles and will be considered below in the context of that criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi).

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner must establish his eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The record reflects that, as of the date of filing, the petitioner had refereed articles for *Polymer Degradation and Stability*. In response to the director's request for additional evidence, the petitioner submitted a letter from T [REDACTED] Editor of *Polymer Degradation and Stability*. [REDACTED] asserts that reviewers must be experts in the field, possess extensive research experience and, preferably, have won an national or international award. [REDACTED] asserts that the petitioner was selected "based on his extensive experience and outstanding achievements in a variety of polymer-related areas." As stated above, CIS may evaluate the content of those letters as to whether they support the alien's eligibility and give less weight to opinions that are not supported by corroborating evidence. See *Matter of Caron International*, 19 I&N Dec. at 795. The record does not contain the official rules for the selection process for reviewers at the journal or even the number of reviewers. The record does not suggest that reviewers are credited in the journal as editors are.

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; not every peer reviewer enjoys sustained national or international acclaim. As such we concur with the director that, without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, the petitioner cannot establish 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 relies on his reference letters to meet this criterion. As stated above, 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 *Matter of Caron International*, 19 I&N Dec. at 795.

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 far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. 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.

The petitioner earned his Ph.D. from Jilin University in 1995. The petitioner then progressed to an associate professor position at that university. As discussed above, in 1998, the petitioner began working in Japan pursuant to two postdoctoral fellowships. In 2002, the petitioner joined the University of Washington (UW) in Seattle as a postdoctoral research associate and was working there as an acting instructor in the laboratory of [REDACTED] as of the date of filing.

[REDACTED], currently a professor at Tokai University in Japan, asserts that the petitioner worked in his laboratory at the Sagami Chemical Research Center in Japan during his STA Fellowship. There, the petitioner worked on liquid crystalline polymers and alignment reagents for liquid crystal displays (LCDs). According to [REDACTED]: "For the first time, he designed and synthesized liquid crystalline side-chain polymers, oligomers, and dendrimers with the fluorescent and photo-crosslinkable coumarin units." **This work led to five published articles.** [REDACTED] then summarizes the petitioner's original results, but fails to explain how this work has impacted the field of liquid crystal polymer research other than to note that the petitioner's work is well cited and has been "adopted in the two review articles."

[REDACTED] asserts that at UW the petitioner "applies his research to the electro-optic (E-O) and light-emitting materials areas." [REDACTED] explains the advantages of E-O materials as building blocks and the challenges in their development. The petitioner provided a new strategy to resolve two problems, designing E-O block copolymers of CLD-block-polystyrene using organic and polymeric synthetic techniques. [REDACTED] concludes that future research in this area "will definitely stimulate the E-O research field."

[REDACTED] further asserts that the petitioner has worked on organic light emitting diodes (OLEDs), which have the potential to be smaller, faster and less expensive than LCDs. The petitioner's work in this area "suggests a new way for solving the problem of the poor spectra stability" through the use of block copolymers as the blue emitter. This work, however, was unpublished as of the date of filing. As stated above, the petitioner must demonstrate sustained national or international acclaim as of the date of filing in this matter. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, we cannot consider accomplishments that had yet to be published and, thus, widely disseminated in the field as of that date.

In a second letter, [REDACTED] reiterates that the petitioner's focus at UW has been to develop "novel nanostructured materials and devices, which enhance and improve the performance of the optical, photonic, and electrical properties of the functional materials." [REDACTED] confirms that the petitioner has strengthened the laboratory's ongoing research and begun research in new directions. [REDACTED] concludes that the petitioner's "success in the development of advanced functional nanomaterials for high-speed telecommunication, light-emitting materials, and novel water soluble functional block

copolymers, which can be used in drug delivery, photodynamic therapy, and biosensors, accredits him a leadership [role] in my research group.”

██████████ an associate professor at UW, asserts that the petitioner has “already demonstrated that the nanostructured electro-optical block copolymers enhance 1.5 to 2 times of the electro-optical materials, and in verse, the preparation of novel electro-optical materials with nanotechnology.” ██████████ predicts that this work “will benefit to [sic] the rapid developing researches [sic] of nanomaterials and nanotechnology.” Similarly, ██████████ asserts that the petitioner’s prior work in Japan “shows a potential application of the nanostructured materials for optical storage and holography.” I ██████████ provides no examples of how the petitioner’s work is already impacting the field other than to note that the petitioner’s articles are well cited. ██████████ and ██████████, another professor at UW, provide similar information.

The above letters are all from the petitioner’s collaborators and immediate colleagues. While such letters are important in providing details about the petitioner’s role in various projects, they cannot by themselves establish the petitioner’s national or international acclaim. The petitioner did provide two letters from independent members of the field. ██████████ Manager of Materials at Lumera Corporation, and ██████████, a professor at Washington University in St. Louis, Missouri, both assert that they do not know the petitioner personally and that their opinion is based on their review of his curriculum vitae and publications he provided to them.

██████████ asserts that the materials with which the petitioner works “have high potentials in the fields of flat displays, solar cell, and nanotechnology, which are critical to the *US economy, national safety, health and energy.*” (Emphasis in original.) ██████████ does not assert, however, that he was aware of the petitioner’s work through his reputation prior to being contacted for a reference or that the petitioner’s work has influenced his own projects at Lumera. Similarly, ██████████ provides general praise of the petitioner’s publication record and achievements, but does not assert that she was aware of the petitioner’s work through his national reputation prior to being contacted for a reference or that she has personally relied on the petitioner’s work in her own projects.

We acknowledge that the petitioner is a named inventor on a Japanese patent. As stated above, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. at 221 n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* The petitioner has not demonstrated that his patent has been licensed or is otherwise impacting the field.

Finally, we also acknowledge that the petitioner has a lengthy publication history and is well cited, with one article cited 25 times as of the date of filing, the date as of which the petitioner must establish his eligibility. The citations clearly reflect on the significance of the petitioner’s scholarly articles and will be considered below in that context. Without a more detailed explanation of how the petitioner’s work has impacted the field, however, they are insufficient to demonstrate that the petitioner’s contributions

are of *major significance*. The petitioner's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge 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. 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. As discussed above, the petitioner's independent references do not claim to be influenced by the petitioner's work and none of the references explain how the petitioner's work is already impacting the field.

In light of the above, we concur with the director that 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 director compared the petitioner's publication record with the record of his references and concluded that it could not serve to meet this criterion. The director also noted that while the petitioner was published in a prestigious journal, it only carried one of his articles. On appeal, the petitioner questions this analysis.

As stated above, the petitioner has a lengthy publication record, 61 articles as of the date of filing, and is consistently well cited. As noted by the petitioner, some of the citations remark favorably on the petitioner's work. Thus, we are persuaded that the petitioner meets this criterion. For the reasons discussed above and below, however, the petitioner has not established that he meets any of the other criteria.

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

The petitioner claimed to have played a leading or critical role for Jilin University and UW. The director concluded that the petitioner's positions were not at the top of the institutions' hierarchy. The petitioner no longer claims to meet this criterion on appeal. We concur with the director. We have already considered the petitioner's contributions while at these institutions above. At issue for this criterion is the role the petitioner was hired to fill and the reputation of the entity that hired him. While these universities may have a distinguished reputation, we cannot conclude that every associate professor or acting instructor who plays an important role in a distinguished university's laboratory plays a leading or critical role for the university as a whole.

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 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 an acting instructor, but 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.