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FILE: [REDACTED]  
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Office: NEBRASKA SERVICE CENTER

Date: **MAR 05 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:

[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 denied by the Director, Nebraska 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 in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner 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). 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, filed on March 24, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a transportation engineer. In a March 22, 2006 letter accompanying the petition, counsel states:

Currently, [the petitioner] is working as a senior traffic and transportation engineer at T-Concepts Corp., Brookfield, Wisconsin, which provides micro-simulation solutions for traffic and transportation engineering problems throughout the United States of America. He is involved in a

Freeway System Operational Assessment for the Wisconsin Department of Transportation for Metro Milwaukee Freeway Systems in Wisconsin.

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.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted his membership certificate for the Institute of Transportation Engineers (ITE). The petitioner also states that he is a member of the Association of Civil Engineering (ACE), but there is no evidence originating from the ACE to support his claim. 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)). Further, there is no evidence (such as membership bylaws or official admission requirements) showing that the ITE or the ACE require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one.

On appeal, the petitioner states that he was "invited as a guest member for TRB [Transportation Research Board] Committee on Highway Capacity and Quality of Service Fourth International Symposium on Highway Capacity to present [a] paper." The petitioner's appellate submission includes a copy of the proceedings from this symposium (held June 27 – July 1, 2000) reflecting that a case study coauthored by him appeared on page 271. This documentation specifically identifies the members of the TRB Committee on Highway Capacity and Quality of Service, but the petitioner's name is not among the individuals listed. While the petitioner presented a paper at this symposium, there is no evidence of his membership on the committee.

The petitioner also submits a November 18, 2006 e-mail addressed to “HCQS [Highway Capacity and Quality of Service] Members and friends.” In addressing this evidence, the petitioner states: “At present, I am a friend of the Highway Capacity Committee to participate in the activities and be a part of the proceedings.” This evidence came into existence 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)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, the AAO will not consider this e-mail in this proceeding. Even if we were to accept that the petitioner is a “friend” of the TRB HCQS committee, there is no evidence that he is an official member of the committee. Nor is there evidence showing that this committee requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner’s field or an allied one.

In light of the above, 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.*

In general, 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. 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.<sup>1</sup>

On appeal, the petitioner argues that six cites to his work by others in journals and conference proceedings meet this regulatory criterion. Regarding the engineering articles that merely reference the petitioner’s work, we note that the plain language of this regulatory criterion requires that the published material be “about the alien.” In this case, the articles citing the petitioner’s work are primarily about the authors’ work, not the footnoted material identifying the petitioner. With regard to this criterion, a footnoted reference to the alien’s work without evaluation is of minimal probative value. Further, we note that the articles citing the petitioner’s work similarly referenced numerous other authors. The submitted citations to the petitioner’s work do not discuss the merits of the his work, his standing in the field, any significant impact that his work has had on the field, or any other aspects of his work consistent with his sustained national or international acclaim. The citations of the petitioner’s work are more relevant to the “authorship of scholarly articles” criterion at 8 C.F.R. § 204.5(h)(3)(vi) and will be further addressed later in this decision.

In light of the above, 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.*

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<sup>1</sup> 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, for instance, cannot serve to spread an individual’s reputation outside of that county.

The petitioner submitted several recommendation letters in support of his petition. These letters describe the petitioner's qualifications as a transportation engineer, his activities in the field, and the general importance of research in the area of traffic system simulation and modeling, but they fail to establish that specific work attributable to him represents original contributions of major significance in transportation engineering.

[REDACTED], Principal Engineer, Ecometrica, Inc., an engineering and environmental consulting firm located in Brookfield, Wisconsin, states:

[The petitioner's] doctoral work was in the area of simulation and modeling of transportation system. . . . Subsequently he did post doctoral work at the University of Colorado. His work was in the area of simulation and modeling of heterogeneous transportation system. . . . He has several publications in the field of transportation engineering. His doctoral work and publications are highly valued by the scientific community. He has made several presentations in the international conferences. In his present continuing work he has diligently applied his knowledge of transportation system to the real life problems.

[REDACTED] Associate Professor of Civil Engineering, University of Colorado at Denver Health Sciences Center, states:

[The petitioner] joined the team as a post-doctoral researcher to participate in several ongoing and new research initiatives. [The petitioner] joined us with a strong background in transportation engineering, software development and traffic data collection.

\* \* \*

[The petitioner's] work on modeling non-motorized and motorized vehicles in integrated transport networks paves the way for analyzing the internal and external benefits and costs of transport on society. His work is published and cited in major journals and conference proceedings . . . .

The letters from [REDACTED] and [REDACTED] focus on the petitioner's published and presented work. The articles authored by the petitioner, however, are far 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.

A June 29, 2005 letter from [REDACTED] Professor of Transportation Systems Engineering, states:

[The petitioner] has extensively studied traffic patterns in developed countries and has developed unique algorithms and software to simulate them on a computer, and then improve upon them. [The petitioner's] work not [sic] enables a traffic planner to design new road network but also he can test them cheaply and safely without having to do experimentation on the road itself. In is [sic] post-

doctoral work in Colorado [the petitioner] worked on developing traffic systems in which cyclists can co-exist with automobiles efficiently and safely on the same highway system.

An October 16, 2005 letter from [redacted] Senior Researcher, Corning Incorporated, contains the above passage and additional duplicate text from [redacted] s letter. In addition to identical language, the statements from [redacted] e and [redacted] included the same grammatical errors. It is not clear who is the actual author of the duplicative text in their letters of support, but it is highly improbable that these two individuals independently formulated the exact same wording. While it is acknowledged that these individuals have lent their support to this petition, it remains that one of them did not independently prepare significant portions of his letter. As such, we find the duplicative statements to be of limited probative value.

[redacted], Director of Transportation Planning at Earth Tech Inc., an infrastructure service firm, states:

[The petitioner's] research in traffic simulation is used to perform alternative analysis for a large range of scenarios. Such alternative analysis ensures an optimal solution without experimenting them in the field. . . . On the research side, FHWA [Federal Highway Administration] has recognized the growing importance of simulation modeling in developing, managing and operating optimal transportation infrastructure and initiated a study called Next Generation Simulation Model (NGSIM). I am a member of the expert panels to review this development. I am confident that the models that NGSIM development group could use [the petitioner's] models to enhance the multimodal capabilities of NGSIM. I have referred his work to the committee.

[redacted], Associate, Cambridge Systematics Inc., states:

[The petitioner] has conducted work on simulation and animation of heterogeneous traffic on urban roads. [The petitioner's] work is unique in that he was able to simulate behaviors of 20 different types of vehicles on the same roadway without lane discipline. He also was able to conduct this modeling for congested, transitional, and free flow conditions. When NGSIM selects heterogeneous flows as an area of improvement, [the petitioner's] work will be reviewed as a possible candidate through which heterogeneous modeling behaviors can be improved in existing software systems.

The record, however, includes no evidence that the petitioner's models were selected for use by the NGSIM study as of the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. While the petitioner's work 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 scientific community. Any Ph.D. thesis or published research, in order to be accepted for graduation, publication, conference presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every transportation engineer who performs original work that adds to the general pool of knowledge or who develops unique algorithms and simulation software for "potential" use has inherently made a contribution of major significance in the field. For example, [redacted] states: "In my opinion, [the petitioner's] heterogeneous microsimulation work has great *potential* in improving the state-of-the-art of microsimulation modeling." [Emphasis added]

[REDACTED], Transportation Director, Environmental Defense, states:

[The petitioner] introduced a new technique to model the behavior of complex heterogeneous traffic, which is a dynamic space concept, considering roads as grids with dynamic assignment of vehicles, rather than using conventional lane concepts. This approach will be helpful developing models for bike paths and bicycle traffic and how these interact with motor traffic.

[REDACTED], Adjunct Professor of Civil Engineering, James Cook University, Australia, states: “[The petitioner’s] work has many useful and important applications in examining strategies for safe and efficient accommodation of cyclists and other non-motori[z]ed modes on our roads.”

[REDACTED], Senior Research Engineer, Texas Transportation Institute, states:

I have concluded that [the petitioner] possesses skills, educational background, and training to become a productive part of the transportation profession in this country. His research work in the area of transportation modeling and simulation is of very high quality, and the transportation sector can greatly benefit from his skills.

With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner’s work, rather than how the petitioner’s past work already qualifies as a contribution of major significance in transportation engineering. 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 petitioner has proposed unique algorithms and simulation software for potential use in the transportation engineering field, the fact that the results of this work were published or presented is not sufficient to show that his work constitutes an original contribution of major significance in his field consistent with sustained national or international acclaim. For example, the record does not indicate the extent of the influence of this work on other transportation engineers nationally or internationally, nor does it show that the field in general has somehow changed as a result of this work.

In this case, the letters of support submitted by the petitioner’s professional contacts and their discussion of his work are not sufficient to meet this criterion. 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 795-796. 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 engineer who has sustained national or international acclaim. Without evidence showing that the petitioner’s work has been unusually influential, highly acclaimed throughout his field, or has

otherwise risen to the level of contributions of major significance, we cannot conclude 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 papers for presentation at various conferences and publication in journals such as *Transportation Research Record*. The petitioner's response to the director's request for evidence and appellate submission demonstrate that his body of work was cited an aggregate of six times. The director found that the record lacked "evidence that the petitioner's published research has been extensively cited or otherwise recognized." We concur with the director's findings for this criterion and take administrative notice of the fact that authoring scholarly articles is inherent to engineering research. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, 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 alien's work may indicate that his work has gone largely unnoticed by his field. In this case, there is no evidence showing that the petitioner's articles were frequently cited, or that they appeared in major publications or other major media in a manner consistent with sustained national or international acclaim. As such, 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 director's decision stated:

The self-petitioner asserts that the evidence establishes that he has played a leading or critical role at the Wisconsin and Michigan Departments of Transportation. However, the record contains no documentary evidence to support these claims. . . . The record lacks evidence demonstrating how the petitioner's role differentiates him from other engineers holding similar appointments, let alone more senior personnel in the organizations in question. The record also lacks copies of research grants awarded and other official documents showing that the petitioner is recognized as a primary investigator or has an equivalent designation evincing significant functional responsibility relative to other engineers within the organization. The record does not demonstrate that the petitioner holds or held a senior office within the organizations, or is or was otherwise responsible for the organizations' success or standing to a degree consistent with the meaning of "leading or critical role." In the context of the petitioner's field, participation in engineering assessments and studies is inherently important but not necessarily qualifying in scope or impact to meet this criterion.

We concur with the director's observations regarding the petitioner's role for the Wisconsin and Michigan Departments of Transportation and find that these observations also apply to the universities and employers for which the petitioner has worked. On appeal, the petitioner does not specifically challenge the director's observations for this criterion.

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

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner requests that his work on various projects, involvement with several agencies, and the uniqueness of his Ph.D. dissertation be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Much of this evidence has already been addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Further, there is no evidence that the documentation the petitioner requests reevaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence,” but only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

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.

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.