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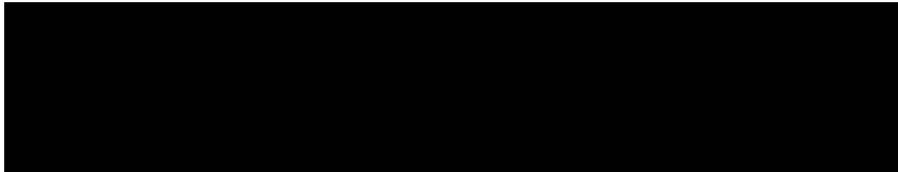
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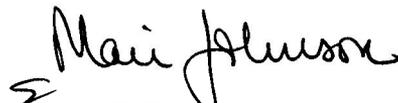
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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, counsel submits a brief, previously submitted evidence and minutes from a liaison meeting between the American Immigration Lawyers Association (AILA) and the Texas Service Center. While we concur with counsel that the petitioner’s citations carry evidentiary weight, we uphold the director’s ultimate conclusion that the petitioner does not meet at least three of the ten regulatory criteria as required. Finally, our conclusion based on a review of the evidence under the regulatory criteria individually is consistent with a review of the evidence in the aggregate.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (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 a research scientist. 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

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 submitted evidence that, in the aggregate, his articles are well cited. The director concluded that none of the articles that cite the petitioner's work focus on his work and, thus, that the articles cannot serve to meet this criterion. On appeal, counsel concedes that "the majority of each article is not about [the petitioner] or his research" but asserts that the petitioner's research group is named and that the research reported in these articles could not have occurred without the petitioner's work.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material "about the alien . . . relating to the alien's work." Thus, the published material itself must be about the petitioner. As counsel concedes, none of the citing articles are "about" the petitioner or his work. Rather, the articles are either general reviews of the field or report on the research of the citing author and merely cite the petitioner's work as one of tens or hundreds of other research articles.

We do not contest that wide and frequent citation is indicative of the significance and impact of the work being cited. That said, such evidence simply does not meet the plain language requirements of this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii). Rather, citations evidence is more relevant to the contributions and scholarly articles criteria at 8 C.F.R. § 204.5(h)(3)(v) and (vi), discussed below.

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 submitted evidence that he was invited to review manuscripts for the *Journal of Physical Chemistry* and the *Journal of Molecular Catalysis A*. The director concluded that the petitioner's participation in the widespread peer-review process could not serve to meet this criterion.

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

On appeal, counsel asserts that both journals have a distinguished reputation and impact factor. Counsel further asserts that the director failed to apply the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv), which requires only that the petitioner provide evidence of service as the judge of the work of others irrespective of whether such service sets the alien apart from others in the field. Counsel relies on notes from a liaison meeting between AILA and the Texas Service Center, which indicate that the Texas Service acknowledged that peer review can serve to meet this criterion.

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.* 817 F. 2d 74, 75 (9th Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even CIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.") Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Thus, the liaison minutes are not binding on us. While the service center indicated it was following decisions by this office, neither the service center nor counsel cite any precedent decision by this office holding that peer-review in the sciences can be presumed to meet this criterion.

Simply submitting evidence that relates to a given criterion is insufficient. In order to meet a given criterion, the evidence must be indicative of or consistent with sustained national or international acclaim if that statutory standard is to have any meaning. While each piece of evidence need not, on its own, establish national or international acclaim, in considering whether the evidence relating to a given criterion in the aggregate is sufficient to meet that criterion, we must take into account what is normal in the alien's field and what might set a member of that field apart from others in the field. In other words, while we recognize that national or international acclaim is demonstrated by meeting three criteria in the aggregate, accepting evidence of routine duties in the field to meet a given criterion would allow a petitioner to establish eligibility based on three routine duties. We fail to see how performing three routine duties in the field is any more persuasive than performing one routine duty.

We cannot ignore that the thousands of scientific journals in the world are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field. 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, we cannot conclude that the petitioner meets this criterion.

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

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.

The petitioner relies on his published articles, the citations of his work, his U.S. and Indian patents and letters from his immediate circle of colleagues to meet this criterion. All of this evidence is clearly relevant to this criterion and will be discussed in detail below. At the outset, however, we note the following considerations.

The regulations contain a separate criterion for authorship of scholarly articles in the field. 8 C.F.R. § 204.5(h)(3)(vi). Thus, while relevant to this criterion, scholarly articles cannot serve as presumptive evidence to meet this criterion. To hold otherwise would render the regulatory requirement that an alien meet at least three criteria meaningless.

In addition, 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). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* Thus, a petitioner must establish the significance and impact of his patent in order to meet this criterion.

Finally, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* 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)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field.

In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

The petitioner obtained his Ph.D. from Osmania University in 1997. The petitioner then worked as a postdoctoral fellow at the Katholic University (KU) of Leuven in Belgium. Subsequently, the petitioner began another postdoctoral fellowship at The Ohio State University and then worked for Superconductive Components Inc. (SCI) before joining MetMateria Partners.

[REDACTED], Chair of the Department of Chemistry at The Ohio State University and one of the petitioner's co-authors, asserts that the petitioner's doctoral research, resulting in 12 published articles, established the petitioner "amongst the best young scientists working in the field." Dr. [REDACTED] further asserts that at KU, the petitioner learned and developed techniques that are essential to understanding the mechanism of catalysts during a reaction. At The Ohio State University, [REDACTED] and the petitioner collaborated on Nitrogen Oxide (NOx) sensors. [REDACTED] notes that typical carbon monoxide sensors will not work for Proton Exchange Membrane (PEM) based fuel cells but that he and the petitioner developed a copper chloride based sensor that can be used within fuel cell processors for PEM fuel cell power generation systems. [REDACTED] notes that a U.S. patent has been issued for this sensor and the record contains the patent. [REDACTED] further asserts that the sensor technology is licensed to Ceramatec for onboard NOx sensors for diesel engines. The record does not include a letter from any official at Ceramatec explaining the significance of this license to their company or the field in general.

[REDACTED], a one-time officer at SCI, asserts that he worked with the petitioner at The Ohio State University before recruiting the petitioner to SCI. [REDACTED] asserts that the petitioner was a "critical team member in the development and commercialization of several new materials synthesis process" at SCI but does not provide examples of specific contributions or how they have impacted the field.

[REDACTED], President of MetaMateria, asserts that the petitioner's contributions have helped MetaMateria grow from three to 22 employees and that his work had produced commercial opportunities expected for the company in the future. Specifically, the petitioner has worked synthesizing nanoparticles of a thermoelectric material intended to capture waste heat and efficiently convert it into electricity and is focusing on superconductive materials that can contribute to nanoparticle coatings for fuel cells. The petitioner is also working on techniques that, according to [REDACTED] will allow for smaller lithium batteries for medical applications and transparent ceramics for military applications.

[REDACTED], a senior scientist with the Department of the Navy, asserts that he has worked with the petitioner for two years and that the petitioner has significantly contributed towards the design of new sensor window materials for missiles, aircraft, tanks and ships. While the petitioner's work at MetaMateria has been evaluated as promising by the petitioner's close colleagues, the record is absent evidence that this work had already made an impact in the field as of the date of filing, the

date as of which the petitioner must establish eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The remaining letters, all from the petitioner's immediate circle of colleagues, provide similar information. The above letters establish only that the petitioner is respected by his immediate circle of colleagues and has made useful contributions to his employers. They do not demonstrate that the petitioner has any reputation in the field beyond his close circle of colleagues.

We acknowledge that the petitioner is a named inventor on a U.S. patent and 10 Indian patents. As stated above, while the patents may demonstrate that the petitioner's work is original, the petitioner cannot simply rely on being a named inventor on a patent to establish that he has made a contribution of *major significance*. According to the patent itself, the petitioner's U.S. patent for a carbon monoxide sensor is assigned to The Ohio State University and NexTech Materials, Ltd. The record contains no evidence that The Ohio State University or NexTech Materials have utilized the petitioner's technology to great impact. As stated above, while ████████ asserts that the petitioner's sensor technology is licensed to Ceramatec for onboard NOx sensors for diesel engines, the petitioner did not submit a letter from any official at Ceramatec explaining the significance of this license to their company or the field in general. Finally, the record contains no evidence that the petitioner's innovations patented in India have been utilized.

We acknowledge that the petitioner is a prolific author, having authored at least 23 published articles as of the date of filing and presented his work at various conferences. Once again, the acceptance of his work for publication and presentation demonstrates that his work is original but does not create a presumption that his work can be considered a contribution of major significance. The petitioner did submit evidence that his work has been cited. While counsel focuses on the total number of citations, we find it more useful to look at the number of citations for each article. The reasons for examining the citations in this way are that the same article may cite more than one of the petitioner's articles (and would be counted multiple times in an aggregate evaluation) and an ordinary scientist in the field for many years may publish many minimally cited articles that do not set him apart from others in the field but accumulate in the aggregate.

The record demonstrates that none of the petitioner's articles individually had been cited more than 28 times, with many of his articles receiving far fewer citations. On appeal, counsel asserts that the work discussed in the articles citing the petitioner's work could not have occurred without the petitioner's work. While the petitioner's work is sometimes cited individually,² the petitioner's work is often cited merely as one of several articles for the same proposition.³

² For example, a 2004 article in *Chemical Engineering Science* cites the petitioner's work individually for the proposition that ordered mesoporous materials have significant potential as catalyst supports as well as for the production of special polymer materials.

³ For example, in a 2002 article in the *Journal of Analytical and Applied Pyrolysis*, the petitioner's article is cited as one of five for the proposition that Aldehydes are often considered as intermediates for certain reactions and the citing article acknowledges that the literature on this point is "copious," with only "some

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific community. The record, however, does not establish that the petitioner's work represented a groundbreaking advance in his field. While the petitioner's research clearly has practical applications, it can be argued that any Ph.D. thesis or published article, in order to be accepted or published, must offer new and useful information to the pool of knowledge.

Ultimately, the record lacks evidence that the petitioner's work has profoundly impacted the field as can be expected of a contribution of major significance. Thus, we concur with the director that the petitioner does not meet this criterion. That said, we acknowledge that the petitioner has been moderately cited and will consider that evidence again under the scholarly articles criterion. We reiterate, however, that the scholarly articles criterion is a separate criterion and meeting that criterion does not create a presumption that an alien also meets this criterion. *See* 8 C.F.R. § 204.5(h)(3); 8 C.F.R. § 204.5(h)(3)(v), (vi) (an alien must meet at least three criteria and contributions of major significance and scholarly articles fall under two separate criteria.)

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 23 published articles and additional conference presentations. As stated above, the petitioner also submitted evidence that his articles are consistently moderately cited. The director noted that it is routine for a research scientist to publish his findings. The director acknowledged the petitioner's citation record but concluded that the petitioner's publication and citation record were insufficient to meet this criterion.

On appeal, counsel asserts that the regulation at 8 C.F.R. § 204.5(h)(3)(vi) does not require that the petitioner demonstrate the significance of his articles, only their existence. Counsel further asserts that the petitioner's citation record adequately demonstrates the significance of his published articles.

As stated above, the evidence submitted to meet a given criterion must be indicative of or consistent with national or international acclaim if that statutory standard is to have any meaning. We cannot ignore that certain activities, such as the authorship of scholarly articles, are inherent to certain occupations, such as research scientists. To hold otherwise would undermine congressional intent that this classification be limited to the small percentage at the very top of the field.

In light of the above, we reject counsel's implication that authorship of even a small number of scholarly articles by a research scientist is presumptive evidence to meet this criterion without any evidence as to the impact of those articles. That said, we acknowledge that the petitioner in this case

references cited." In a second example, a 2003 article in the *Journal of Polymer Science* cites 26 articles total for the high potential of mesoporous silica as a nanoreactor for polymerization, citing the petitioner's article as one of 10 articles reporting this potential for ethylene.

has authored a moderate number of articles that have been consistently moderately cited. Thus, we are persuaded that the petitioner meets this criterion.

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

While counsel initially asserted that the petitioner's presentations at scientific conferences serve to meet this criterion, on appeal, counsel does not challenge the director's conclusion that a scientific conference is not an artistic exhibition or showcase. We find that the petitioner's conference presentations are comparable to the publication of scholarly articles pursuant to 8 C.F.R. § 204.5(h)(3)(vi), a criterion we have acknowledged the petitioner meets.

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies on his patents, publications, moderate citation record, participation in the widespread manuscript peer review process and the praise of his immediate circle of peers. [REDACTED], one of the petitioner's references, is the CEO of NanoDynamics, Inc., won an IR 100 Award for the most significant technical product of the year and is a fellow of the American Ceramic Society. [REDACTED] another reference, was a member of the Dutch National Priority Program on Materials Research Board, with the responsibility of evaluating grant proposals. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

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 research scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a research scientist, 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.