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U.S. Citizenship
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FILE: EAC 05 256 50817 Office: NEBRASKA SERVICE CENTER Date: **MAY 29 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
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 and additional evidence. For the reasons discussed below, the petitioner has not overcome the director’s finding that the record lacks evidence of the petitioner’s national or international acclaim in his field. We reach this conclusion from a review of the evidence under the regulatory criteria to which it relates and from 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, who had worked briefly after obtaining his first Ph.D. and, as of the date of filing, was studying for his second Ph.D., as an alien with extraordinary ability as a physicist. While an alien with little post-academic experience is not precluded from establishing eligibility for this exclusive classification, he must compare with the small percentage at the top of his field, including the most experienced and renowned members of his field.

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 been advised twice of the regulatory criteria, in the director's August 8, 2006 request for additional evidence and in the final decision, but has never fully explained which three criteria he claims to meet. The criteria follow.

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

The record contains no evidence relating to 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 submitted his membership card for the American Physical Society (APS). The petitioner did not submit any evidence of the membership requirements for APS, such as the society's bylaws. The regulation at 8 C.F.R. § 204.5(h)(3)(ii) expressly requires evidence of membership in an association that requires outstanding achievements of their members. Thus, the membership requirements are a fundamental element that must be established in order to meet this criterion. Without evidence that APS membership is limited to those who have demonstrated outstanding achievements, the petitioner cannot establish 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 initially submitted the results of Internet search engine searches for his name. The list of results does not establish that any of the results represent published materials primarily about the petitioner in professional or major trade publications or other major media. Some of the results do not appear to relate to the petitioner and other results are articles *by* the petitioner. Additional results are in

a foreign language and are not accompanied by full certified translations as required under 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3).

In response to the director's request for additional evidence, the petitioner submitted a letter from the State Unitary Enterprise broadcasting company of Bashkortostan asserting that on July 30, 2005, the petitioner was interviewed by telephone for a satellite television broadcast on Russian professionals whose skills could be in demand "in his native country - Bashkortostan." We note that Bashkortostan is not a country. The letter further indicates that this local satellite television station provides coverage for several regions in Russia as well as Eastern Europe, Scandinavia, Caucasus and Middle Asia. The petitioner also submitted a short article dated September 19, 2001 on the same topic in a local newspaper in the Mechetlinsky district of Bashkortostan.

The director concluded that the television broadcast was not primarily about the petitioner relating to his work and that the newspaper article appeared in a local paper that could not be considered major media. On appeal, the petitioner asserts that the broadcast included his biography and that he spoke about his research and life in the United States. The petitioner further asserts that the broadcast concluded that specialists like him would be well in demand in Russian science.

We acknowledge that the letter from the satellite television station states that the petitioner spoke about his biography and research. The letter further states that the petitioner was chosen as an example of someone whose experience "could have been contributing to development of science in his native country - Bashkortostan." 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 are not persuaded that this phone interview with a satellite television station based in the area where the petitioner is from is indicative of or consistent with national or international acclaim. The petitioner appears to have been selected because he is a skilled professional from Bashkortostan who is working overseas. While he discussed his research, his research does not appear to have formed the basis of his selection for the interview. In other words, the broadcast does not constitute journalistic coverage of the petitioner's research based on the significance of that research. Ultimately, this broadcast does not appear to have derived from or contributed to the petitioner's notoriety in the field.

The petitioner does not challenge the director's conclusion that the brief article in the Mechetlinsky district newspaper did not appear in major media and we concur with the director.

In light of the above, 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 record contains no evidence relating to this criterion.

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

The petitioner initially claimed to have made contributions to the physics of multiphase flows. He submitted his published articles and letters from his immediate circle of colleagues. The director did not specifically address this criterion, but did note that the petitioner had not submitted any evidence that his work had been cited and that the letters were not supported by independent evidence of acclaim. On appeal, the petitioner reiterates the work he did while pursuing his second Ph.D., asserting that he has now defended his dissertation. The petitioner, however, must establish his eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Thus, the petitioner cannot rely on events that occurred after that date, in this case, September 25, 2005.

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 *as of the date of filing*. Otherwise, it is difficult to gauge the impact of the petitioner's work.

We will consider the petitioner's reference letters in detail below. The opinions of experts in the field, however, 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. 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 received his initial Ph.D. (Kandidat Nauk) in Physics and Mathematics from Bashkir State University in 2000. The petitioner indicates that in 2001 he was a “leading expert in information technology” at Bashkir State University before accepting a postdoctoral research associate position at Rensselaer Polytechnic Institute (RPI). In August 2002, the petitioner began pursuing his second Ph.D. at RPI and was still pursuing that degree as of the date of filing.

The petitioner submitted a letter from [REDACTED] currently a professor at Moscow State University and a visiting professor at RPI. [REDACTED] asserts that he was head of the petitioner’s doctoral thesis committee at Bashkir State University. As part of his doctoral work at this institution, the petitioner “explored thermoelastic and filtration processes in porous media undergoing electromagnetic heating,” aimed at improving oil production. While [REDACTED] asserts that the petitioner’s investigations resulted in improved pumping capacity, [REDACTED] does not identify a pumping facility that applied the petitioner’s results and the record contains no attestations from Russian industry officials confirming their use of the petitioner’s work.

In his initial letter, [REDACTED], co-advisor of the petitioner’s thesis at RPI and a member of the National Academy of Engineering, explains that the petitioner is “one of the lead researchers” in [REDACTED]’s group pursuing direct numerical simulation (DNS) of plunging liquid jets and wavy separated multiphase flows. [REDACTED] asserts that this work is funded by the Office of Naval Research (ONR). [REDACTED] speculates that the petitioner’s research “*should* have a significant impact on the design of naval surface ship hulls, nuclear reactor safety technology, and NASA’s proposed manned mission to Mars.” (Emphasis added.) [REDACTED] further asserts that the petitioner is the only person in the United States doing this type of analysis.

In a new letter submitted on appeal, [REDACTED] provides more details. Specifically, [REDACTED] indicates that the petitioner developed “a three-dimensional adaptive grid finite element model (FEM) which uses an advanced level set algorithm to track the gas/liquid interfaces associated with breaking surface waves and plunging liquid jets.” The petitioner used this “state-of-the-art computer code to perform DNS for realistic air/water direct ratios, and has received good results.” [REDACTED] further explains that these results are unique because the petitioner was successful where others had tried and failed. In addition, [REDACTED] explains that the petitioner derived “an exact analytical solution for a stable traveling interfacial wave,” which he then used to validate his computer code. [REDACTED] notes that the petitioner presented this work in 2004 and published it in 2005. Finally, Dr. [REDACTED] asserts that the petitioner “worked out an ingenious way to use DNS results to develop the interfacial closure laws required” in the widely used computational multiphase fluid dynamic (CMFD) models. While [REDACTED] asserts that the “implications of this seminal research are very significant,” he does not assert that, as of the date of filing, this work was already influential. Similarly, [REDACTED], another co-advisor of the petitioner’s thesis at RPI, speculates that the

petitioner has developed techniques for simple closure laws “that *will* profoundly change the way in which design is done for multiphase flows.” (Emphasis added.)

██████████y concludes that the petitioner is “one of the world-wide leaders” in heat transfer technology and one of the best Ph.D. candidates he has supervised. ██████████, another member of the petitioner’s thesis committee at RPI, provides similar information and concludes that the petitioner “is one of the best students, and also one of the most motivated.” We will not narrow the petitioner’s field to Ph.D. candidates. The petitioner must also compare with the most experienced and renowned members of the field.

The record also includes a letter from ██████████, coordinator of the Bubbly Flows Research Program at ONR, although this letter is not on official ONR letterhead. ██████████ asserts that the petitioner has focused on DNS of the air entrainment processes in plunging liquid jets and developing an analytical form of the closure laws for bubble sources. ██████████ explains that correctly modeling bubble sources “is the most difficult and critical element in the Bubbly Flows program” and that the successful solution of this problem will be a significant advancement in ship flow-field prediction. ██████████ further asserts that the complexities involved in computational fluid dynamics has resulted in a situation where only a small group of researchers, including the petitioner, have succeed in implementing this technique. ██████████ does not explain how the petitioner’s results are already being implemented in the field beyond the laboratory in which the petitioner works.

The petitioner also submitted a letter from P██████████ at the University of Arizona. While currently at an independent institution, P██████████ asserts that he became acquainted with the petitioner at RPI and has known the petitioner for three years. Thus, ██████████ does not appear to be a wholly independent reference who became aware of the petitioner’s work through his national or international reputation. ██████████ asserts that the petitioner’s research is of great importance to ONR. We acknowledge that the petitioner’s work is funded by ONR and, thus, is considered of importance to that office. We are not persuaded, however, that every researcher working under a government grant must be presumed to have already made a contribution of major significance to his field.

██████████y further asserts that the petitioner has “an outstanding reputation at the School of Engineering and Center of Multiphase Research at RPI,” which ██████████ asserts is one of the top five engineering programs in the United States. While we do not question RPI’s status, the petitioner must demonstrate national or international acclaim, not merely a positive reputation at the institution where he is pursuing a Ph.D. ██████████ then asserts that the petitioner’s recognition in the international community is apparent from the invitations to present his work at international conferences. The petitioner has not demonstrated that the petitioner was a specially invited keynote speaker at a conference or other evidence that sets him apart from the thousands of scientists whose submitted manuscripts are accepted for poster or oral presentation at scientific conferences. We acknowledge that one of the petitioner’s articles was selected as an archival paper

for presentation and inclusion in a special edition of *Nuclear Engineering and Design* in honor of Dr. ██████'s 65th birthday contingent upon "extensive editorial work." This invitation appears to reflect on ██████'s acclaim far more than the petitioner's.

The record contains several articles authored by the petitioner. As explained above, however, a contribution of major significance must not only have been disseminated in the field but also be demonstrably influential. The petitioner submitted a list of results from an Internet search engine search of his name. Not all of the results relate to the petitioner and some of them merely represent links to the petitioner's own work rather than explicit citations of the petitioner's work in articles authored by other researchers in the petitioner's field. As stated above, the petitioner did not provide translations of the foreign language results. Thus, the petitioner has not established that his work is widely and frequently cited.

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 scientific community. Any Ph.D. thesis or postdoctoral 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 to the field as a whole.

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

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence that he has authored several published articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." Moreover, for physicists and astronomers, the Department of Labor's *Occupational Outlook Handbook* (2008-2009 ed.), available online at <http://www.bls.gov/oco/ocos052.htm> and accessed May 28, 2008, provides that good written communication skills are important because many physicists write research papers. This information reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The record contains no evidence that the petitioner is widely and frequently cited or even moderately cited. Thus, the petitioner has not demonstrated that his publication record is indicative of or consistent with national or international acclaim and, as such, has not established that he meets this criterion.

Even if we were to conclude that the petitioner meets this criterion based on the submission of evidence that conforms to the plain language of this criterion,¹ for the reasons discussed above and below, the petitioner falls far short of meeting any other criterion.

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

This criterion applies to the visual arts, and is not applicable to the petitioner's field.

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

The petitioner asserted initially that he had been offered the Chair of the Department of Informational Technology at Bashkir State University. ██████████ does not confirm this offer and the record does not contain this offer. Moreover, the petitioner does not indicate that he actually performed this role for the university. Finally, it is not clear that this role is indicative of the petitioner's acclaim in the field of Multiphase Physics, the field in which he seeks to work in the United States. The record also lacks evidence supporting the petitioner's assertion that he worked as a "leading expert in information technologies" at Bashkir State University or evidence as to how this position fits within the overall hierarchy at the university. The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience shall consist of letters from the employer. Moreover, 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)).

The petitioner has submitted evidence of potential employment in the United States. As stated above, the petitioner must establish eligibility for the classification sought as of the date of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, prospective employment cannot serve to meet this criterion.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. As of the date of filing, the petitioner had documented that he worked as a postdoctoral

¹ An interpretation that fails to consider whether the evidence submitted to meet a given criterion is indicative of or consistent with national or international acclaim would undermine the statutory standard for this classification. Even acknowledging that the evidence for a single criterion alone need not independently establish eligibility, we cannot conclude that submitting evidence of three achievements inherent to the field is any more persuasive than a single achievement inherent to the field.

research associate. We are not persuaded that this entry-level training position is a leading or critical role for the university as a whole.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner has never claimed to meet this criterion and the record contains no evidence demonstrating that the petitioner's remuneration is comparable with the most experienced and renowned members of the field.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion relates to the performing arts and, thus, is not applicable to the petitioner's field.

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, a Ph.D. student as of the date of filing, relies on his publication record, professional membership, funding from ONR and the praise of his immediate circle of peers. As stated above, [REDACTED] is a member of the National Academy of Engineering. He also previously served as Director of the Center for Multiphase Research Center and Dean of Engineering at RPI. Dr. [REDACTED] served on the editorial committee of several journals. Thus, it is clear that the top of the petitioner's field is far higher than 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 physicist 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 physicist, 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.