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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 10 APR 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

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 Service 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 she 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 computer 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 which, she claims, meets the following criteria.

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

As evidence to meet this criterion, the petitioner initially submitted letters evaluating her proposed project to develop an interactive Soil Quality and Data Information and Knowledge System (SQIKS). [redacted], a retired soil and water management program leader at the United States Department of Agriculture, asserts that the task of creating "a digital interactive database incorporating the research results and observations recorded on the soil and water resources of this country" is "momentous" and that the petitioner has the "drive and tenacity" to initiate this project.

Gale Dunn, a soil scientist at the USDA-ARS in Fort Collins, asserts that the petitioner's abilities as an intern were impressive, that her thesis was excellent, and that the implications of her proposal are "tremendous" and necessary. [redacted] a conservation agronomist at the National Soil Erosion Research Lab, USDA, discusses the importance of the petitioner's proposed database to the conservation of soil and water resources. These sentiments are echoed by [redacted] a former classmate of the petitioner's now working for the Environmental Protection Agency (EPA); [redacted] Head of the Department of Agronomy at Purdue University where the petitioner obtained her Ph.D.; [redacted] who participated in the petitioner's thesis defense at Alcorn State University; Bill X. Hu, another former fellow classmate; [redacted] a research agronomist at Purdue University; and the petitioner's Master's advisor, [redacted] in whose course the petitioner was a teaching assistant at Purdue University and [redacted] a professor at that university, both assert that the petitioner's expertise in agronomy and computer science uniquely qualifies her to create the proposed database. [redacted] Head Soil and Plant Analysts for the Canadian Natural Resources Department, provides even less information than the above references, stating merely that the petitioner's skills will enable her to contribute significantly to U.S. agriculture.

Dr. Ronald Turco, a professor at Purdue University, writes:

> [The petitioner] was your typical graduate student, showing improvement as she continued through the program and graduating in fine fashion. From her work on her Ph.D., she was able to publish two scientific papers that have advanced our understanding of soils and soil processes. However, it is the time after her graduate degree that I feel has made [the petitioner] unique and valuable to the United States.
>
> . . . Since [the petitioner] completed her Ph.D., she has been taking classes and has acquired the knowledge that has allowed her to combine the areas of computer and natural resources sciences. More-to-the-point, she recently was the lead person on a multi-investigator proposal submitted from my institute to NSF, which sought funding to work in this area of unique research. She was the lead individual on the project and the subsequent proposal because of her earlier computer models (which she had developed on her own) served as the background for the effort.

Professor Sunil Prabhakar an assistant professor at Purdue University who specializes in digital libraries, provides similar information.

As noted by the director in his request for additional documentation, many of these letters assert that the petitioner's residence in the United States would be in the national interest. The director correctly stated that national interest considerations are relevant to a lower classification than that sought by the petitioner. A petitioner cannot establish that she has already sustained national or international acclaim based on a proposal for a future project, no matter how important that project may be.[1] Rather, a petitioner must demonstrate that she has already sustained national or international acclaim based on contributions of major significance to her field.

In response to the director's request for additional documentation, the petitioner submitted additional letters. [redacted] an assistant professor at Ohio State and [redacted] soil scientist with the Research and Development Department of Chicago provide additional reviews of the petitioner's database proposal but no analysis of past contributions.

Other letters, however, provide an evaluation of the petitioner's past work. [redacted] research scientist at USDA-ARS in Beaver, West Virginia, reiterates that the petitioner's project has great potential. Regarding her past accomplishments, he states:

> In her graduate program [the petitioner] has carried extensive research in the areas of soil pH on availability of phosphorus and aluminum, sorption and degradation of herbicides and earthworm dynamics in various tillage systems. [The petitioner's] research findings have contributed significantly to advance the knowledge in the areas of soil chemistry, soil biology and biochemistry.

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. It does not follow that every published paper represents a contribution of major significance, as required by this criterion.

In an e-mail message to the petitioner, [redacted] Director for Cooperation at CIAT, advises that she meets the qualifications for Library Head if she is interested in applying. Meeting the job qualifications for a position is not evidence of past contributions of major significance in one's field. The job requirements, which the petitioner submitted, do not indicate that a successful candidate must demonstrate that she has made major contributions to her field. Similarly, the acknowledgement by several government agencies that her job application is under consideration is not evidence that the petitioner has national or international acclaim. There is no evidence that the

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[1] Even advanced degree professionals or aliens of exceptional ability requesting a waiver of the labor certification in the national interest must demonstrate a past history of achievement which justifies projections of future benefit to the national interest.

petitioner's application was solicited by these agencies based on her significant contributions to her field.

[redacted] a soil scientist with USDA in Ohio, writes that while he has never met the petitioner, her published article on the effect of earthworms on sorption and degradation of the herbicide atrazine has influenced the direction of his own work. [redacted] Subject Editor of *Soil Biology and Biochemistry*, asserts that the petitioner's area of research, the fate of common herbicides and the functioning of earthworms in agricultural systems is important and the petitioner's work was "solid and high quality." He rates the petitioner as "a productive scientist doing high quality work that is of value to American agriculture." [redacted] the Editor-in-Chief; [redacted] a Subject Editor; and [redacted] another Subject Editor all provide similar information.

[redacted] of the University of Exeter, describes the petitioner as "a promising young scientist who has potential to contribute significantly to soil ecology in the USA." Potential is insufficient for this criterion and this classification. A petitioner must have already made contributions of major significance for this criterion and have already sustained national or international acclaim for this classification. [redacted] also states that the petitioner's publications "contribute to both fundamental and applied understanding of earthworm ecology in the USA." [redacted] professor of entomology at Ohio State University, writes that the petitioner's articles constitute "significant additions to the scientific literature."

While the petitioner has submitted letters from independent researchers, only one researcher acknowledges being influenced by her work. Opinions from independent experts who were not previously aware of the petitioner, and are simply reviewing a resume or list of accomplishments, cannot establish national acclaim. Such letters may, in fact, simply reinforce the conclusion that the petitioner is not well-known in the field, by demonstrating that her reputation did not precede the specific request for a recommendation. Moreover, while the authors describe the petitioner as talented and her work as useful, none of the letters reflect that the petitioner's work has had a major influence on the field. Finally, while not discussed by the director, the record contains a reference letter requested by the petitioner but submitted to the Service under separate cover. The author of this letter opines that the petitioner's knowledge and skill are not especially notable. While not the sole basis of our conclusion, it reinforces our determination that the petitioner has not made contributions of major significance to her field.

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

The petitioner has submitted two 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 were 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." This report reinforces the Service'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. While editors for the journal which published the petitioner's articles assert that their journal is extremely influential and often cited, the record contains no evidence that the petitioner's articles have been widely cited by independent researchers.

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

The petitioner relies on the letter from [redacted] detailing her as the lead individual for the digital library proposal. While the petitioner submits substantial documentation on appeal which reflects that the digital library is operational, it is not clear that the proposal had received the requested funding from the National Science Foundation at the time of filing. Regardless, a proposal is not an organization or establishment. Thus, even if the petitioner had established that she was playing a leading or critical role for a funded project at the time of filing, that role could not serve to meet this criterion.

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 herself as a soil scientist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a soil scientist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.