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**U.S. Citizenship
and Immigration
Services**

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FILE: EAC 03 081 54578 Office: VERMONT SERVICE CENTER Date: JUN 16 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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.

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 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 earned sustained national or international acclaim at the very top level.

This petition, filed on January 15, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Mechanical Engineering Researcher." At the time of filing, the petitioner was working as an Associate Professor in the Department of Mechanical Engineering at Yuan Ze University in Taiwan.

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.

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, 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In a memorandum accompanying the petition, counsel states: “[The petitioner] is a member of the Legislative Yuan. Membership in a nation’s legislative body amounts to a membership in a prestigious organization that requires outstanding achievements of its members.” The plain wording of this criterion, however, requires evidence of the petitioner’s “membership in associations in the field for which classification is sought.” In the present case, the petitioner seeks employment in the United States as a “Mechanical Engineering Researcher” rather than as a politician.¹ Serving as an elected member of a legislative body does not constitute membership in an engineering association.

Counsel also asserts that the petitioner is a member of various professional associations; however, no evidence of his membership in the associations was provided. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbenra*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, the petitioner submits a certificate indicating that he was “elected an Associate Member by the University of Wisconsin at Milwaukee Club” of Sigma Xi, The Scientific Research Society, in 1989. The petitioner also submits general information about the Society printed from its website, but he did not include information pertaining to the Society’s specific membership requirements for Associate Members. Further review of the Society’s website indicates that outstanding achievement is not required for admission as an Associate Member.² Rather, an individual need only demonstrate an “aptitude for research which is expected

¹ The regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise.” The record contains no evidence indicating that the petitioner intends to seek a political office here in the United States.

² Information from Sigma Xi’s website, <http://www.sigmaxi.org> (accessed June 10, 2005), states:

Requirements for Election or Promotion to Membership.

in due course to lead to the fulfillment of the requirements for full membership.” Clearly, “Full Membership” is indicative of a higher level of achievement.

The record contains no evidence showing that the petitioner holds membership in an association requiring outstanding achievements of its members, as judged by recognized national or international experts.

Published materials 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.

The petitioner submitted nine articles under this criterion. In describing these articles, counsel states: “These articles discuss [the petitioner’s] work as either a Legislator or Mayor. They cover his work on political issues” The plain wording of this criterion, however, requires “published materials . . . relating to the alien’s work in the field for which classification is sought.” In this case, the field for which classification is sought is “mechanical engineering” rather than politics. The articles provided do not relate to the petitioner’s work as an associate professor or mechanical engineering researcher, but, rather, his political activities. We further note that the petitioner himself is not the primary subject of the majority of these articles.

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 letters indicating that he served as an advisor to the organizing committee for a national sports event and as a consultant and tutor to the China Youth Corp. There is no indication, however, that the petitioner’s service on these committees involved professional activities related to mechanical engineering or an allied field of specification.

The petitioner also submitted letters indicating that he served on various committees at Yuan Ze University (such as his service as a member of the examination committee in the Department of Mechanical Engineering charged with evaluating master’s degree candidates). In an occupation where “judging” the work of others is an inherent duty of the occupation, such as an instructor, teacher, or professor, simply performing one’s job

Member (Full Member): Any individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science is eligible for election or promotion to full membership in the Society by a chapter or the Committee on Qualifications and Membership.

Associate Member: Any individual who has, through initial research achievement in a field of pure or applied science, shown aptitude for research which is expected in due course to lead to the fulfillment of the requirements for full membership, is eligible for election to associate membership by a chapter or the Committee on Qualifications and Membership.

related duties demonstrates competency, and is not evidence of national or international acclaim.³ The record contains no evidence showing that service on such committees is unusual for a mechanical engineering professor or indicative of extraordinary achievement. Furthermore, we note that evaluating established professional mechanical engineers is of far greater probative value than evaluating students at one's university.

Somewhat more persuasive is a letter from Tsuo-Chen Chen, Director, Bureau of Standard Measurements, Ministry of Economic Affairs. His letter, in its entirety, states:

The Bureau of Standard Measurements under the Ministry of Economic Affairs is pleased to announced [sic] the appointment of [the petitioner] as Bureau National Standards Drafting Committee panelist in Mechanical Engineering as per provisions cited in Article 3 of the Bureau's National Standards Drafting Committee Organizational Chapter. This appointment will be ended till [sic] June 30, 1997.

The petitioner has not adequately explained how drafting a technical standard constitutes judging the work of others in one's field. Furthermore, the petitioner has not submitted evidence showing that only a small percentage of top engineers are selected to serve on such a panel or evidence of the basis for his appointment. For example, the petitioner did not include a copy of the provisions from "Article 3 of the Bureau's National Standards Drafting Committee Organizational Chapter," which would most likely provide details regarding the basis of the petitioner's appointment. We cannot ignore the statute's demand for "extensive documentation" of sustained national or international acclaim. In this instance, the above letter lacks significant details regarding the petitioner's work as a panelist and the basis for his selection.

Without evidence that elevates the petitioner above almost all others in his field at the national or international level, we cannot conclude 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.

On appeal, counsel cites the petitioner's published articles as evidence of his original contributions. Published work, however, falls under the next criterion. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (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 works under the next criterion.

We accept that petitioner's work has yielded some useful and valid results; however, it is apparent that any scientific manuscript, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose scholarly research is accepted for publication or presentation has made a major contribution in his field. Without extensive documentation

³ This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

showing that the petitioner's findings have been unusually influential or highly acclaimed throughout the greater engineering field, we cannot conclude that he meets this criterion.

In regard to the petitioner's conference presentations, we note that the record contains no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top scientists or engineers. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. The record contains no evidence showing that the petitioner's conference presentations commanded an unusual level of attention in comparison to those of the other participants or that the petitioner has served as a keynote speaker at a national science or engineering conference.

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

According to his resume, the petitioner published seven conference abstracts between 1986 and 1993. The record contains evidence of one of these abstracts. The petitioner also submitted evidence of his secondary authorship of three articles in *Enhanced Heat Transfer* and the *International Journal of Heat and Mass Transfer* between 1998 and 1999.

We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own publications. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed. In the present case, there is no evidence showing that the petitioner's published findings are widely cited.

The record contains no evidence of abstracts or published articles authored by the petitioner subsequent to 1999. The statute and regulations, however, required the petitioner's acclaim to be *sustained*. Counsel notes that the petitioner "has two forthcoming articles as primary author in the *International Journal of Heat and Mass Transfer*," but these publications did not exist as of the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which CIS (legacy Immigration and Naturalization Service) held that alien's seeking employment-based immigrant classifications must possess the necessary qualifications as of the filing date of the visa petition.

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

Counsel initially claimed that the petitioner's conference presentations satisfied this criterion. We have consistently found, however, that this particular criterion applies to the visual arts rather than scientific or engineering research. In the fields of science and engineering, acclaim is generally not established by the mere act of presenting one's work at a science or engineering conference.

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

Counsel initially claimed that the petitioner's roles as a national legislator and as Mayor of Chungli City were adequate to satisfy this criterion. As we observed in the previous criteria, such roles do not relate to the petitioner's field of endeavor.

The petitioner submitted letters reflecting various collateral titles he held while working as an associate professor in the Department of Mechanical Engineering at Yuan Ze University. For example, the petitioner served as Chief of the Preparatory Office of the Continuing Education Center and Deputy Examiner of the Master's Degree Qualification Examination Committee. We do not find, however, that the role of an associate professor is on the same level of importance as that of a full professor, department head, or dean. For example, Shih-Hung Chan, who signed the majority of the letters originating from Yuan Ze University, is identified as the university's "Principal." The record contains no evidence indicating that the petitioner has performed in a leading or critical role in the same manner as Shih-Hung Chan. Nor is there evidence showing the extent to which the petitioner exercised substantial control over personnel or organizational decisions executed on behalf of Yuan Ze University.

For the above reasons, we find that the petitioner's evidence falls short of establishing that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim. We further note that counsel's appellate brief did not challenge the director's findings regarding 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, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

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) 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.