



U.S. Citizenship
and Immigration
Services

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FILE:

LIN 05 186 51670

Office: NEBRASKA SERVICE CENTER

Date: FEB 07 2007

IN RE:

Petitioner:

Beneficiary:

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]

PUBLIC COPY

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.

Mari Johnson

S 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 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 responds to the director’s concerns and subsequently submits additional evidence. For the reasons discussed below, the petitioner has not overcome the director’s bases for denial.

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.

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 (November 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 associate. A letter submitted on appeal reveals that this position is a postdoctoral appointment, typically an entry-level position. While neither the statute nor the regulations preclude eligibility for an individual just beginning their post-academic career, the petitioner bears a heavy burden of demonstrating that he compares with those at the top of his field, including the most experienced and renowned members.

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

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 did not initially claim to meet this criterion. In response to the director's request for additional evidence, the petitioner submitted evidence that in 2005 the Iowa State University Chapter of Sigma Xi elected the petitioner to full membership in the scientific research society. The materials about Sigma Xi provided indicate that the society boasts 200 Nobel Laureates among its 70,000 members. Dr. [REDACTED], President of the Iowa State University Chapter, asserts that membership in Sigma Xi is by election and conferred only upon those "who have demonstrated outstanding achievements in a field of pure and applied science."

The director concluded that the petitioner had not provided the specific membership criteria for Sigma Xi. On appeal, the petitioner asserts that the letter from Dr. [REDACTED] serves as evidence of Sigma Xi's membership criteria.

The letter from Dr. [REDACTED] is insufficient. The vague assertion that "outstanding achievements" are required is insufficient without evidence as to what Sigma Xi considers "outstanding" according to its bylaws. For example, if Sigma Xi were only to require authorship of one or two peer-reviewed articles in conjunction with a specific level of education, then election to membership does not truly set the petitioner apart from the majority of his peers.

The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That Sigma Xi includes members who have won the Nobel Prize does not impart that distinction to the vast majority of its members who have

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

not been so recognized. An organization that boasts 70,000 members does not represent only that very small percentage at the top of the field.

Finally, as stated above, the petitioner did not initially claim to meet this criterion and did not list Sigma Xi among his memberships on his Curriculum Vitae submitted initially. The membership certificate does not indicate when in 2005 the petitioner was elected to membership in Sigma Xi. The petition was filed on June 3, 2005. If the petitioner was not yet elected to membership as of that date, we cannot consider that memberships as evidence of his eligibility on that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

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.

The petitioner does not challenge the director's conclusion that citations are not published materials about the petitioner relating to his work and we concur with the director. Articles that cite the petitioner's work are primarily about the work performed by the author of the citing article.

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.

Once again, the petitioner did not initially claim to meet this criterion. In response to the director's request for additional evidence, the petitioner submitted an August 30, 2005 letter from Dr. [REDACTED] [REDACTED], an editor of the *Journal of Alloys and Compounds* and a member of the editorial board of *Inorganic Chemistry* and the *Journal of Solid State Chemistry*. Dr. [REDACTED] affirms that the petitioner has served as a peer-reviewer for the *Journal of Alloys and Compounds* and *Metallurgical and Materials Transactions A*. The petitioner submitted a manuscript review dated July 15, 2005 for the *Journal of Alloys and Compounds*.

The director concluded that the petitioner had not established that his participation in manuscript reviews exceed what is typical in the field. On appeal, the petitioner references the comments of Dr. [REDACTED]. Subsequently, the petitioner submitted several additional manuscript reviews. All but one of the reviews postdate the filing of the petition. The only evidence of the sole manuscript review alleged to predate the filing of the petition is the petitioner's own assertion. 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)).

We cannot consider the manuscript reviews that postdate the filing of the petition. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. At best, the petitioner has claimed only a single manuscript that predates the filing of the petition.

Regardless, the petitioner has not established that reviewing manuscripts sets the petitioner apart from his peers. We acknowledge the comments of Dr. [REDACTED] who affirms that manuscript reviewers must be experts and enjoy an international reputation. 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 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As noted by the director, Dr. [REDACTED]'s general assertions are not corroborated by specific information, such as how many reviewers the journals utilize and their selection process.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. 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 as of the date of filing, 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.

The petitioner relies on his publication record and numerous reference letters, most of which are from independent researchers, to meet this criterion. The director concluded that the petitioner's contributions were consistent with a vital and growing field of research and did not rise to the level of major significance in the field. On appeal, the petitioner asserts that the reference letters from independent researchers and industry professionals demonstrate the major significance of the petitioner's work in the field.

We will review the letters 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. As stated above, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 795. However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796. 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 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 far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. 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 obtained his Ph.D. in Metallurgical Engineering in May 2004 from the University of Wisconsin-Madison. The petitioner then accepted a research associate position at Ames Laboratory, where he remained as of the date of filing.

Dr. [REDACTED] a professor at the University of Wisconsin-Madison, discusses the petitioner's work at that institution. According to Dr. [REDACTED] the petitioner created a new thermodynamic model for the defect structure PdIn, a key material being used as contacts for semiconductors. The petitioner demonstrated a defect structure for PdIn that had been "suspected for years."

During his investigation of grain growth in nanoscale PdIn thin films, the petitioner was also able to predict the microstructure at a certain temperature with a specific period of time. These findings have implications for extending the life of conductors. Dr. [REDACTED] asserts that this work "has drawn wide attention from those in our field working on these issues."

Dr. [REDACTED] further asserts that the petitioner was able to grow rare earth silicide nanowires on silicon. The petitioner's novel methods of growing rare earth disilicide nanowires "has opened up a new avenue to fabricate one-dimensional nanoscale features and is a new breakthrough toward their final applications in quantum scale devices."

Finally, Dr. [REDACTED] explains that the petitioner "clarified the complex behavior observed in the sputter deposited NiMn thin films experimentally." The results of this work, including a theoretical model to predict the optimal annealing time and temperature, are "of enormous importance for the production of sensors in hard disk drives with NiMn films and similar materials by magnetic industries."

The initial letters from independent researchers attest to the potential applications of the petitioner's work, but do not affirm being influenced by the petitioner's results or using his methods. The initial

independent references also fail to provide examples of other research laboratories or industrial research and development divisions relying on the petitioner's work.

In response to the director's request for additional evidence as to how the petitioner's work was influencing the field, the petitioner submitted additional independent reference letters. As with the previous independent letters, the new letters provide general assertions that the petitioner has advanced the field and that his work has important applications without providing specific examples of researchers adopting or applying the petitioner's results. For example, Dr. [REDACTED] a technical specialist at Visteon, asserts that the petitioner's research "provides an essential component to advancing hybrid vehicle research and development." While Dr. [REDACTED] asserts that he has worked on hybrid technology for 10 years, he does not provide an example of how he personally has applied the petitioner's work or indicate that Visteon has expressed an interest in applying the petitioner's methods.

Similarly, Dr. [REDACTED] Research and Development Director of Advanced Devices Development at Seagate Recording Head Operation, asserts that he knows of the petitioner through reading his published articles and concludes that the petitioner has contributed to the field's understanding of NiMn, a key material used in reading heads for hard disk drives. Dr. [REDACTED], however, does not assert that the petitioner's methods have had a profound effect, or any effect, on Seagate's manufacture of hard disk drive products. In fact, Dr. [REDACTED] does not assert that Seagate has modified any of its practices based on the petitioner's results and methods.

Dr. [REDACTED], a senior staff engineer at Seagate, seems to imply some use of the petitioner's methods by Seagate, but his letter is ambiguous. Dr. [REDACTED] asserts that the petitioner's work with NiMn "provides an essential piece to our research and understanding of the giant magnet-resistive (GMR) recording head." As stated by the director, however, in order to be accepted for publication, any article must report original findings that contribute to the general pool of knowledge. Dr. [REDACTED] further asserts that the petitioner developed a kinetic model that successfully predicts certain reactions. Dr. [REDACTED] concludes that this model "is extremely useful for the production of NiMn thin films and other materials in [the] reading head." Dr. [REDACTED] does not make clear, however, whether Seagate is actually using the petitioner's model.

Finally, Dr. [REDACTED] discusses hard drive failure and asserts that the petitioner's work "helps us to calculate the diffusion rate of Ni or Mn atoms at working conditions and estimate the life expectancy of the reading head right away, thus saving us significant resources, i.e. money and time in the research." Assuming "us" refers to Seagate and not the field in general such that Dr. [REDACTED] is providing a concrete example as opposed to a vague generalization, this language suggests that the petitioner's work has had some influence in the hard drive industry. Not every technique with proven application in industry, however, is a contribution of *major significance*.

The petitioner submitted two letters from his colleagues at the Ames Laboratory. Dr. [REDACTED] a senior scientist at the Ames Laboratory, asserts that the petitioner developed a new computer-based model to quantitatively predict the solidification path of alloys of interest in the La-Ni-

[REDACTED]. The petitioner used this model to determine the compositions to grow single crystals of several alloys, which had not been done before. Dr. [REDACTED] explains that the petitioner's model saves time and money in identifying new alloys for industrial applications with less hazardous chemicals, such as refrigerants and batteries. Dr. [REDACTED] another senior scientist at the Ames Laboratory, provides similar information. As of the date of filing, this work had yet to be published and, thus, disseminated to the field. The independent references attest to the potential of this work, but the record lacks evidence of the widespread impact of this work as of the date of filing.

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 provided evidence that two of his articles had been cited twice, his invited paper had been cited once and his rapid communication had also been cited once. The petitioner provided a letter from one of the authors citing his work, characterizing it as "excellent." The petitioner has not established that his field is one in which citations are exceeding rare such that two citations of a single article is remarkable. For example, the petitioner has not demonstrated that Dr. [REDACTED] other articles from the same time period have all be limited to only one or two citations. The record is simply not persuasive that the petitioner's citation record is consistent with the claims that the petitioner has made contributions of *major significance* to his field.

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, as of the date of filing, he had authored six published articles on the subjects discussed in the reference letters. As stated above, the petitioner provided evidence of minimal citation of these articles. The director noted that the Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, suggests that 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." Thus, the director concluded that publication of scholarly articles is not automatically evidence of sustained acclaim. On appeal, the petitioner asserts that the references have attested to the significance of the journals that published his work and have noted the authorship of an invited paper and rapid communication.

Dr. [REDACTED] a professor at the University of São Paulo in Brazil, states:

An invited paper is the elite of the papers reporting significant new findings and usually only those authorities in the field are invited to publish papers by the editors; short communications are brief, preliminary reports of unusual urgency, significance, and interest to the materials community.

Several references attest to the prestigious nature of the journals that have published the petitioner's work. We will not presume the significance of a given article from the journal in which it appeared. Rather, we look for evidence of the influence of the individual article. That the petitioner's authored an invited paper and a rapid communication is notable. The record, however, suggests that while these articles were deemed promising, they have yet to impact the field.

The record reveals that no more than two independent experts have cited any one of the petitioner's articles. This number of citations is not evidence that the petitioner's work is widely cited. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner claims to have played a leading or critical role for the Ames Laboratory, where he works as a postdoctoral research associate. The director rejected this claim as the petitioner does not hold a senior position at the Ames Laboratory. On appeal, the petitioner asserts that his role is "critical." He submits a new letter from Dr. [REDACTED] discussing the competitive nature of the hiring process and the petitioner's "critical" work.

We have already considered the petitioner's alleged contributions to the field above. At issue for this criterion are the nature of the position the petitioner was hired to fill and the reputation of the hiring entity. The implication of the petitioner's position is that the very nature of the distinguished reputation held by the Ames Laboratory and the importance of the work performed there creates a presumption that all of its researchers are "critical." We find, however, that the nature of the position the petitioner was hired to fill is a separate consideration apart from the reputation of the hiring institution. Obviously, every position at the Ames Laboratory is "critical" insofar as the institution requires an employee to fulfill those duties. To presume that every position is "critical" simply because it exists, however, would render the term meaningless for purposes of evaluating the petitioner's stature in the field. While the Ames Laboratory has a distinguished reputation, we cannot conclude that every postdoctoral research associate who plays a necessary role in a given project plays a leading or critical role for the institution as a whole such that the very selection for this position separates the petitioner from other individuals at the institution.

In light of the above, the petitioner has not established that he meets 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 himself as a research associate 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 associate, 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.