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Office: NEBRASKA SERVICE CENTER

Date:

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IN RE:

Petitioner:
Beneficiary:



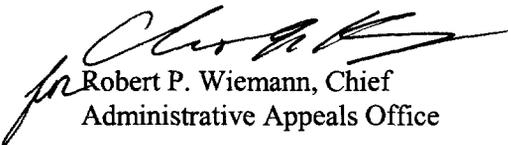
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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, 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 submits a statement and evidence of accomplishments that postdate the filing of the petition. For the reasons discussed below, we uphold the director's ultimate decision.

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 *Employment-Based Immigrants*, 56 Fed. Reg. 60897, 60898 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a research associate in mechanical engineering. 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, internationally 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted evidence that he received a student award from the Western States Section of the Combustion Institute for preparing and presenting a technical paper at a 2001 conference. The petitioner also received a student award from the American Association for Aerosol Research (AAAR) in recognition of excellent performance in research as demonstrated by a presentation in 2002. The Executive Director for AAAR asserts that the competition for this award is "international in scope." In addition, the petitioner received a student travel award given to students whose presentations were accepted to the 3rd Joint Meeting of the U.S. Section of the Combustion Institute in 2003. Finally, in May 2004, the petitioner received a Summer Research Institute Fellowship from the Battelle Memorial Institute. The fellowship "recognizes [the fellow's] academic achievements and enables [the fellow] to pursue research, training and professional development opportunities that will enhance [the fellow's] academic pursuits." The fellowship letter further states that the fellowships are awarded "in recognition of [the fellow's] academic and/or scientific achievements and allow[s] [the fellow] to pursue educational opportunities" at the Pacific Northwest National Laboratory (PNNL).

The director concluded that the awards recognized student achievements, not achievements in the field. While the director acknowledged that these awards demonstrate the petitioner's potential in the field, the director concluded that they do not demonstrate that the petitioner already enjoys sustained acclaim. On appeal, the petitioner asserts that the conference awards recognize the quality of his work and that three consecutive awards are significant. He further asserts that the PNNL fellowship is open to faculty and professional researchers worldwide. Finally, the petitioner references the opinion of [REDACTED], an associate professor at the University of Missouri-Rolla who asserts that the petitioner "received four student awards in national conferences as well as a distinguished fellowship award from Pacific Northwest National Laboratory." The petitioner submits Internet information about the summer research institute fellowship program at PNNL indicating that faculty and professional researchers are eligible.

Student participation and travel awards do not satisfy this criterion because the most experienced and renowned members of the field do not aspire to win these awards. Moreover, an internship or fellowship based on academic achievement is not an award or prize for excellence in the field.

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

While the petitioner has submitted evidence that faculty and professional researchers are eligible for the general program, the petitioner has not established that he competed for the same slots against these professionals. We note that the award letter submitted initially asserts that the petitioner "must remain matriculated and in good standing at [his] college/university throughout this fellowship." Thus, his particular award appears limited to students. Moreover, even for faculty and researchers, the petitioner has not demonstrated that the fellowship is a nationally or internationally recognized *prize or award for excellence in the field* rather than a program designed to provide future research opportunities, not to recognize past excellence in the field.

In light of the above, the petitioner has not established that he meets 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 evidence of his membership in the Combustion Institute but no evidence of its membership requirements. The director did not address this particular membership and the petitioner does not assert on appeal that this membership is qualifying. We find that the record lacks evidence that this association requires outstanding achievements of its members.

The petitioner instead relies on his membership in [REDACTED]. The director concluded that the "noteworthy" achievements required by [REDACTED] not consistent with the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii), which provides that a qualifying membership must require outstanding achievements as judged by national or international experts in the field. On appeal, the petitioner asserts that this membership, in combination with the remaining evidence of record, establishes his acclaim in the field.

The submitted materials about [REDACTED] reveal that [REDACTED] invites to full membership "those who have demonstrated noteworthy achievements in research." These achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admissions if requested." A noteworthy achievement is not necessarily an outstanding achievement. In fact, the record reveals that the society does not take a particularly strict view of noteworthy achievements. Specifically, [REDACTED] Executive Director, indicates that the "Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers." In addition, an earned doctoral degree may be substituted for one paper. The petitioner has not demonstrated that primary authorship of one or two papers is an outstanding achievement in his field.

In light of the above, the petitioner has not established 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.

While the petitioner submitted evidence that his articles have been cited and received positive peer-reviews, he does not assert that this evidence was submitted to meet this criterion. The director does not explicitly discuss this criterion. We simply note that the peer reviews were not published and that the citing articles were not "about" the petitioner, but the work of the citing author. Thus, 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 petitioner submits several peer reviews he purportedly completed and evidence that the articles were subsequently published. Without letters or e-mail notices requesting that he review a particular article or similar recognition from an editor, the petitioner cannot establish that he composed these reviews at the request of a journal or that the journal relied on these reviews. The petitioner did submit an e-mail notice from [REDACTED] on sabbatical at the University of Utah, acknowledging the assistance of his "colleagues" at the University of Utah, including the petitioner, in reviewing manuscripts. Thus, the petitioner has only established that one of his close colleagues solicited his assistance in completing manuscript reviews. Being requested to review a manuscript by one's own colleague is not indicative of or consistent with national or international acclaim.

Moreover, as stated by the director, 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's work as a peer reviewer apart from others in his field, such as, but not limited to, evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

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

In evaluating the evidence relating to this criterion, we must take into account that 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. Otherwise, it is difficult to gauge the impact of the petitioner's work.

Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* 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.*; *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 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.

In February 2005, the petitioner obtained his Ph.D. in mechanical engineering at the University of Delaware under the direction of [REDACTED]. As stated above, in the summer of 2004, the petitioner took part in a research fellowship at PNNL. As of the date of filing, the petitioner had been working as a research associate at the Center for the Simulation of Accidental Fires and Explosions (C-SAFE) at the University of Utah since 2005.

[REDACTED] explains the importance of the petitioner's area of research, combustion and soot formation, and praises the petitioner's skills in solving problems experimentally and computationally. More specifically, [REDACTED] asserts that the petitioner "designed a procedure which provides strong evidence that there is no nanoparticle in flames" below sooting limits, suggesting that combustion can be made clean with regard to particle emission. The petitioner also discovered that doping a small amount of ferrocene reduced the critical sooting limits in premixed laminar flames. The petitioner also played "key roles" in other studies, including a study of the size of distributions of soot particles in flames, evaluation of the importance of the diffusion coefficient in a combustion environment, determination of laminar flame speeds of fuel blends and investigation of the hygroscopic properties of soot, sea salt and other aerosols. Finally, the petitioner also served as [REDACTED] computer administrator, assembling a network cluster consisting of many computer nodes for high performance scientific computation. Dr.

██████████, a member of the petitioner's Ph.D. committee, provides similar information. While ██████████ notes that the petitioner has been moderately cited, neither ██████████ provide any specific examples of how the petitioner's work has made major contributions to the field consistent with sustained national or international acclaim, such as discussing how it is being applied in other, independent laboratories.

The petitioner also submitted a letter from ██████████ a principal member of the technical staff at Sandia National Laboratories (an associated partner of C-SAFE). While ██████████ asserts that he is not a personal acquaintance of the petitioner and has never worked with him, ██████████ Schönbacher, Head of the Institute of Chemical Engineering at the University of Duisburg-Essen, Germany, asserts that he met the petitioner "several times in a technical workshop of combustion research at Sandia National Laboratories," hosted by ██████████ and another researcher. Thus, it would appear that the petitioner attended "several" of ██████████ workshops at Sandia National Laboratories. ██████████ asserts that the petitioner "discovered important properties of the evolution of the soot particle size distribution during soot formation by applying the cutting-edge technology of a scanning mobility particle sizing system" and "characterized the temperature influence on particle size distributions." While ██████████ asserts that this work "yielded valuable data for validating models of soot formation during combustion phenomena," he does not provide information consistent with a contribution of major significance that has garnered national or international acclaim, such as, for example, by explaining how other researchers have utilized this information.

██████████, a professor at Ben-Gurion University of the Negev in Israel, asserts that his opinion is based on his interactions with the petitioner while on sabbatical at the University of Utah and a review of the petitioner's curriculum vitae and published articles. ██████████ asserts that the petitioner's contributions consist of developing a sampling system that can measure the true soot particle size distribution in a flame and designing an "ingenious experiment" to find the influence of temperature on the bimodality of soot particle size distribution. ██████████ asserts that the petitioner used his sampling system to discover bimodality in soot particle size distribution, assumed to be uni-modal. Dr. ██████████ notes that the petitioner's work was published, indicating national and international exposure. ██████████ does not provide information indicating that the petitioner's work has made major contributions to the field consistent with national or international acclaim, such as examples of the petitioner's data being used to set standards or his sampling system being used in other laboratories.

The most independent letter is from ██████████, an associate professor at the University of Missouri-Rolla. ██████████ indicates that he learned of the petitioner's work at technical conferences and that his group has utilized and cited the petitioner's work.

The petitioner also submitted evidence that two of his articles had been moderately cited and a third article has been cited four times. The petitioner submits evidence of more citations on appeal, but these do not relate to his alleged acclaim as of the date of filing, the date as of which the petitioner must establish his eligibility. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). As noted by the director, the petitioner is not listed as the first author of his cited

articles. On appeal, the petitioner explains that while he contributed to the cited articles, he did not "fight to be first author."

The petitioner's listing as second author on the most cited articles does not negate the evidentiary value of that evidence. Nevertheless, the record contains only one letter from a member of the field who can be considered independent of the petitioner. While [REDACTED] supports the petition, he provides few specifics consistent with national or international acclaim, such as examples of how the petitioner's data or methods are being applied in the field. While the petitioner has been moderately cited and the petitioner submitted copies of the bibliography sections of articles containing some citations, the petitioner did not provide examples of the text of the articles that cite his work. Thus, the petitioner has not demonstrated the context in which his articles were 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.

As of the date of filing, the petitioner had authored seven articles, two of which are submitted for the first time on appeal. On his curriculum vitae, the petitioner listed 19 conferences, but did not submit evidence that he presented his work at all of these conferences, such as programs or published proceedings. The petitioner's self-serving curriculum vitae is not evidence. See *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)). We will consider the publications documented in the record. While publication is inherent to the field of research, we acknowledge that two of the petitioner's articles have been moderately cited. Thus, the petitioner has 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. 8 C.F.R. § 204.5(h).

Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher 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 and has published scholarly articles, 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.