U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: LIN 08 044 51808 Office: NEBRASKA SERVICE CENTER Date: DEC 04 2009

IN RE: Petitioner: [redacted]
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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

This petition, filed on March 12, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a professor of electrical and mechanical engineering. The petition was signed by the petitioner on September 7, 2004 and was accompanied by a September 10, 2004 cover letter stating: "Please find the hard copies of the initial application documentation, which is also scanned on the enclosed compact disk in the PDF format. The content of the documentation is listed in the appendix to this letter." The "Appendix to the Cover Letter" document was included, but the petitioner did not submit hard copies of any initial documentation or the compact disc. On February 19, 2009, the director denied the petition stating that it "was submitted without the required initial evidence."

On appeal, the petitioner states that he has received a major, internationally recognized award. The petitioner further argues that he has sustained national or international acclaim and that his achievements have been recognized in the field of expertise.

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.

U.S. Citizenship and Immigration Services (USCIS) 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, 60898-99 (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.

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). On appeal, the petitioner submits a certificate stating that [redacted] conferred upon him the title of "Honorary Doctor" (1984). The petitioner states: "I was promoted together with two [redacted] (I submitted copies of newspapers showing photos of us three during the promotion). The honor of [redacted] is a major international honorable award . . . ." The record, however, does not include copies the newspapers containing these photographs. 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)).

In this case, there is no evidence showing the international significance of the Honorary Doctorate from [redacted]. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of [redacted] the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. In this instance, there is no evidence showing that an [redacted] equates to a major, internationally recognized award.

Barring the alien's receipt of a major, internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[1]

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

As discussed previously, the petitioner's appellate submission included a certificate indicating that he received an [redacted] There is no evidence showing that this award equates to a nationally or internationally recognized award for excellence rather than a form of institutional recognition. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's honorary doctorate is recognized beyond the presenting university and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

On appeal, the petitioner submits a dossier which includes his resume, curriculum vitae, and list of publications. The petitioner references this dossier as documentation of his "honors, awards, recognitions." The petitioner states that he received the following:

1. [redacted]
2. [redacted]
3. [redacted]
   (1997)
4. [redacted]
5. [redacted]
6. [redacted]
7. [redacted]
8. [redacted]
9. [redacted]

The record, however, does not include evidence of the preceding honors. The self-serving claims in the petitioner's resume and curriculum vitae are not sufficient to meet the burden of proof for this regulatory criterion. As stated previously, going on record without supporting documentary

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

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The petitioner has not established that items 1 through 9 do not exist or cannot be obtained. Further, his resume and curriculum vitae do not equate to secondary evidence or affidavits. In this case, there is no evidence showing that the petitioner has received nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Accordingly, 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.*

In order to demonstrate that membership in an association meets this criterion, a 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. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner's curriculum vitae document states that he is a [redacted] a [redacted] and a member of the [redacted] The record, however, does not include evidence of the preceding memberships. Further, there is no evidence (such as membership bylaws) showing the admission requirements for these organizations. The self-serving claims in the petitioner's curriculum vitae are not sufficient to meet the burden of proof for this regulatory criterion. As stated previously, 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. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. The petitioner has not established that evidence of the preceding memberships does not exist or cannot be obtained. Further, his curriculum vitae document does not equate to secondary evidence or an affidavit. In this case, there is no evidence showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, 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.

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. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[2]

The petitioner submitted pages from the 1989 edition of the [redacted] The petitioner's brief biographic entry appears on page 327 of the edition along with five others. The petitioner has not established that this publication, or any significant portion of it, is about him. Further, there is no evidence (such as circulation statistics) showing that *Men of Achievement* qualifies as a professional or major trade publication or some other form of major media. Moreover, appearing as one of thousands of other successful individuals in a directory of professionals is not indicative of or even consistent with national or international acclaim. Accordingly, the petitioner has not established 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, the petitioner submits evidence that he authored book chapters in *Stability Domains*; wrote books entitled [redacted]; and coauthored an article in *Mathematics and Computers in Simulation*. The petitioner's dossier includes a list of his other publications, but documentation of those publications was not submitted. As stated previously, 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. at 165.

With regard to his publication record, the petitioner states that his "scientific contributions involve the fundamental results on the stability theory of nonlinear dynamical systems, on the tracking theory of control systems, and on time and the theory of relativity." The regulations contain a separate criterion regarding the authorship of scholarly publications. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a

[2] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

petitioner meet at least three separate criteria. While the petitioner's work 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 science and engineering community. Any Ph.D. thesis or scholarly 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 scientist who performs original mathematical or engineering research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole.

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, engineering, or mathematics, 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. *See also Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance). While the documentation submitted indicates that the petitioner has published his work, the evidence of record does not establish that he has made original scientific contributions of major significance in his field. For example, the petitioner's evidence does not establish that his findings have had a substantial national or international impact in the engineering field, nor does it show that the field has significantly changed as a result of his work. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of scientific contributions of major significance, we cannot conclude 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 discussed previously, the petitioner submitted documentation indicating that he has authored books, book chapters, and research articles. While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the scientific community's reaction to the petitioner's published articles in a field where publication is expected of those merely completing training in the field. *Kazarian v. USCIS*, 580 F.3d at 1036. As publication of one's work is inherent to working as a professor in a university setting,[3] we will evaluate a citation history or other evidence of the impact of the petitioner's publications when determining their significance to the field. For example, numerous independent citations for a publication authored by

[3] The Department of Labor's Occupational Outlook Handbook, 2008-2009, provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. *See* http://data.bls.gov/cgi-bin/print.pl/oco/ocos066.htm, accessed on November 23, 2009, copy incorporated into the record of proceeding. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research, whether arising from research at a university or private employer, does not set the researcher apart from faculty in that researcher's field.

the petitioner would provide solid evidence that other scientists have been influenced by his work and are familiar with it. On the other hand, few or no citations of a publication authored by the petitioner may indicate that his work has gone largely unnoticed by his field. In this case, there is no citation history or other evidence demonstrating that the petitioner's published work has attracted a level of interest in his field consistent with sustained national or international acclaim. Further, there is no evidence showing the number of copies of the petitioner's books in circulation. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). 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. 8 C.F.R. § 204.5(h)(2).

Beyond the decision of the director, the petitioner has not submitted clear evidence that he will continue to work in his area of expertise in the United States. 8 C.F.R. § 204.5(h)(5). Under Part 6 of the Form I-140, Petition for Alien Worker, the petitioner did not specify an address where he will work in the United States. Rather, the petitioner states: "Since I do not have any offer, I do not know yet the address of the employer." While a job offer is not required for the classification sought, 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. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record does not include such evidence as required by the regulation.

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 a national or international level. Further, the petitioner has not submitted clear evidence demonstrating that he will continue to work in his area of expertise in the United States. Therefore, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i) and (ii) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.