

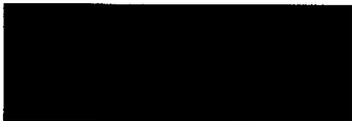


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FILE: EAC 04 038 51458 Office: VERMONT SERVICE CENTER Date: AUG 10 2005

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:



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, 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(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.

The applicable regulation defines the statutory term "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.*

In this case, the petitioner seeks classification as an alien with extraordinary ability in the sciences, particularly in the field of earth systems science. The record indicates that the petitioner is employed as Chief Scientist at I.M. Systems Group Incorporated (IMSG) and serves as Program Manager for IMSG's contracts with the National Oceanic and Atmospheric Administration, (NOAA) within the U.S. Department of Commerce. The petitioner submitted supporting documentation of his graduate student fellowships, professional employment, membership in scientific associations, review of articles for scientific journals, his scholarly publications and reports, conference presentations, and 19 support letters. The director noted the petitioner's accomplishments, but found the record did not establish that the petitioner had earned the sustained acclaim requisite to classification as an alien with extraordinary ability. On appeal, counsel submits a brief, citation information for some of the petitioner's articles, an additional letter from the petitioner's employer, a printout from the website of the National Weather Service, and evidence that the petitioner has reviewed manuscripts for the *Journal of*

Hydrometeorology. Counsel's claims and the additional evidence submitted on appeal do not overcome the deficiencies of the petition and the appeal will be dismissed. The evidence submitted and counsel's contentions are addressed in the following discussion of the regulatory criteria relevant to the petitioner's case.

(i) 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 two letters from the University of Cincinnati showing that he received summer research fellowships in 1999 and 2000 when he was a doctoral student at the university. Academic awards, scholarships and fellowships do not meet this criterion because only students – not established scientists – are eligible for and receive these scholastic honors. The petitioner's graduate fellowships only reflect on his work as a doctoral student, they are not equivalent to nationally or internationally recognized awards for scientific excellence. Accordingly, the petitioner does not meet this criterion.

(ii) 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 following associations: the American Geophysical Union (AGU), the Institute of Electrical and Electronics Engineers, Incorporated (IEEE), the American Association for the Advancement of Science (AAAS), and the Armed Forces Communications and Electronics Association (AFCEA). The petitioner also submitted a printout from the website of the American Meteorological Society, but no evidence of his membership in that society. The record contains letters and printouts from the websites of AGU, IEEE, AAAS and AFCEA, but no evidence that outstanding achievements are prerequisite to membership in any of these associations. Accordingly, the petitioner does not meet this criterion.

(iii) 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.

The petitioner originally submitted no evidence and did not claim eligibility under this criterion. On appeal, counsel responds to the director's statement that the record contained no evidence meeting this criterion by submitting citation lists for four of the petitioner's articles. Citations of an alien's work by other scientists in their scholarly publications rarely meet this criterion because the citing articles are primarily about the authors' own research, not the work of the alien. In this case, the petitioner does not submit copies of the articles that have cited his work or provide any other evidence that the citing articles feature or substantively discuss his work. Accordingly, the petitioner does not meet this criterion.

(iv) 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 a letter from [REDACTED] Editor of *Water Resources Research*, stating that the petitioner has reviewed several manuscripts for publication in this journal since 1998. The petitioner also submitted evidence that in May 2002 he served as a panelist for the Small Information Technology Research grant program at the National Science Foundation. Two of the petitioner's support letters state that he was the

only panelist from a commercial company representing the information technology industry and that all of the other panelists were from academic institutions. On appeal, the petitioner submitted additional evidence that he reviewed manuscripts for publication in the *Journal of Hydrometeorology* in June and September 2004. These reviews occurred after the petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Nonetheless, we find the petitioner's peer review for *Water Resources Research* and his service on the National Science Foundation panel sufficient to meet this criterion.

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

The petitioner submitted 19 recommendation letters as evidence of his eligibility under this criterion. The majority of these letters are written by his advisors, colleagues and collaborators. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

We first note that six of these letters are of little probative value, in part, because they are dated between June and August 2000, over three years prior to the filing of this petition and appear to have been solicited shortly after the petitioner's receipt of his doctoral degree from the University of Cincinnati in 2000. The letters of Dr. [REDACTED], Chief Scientist of Southern Great Plains Experiments at the Agricultural Research Service of the U.S. Department of Agriculture; [REDACTED], Professor of Civil and Environmental Engineering at Tufts University; and Dr. [REDACTED], Project Scientist at the National Weather Service (whose letter is unsigned) describe the petitioner's graduate work and herald its potential for future developments in the field. These scientists praise the petitioner and state that their field will benefit from his continued presence in the United States.

The other three letters written in 2000 provide even less information about the petitioner's work. Dr. [REDACTED], Scientist at the Institute for Global Change Research and Education, writes in his letter dated August 10, 2000 that he supervised the petitioner's work as a graduate student performing field research in the summer of 1997. Dr. [REDACTED] explains that the petitioner was "one of about ten students and faculty that assisted in data collection." Dr. [REDACTED] does not state that the petitioner has made any major contributions to his field, but simply notes that "[d]uring his academic study in the United States, [the petitioner] has contributed to research in boundary layer meteorology and land surface hydrology." Dr. [REDACTED] of the International Institute for Aerospace Survey and Earth Sciences in the Netherlands states that he and the petitioner have engaged in discussions on topics of mutual interest and merely describes the petitioner as "a good scientist having good skills on integrating scientific concepts with practical challenges in hydrology." [REDACTED], Professor of Meteorology at the Pennsylvania State University, states that he served on the petitioner's doctoral thesis committee and describes him as "a very hard working and intelligent person with a considerable and impressive range of scientific skills."

More specific information regarding the significance of the petitioner's research is found in the remaining 16 letters. [REDACTED] Professor and Graduate Director at the Department of Civil and Environmental Engineering at the University of Cincinnati, was the petitioner's academic advisor and doctoral supervisor during his graduate studies at the University of Cincinnati. Professor [REDACTED] states that while a graduate student, the petitioner "successfully developed a systematic methodology that utilizes high-resolution satellite remote sensing data for the estimation surface [sic] evaporation in an efficient and practical fashion." The petitioner's method, according to Professor [REDACTED] "performs consistently better with much less complexity" than other modeling methods and was an "extraordinary" achievement that "had a wide impact on the land surface modeling research in the geophysical science community" and was published in three respected scientific journals. Professor [REDACTED] further credits the petitioner with making the University of Cincinnati's "program the leading peer among the nation in satellite remote sensing application studies" and notes that there are two graduate students who are currently conducting further research on the algorithms developed by the petitioner.

The importance of the petitioner's work in this area is further explained by [REDACTED] Professor of Civil and Environmental Engineering at the Massachusetts Institute of Technology. Professor [REDACTED] states that the petitioner's new methodology for remote sensing of surface evaporation was "a major advancement compared to the traditional methods currently dominant in this research field." Professor [REDACTED] explains that the petitioner's methodology "has been implemented as a solution to a recent practical problem at South Florida Water Management District owing to a collaborative effort led by Professor [REDACTED] at the University of Cincinnati with myself and [the petitioner] as investigators. This effort has succeeded in its first phase and now in its second phase with promising results." A letter dated May 30, 2003 from Dr. [REDACTED] Division Director of Hydrologic Systems Modeling for the South Florida Water Management District, confirms that the district awarded a contract to Professor Islam in 2001 on which Professor [REDACTED] and the petitioner were sub-contractors and that a new contract has been re-awarded to further the original research. Dr. [REDACTED] explains that "[t]he methodology used in our ET [evapotranspiration] contracts to generate actual ET estimates was based on [the petitioner's] PhD research work (conducted under the direction of Prof. [REDACTED] which provides "an innovative, systematic and practical approach for the estimation of actual ET using high-resolution polar orbiting NOAA satellite remote sensing data. Consequently, it is more cost effective and time-efficient for generating ET estimates than other ground-based methods currently used by us." Finally, Dr. [REDACTED] notes that another water management district and several scientists have expressed interest in using the petitioner's method. The importance of the petitioner's methodology is also affirmed by [REDACTED] Associate Professor of Civil and Environmental Engineering at the University of Cincinnati and one of the petitioner's dissertation committee members; Dr. [REDACTED] of the Agricultural Research Service; and Dr. [REDACTED] of the National Weather Service.

The petitioner submitted copies of five articles based on his doctoral research that were published in scientific journals and a copy of the final report submitted to the South Florida Water Management District. The petitioner is the lead author of three of the five submitted journal articles. On appeal, the petitioner submitted evidence that four of these articles have been cited by other researchers. The article entitled "Estimation of Surface Evaporation Map Over Southern Great Plains Using Remote Sensing Data" was published in 2001 in *Water Resources Research*. The petitioner is the lead author of this article, which at the time of filing had been cited in eight articles by other research teams. A second article of which the petitioner is the lead author, "A Methodology for Estimation of Surface Evapotranspiration Over Large Areas Using Remote Sensing Observations," was published in 1999 in *Geophysical Research Letters* and, at the time of filing, had been cited in six articles by other research teams. Two articles of which the petitioner is a co-author had been cited a combined total of five times when the petition was filed.

The remaining recommendation letters discuss the petitioner's subsequent work at I.M. Systems Group Incorporated (IMSG) on the company's projects with the NOAA, National Environmental Satellites Data and Information Services (NOAA/NESDIS) and National Center for Environmental Prediction (NOAA/NCEP) within the U.S. Department of Commerce. Dr. [REDACTED] Executive Director of the Joint Center for Satellite Data Assimilation at NOAA/NESDIS who supervises two of the petitioner's team members, states that the petitioner

has been the Chief Developer of the high priority NESDIS/ORA [Office of Research and Applications] task – Experimental Global Vegetation Health and Green Vegetation Fraction Products System, which has shown successful result [sic] and is now being migrated to an operational NESDIS system (i.e. Global Vegetation Processing System) under [the petitioner's] lead. . . . I view this work as extraordinary high quality which extended decades' [sic] of the research effort by NOAA/NESDIS scientists on the subject of space-borne land surface monitoring that has high relevance to our understanding of global and regional scale climate change, drought, and other environmental anomalies.

[REDACTED] Senior Scientist at NOAA/NESDIS, states that he has been NOAA's advisor and technical point of contact for the petitioner's work on this project. Dr. [REDACTED] explains that the system developed by the petitioner "is capable of providing real-time regional scale land surface cover anomaly. Such information is critical to the United States and global community in providing information about agricultural production, water resources management practice, fire danger, as well as vector-borne epidemics." Dr. [REDACTED] heralds the petitioner's work as "unprecedented within NOAA/NESDIS" and as a "breakthrough at NOAA/NESDIS in migrating satellite remote sensing derived land surface products from diagnostic datasets to numerically compliance data streams that can directly feed the needs of national numerical modeling and numerical weather forecasting."

[REDACTED] Team Leader for Hydrometeorology at the National Centers for Environmental Prediction (NCEP) of the National Weather Service (within the NOAA), states that he is currently collaborating with the petitioner. Dr. [REDACTED] explains that the petitioner's Automated Global Vegetation Health and Green Vegetation Fraction System solved a "long-standing and difficult" problem in the field by "successfully establish[ing] the dynamic relationships between GVF [green vegetation fraction] anomalies and land surface vegetation condition index." Dr. [REDACTED] heralds the petitioner's "remarkable" development of "several comprehensive matrices that can be used in operational practice to calculate near real-time GVF for weather and climate prediction models." [REDACTED] Geographer and Co-Chair of the Land Surface Product Oversight Panel at NOAA/NESDIS similarly praises the petitioner's work as an "unprecedented" effort that "has bridged the gap between the traditional remote sensing data products . . . and the need for the efficient incorporation of remotely sensed derived products into operational NWP [numerical weather prediction] models."

Mr. [REDACTED] also explains that the petitioner was involved in NOAA/NESDIS' collaboration on a grant proposal led by the Imaging Science and Information Systems (ISIS) Center at Georgetown University Medical Center. This proposal is described by [REDACTED] Professor and Director of the ISIS Center at Georgetown University Medical Center, as an "effort, led by the ISIS Center of which I am the principal investigator, [to exploit] the power of information technology (IT) to enable remotely sensed epidemic surveillance of triggering and propagation of mosquito vector-borne infectious disease, such as West Nile fever and others yet to emerge, in the United States." The project is titled "Remotely Sensed Epidemic Surveillance (RSEPIS)." According to Professor [REDACTED] the petitioner's "multi-disciplinary expertise in remote sensing, IT and GIS [geographic

information systems] makes him critical to this project's success [and] . . . [he] will be responsible for the major remote sensing data processing tasks and technical support with the IMSG Science Team led by him at NOAA/NESDIS." The importance of the petitioner's contributions to the RSEPIS proposal are affirmed by James M. Wilson, Director of the Division of Integrated Biodefense at ISIS who was in charge of drafting and integrating different ideas into the proposal. The record contains a letter from the U.S. Department of Agriculture (USDA) Cooperative State Research, Education and Extension Service stating that this research proposal has been received, but the petitioner submits no evidence that the proposal has been awarded funding the USDA or any other agency.

Despite these letters' glowing assessments of the petitioner's recent work, the record contains no evidence that he has received recognition for his research outside of his immediate colleagues. The petitioner submitted a copy of a paper entitled "Global Climatological and Real-Time Green Vegetation Fraction from AVHRR" that is captioned "Manuscript to be submitted to Journal of Climate." The petitioner is the lead author of this article along with four co-authors, three of whom wrote recommendation letters in support of his petition. The record indicates that the petitioner has presented his recent research at three scientific meetings held in 2003, but he submits no evidence that his presentations received significant recognition by other researchers as major contributions to his field.

In sum, the record indicates that the petitioner's work is highly valued by his former advisors and recent colleagues and collaborators. Yet the petitioner submitted evidence of his co-authorship of just five published articles, only four of which had been minimally cited at the time of filing. The record contains no other corroborative evidence that the petitioner's work has made contributions of the significance claimed by his support letters. Accordingly, he does not meet this criterion.

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

The record indicates that the petitioner has co-authored five articles published in scientific journals. However, frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien's publications have had a significant impact in his field.

As discussed above under the fifth criterion, the record documents five scholarly articles and one abstract co-authored by the petitioner and published in scientific journals between 1993 and 2001. The petitioner is the lead author of three of these articles, two of which have been cited a combined total of 14 times by other research teams. Two other articles of which the petitioner is a co-author have been cited a combined total of five times. On appeal, the petitioner submitted evidence that two articles of which he is the lead author have been repeatedly cited since his petition was filed, but we cannot consider this evidence. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. The petitioner's minimal publication and citation record does not reflect the requisite sustained acclaim. Accordingly, he does not meet this criterion.

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

Counsel cited a letter from former Immigration and Naturalization Service Acting Assistant Commissioner [REDACTED] as authority for the proposition that evidence of academic conference presentations may fulfill this criterion. Letters such as this “do not constitute official Service policy and should not be considered as such in the adjudication of petitions or applications.” Memo. from [REDACTED] Acting Asst. Cmmr., Off. of Programs, Immig. and Naturalization Serv., to All Serv. Ctr. Dirs., Dist. Dirs., Offs.-in-Charge, *Significance of Letters Drafted by the Office of Adjudications*, (Dec. 7, 2000). In addition to the Act, regulations and AAO precedent decisions, only policy memoranda are considered official Citizenship and Immigration Services (CIS) policy. *Id.* The Weinig letter is internal correspondence responding to an inquiry from a service center director. It is not a CIS policy memorandum and thus warrants no deference.

Even if we consider the submitted documentation of the petitioner’s conference presentations as comparable evidence of his eligibility under this category pursuant to 8 C.F.R. § 204.5(h)(4), the petitioner does not meet this criterion. Frequent presentation of one’s work is inherent to successful employment as a research scientist and does not necessarily demonstrate the requisite sustained acclaim. The record in this case contains no evidence that the petitioner was a featured invited speaker at the conferences he attended or that his presentations received significant recognition by other researchers attending the meetings. Hence, the record does not establish that the petitioner’s conference presentations were made in a manner consistent with sustained national or international acclaim and he does not meet this criterion.

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

The record establishes that the petitioner is currently employed by IMSG. The April 8, 2003 letter of [REDACTED] President and Chief Executive Officer of IMSG, states that the petitioner works “very closely with me as my principle scientific advisor.” Mr. [REDACTED] explains that “the IMSG Science Team is under the leadership of [the petitioner] and currently provides scientific support services at NOAA/NESDIS with a U.S. Government funding level of approximately one million dollars per year.” In conclusion, Mr. [REDACTED] states that he views the petitioner “as a crucial member of the management team, a highly talented scientist, a qualified project leader, and a good program manager.” [REDACTED] Vice President of IMSG, further explains that as a program manager, the petitioner “was instrumental in increasing our customer’s confidence in our NOAA Science Team resulting in more than 300% growth over the past year and a half. . . . [The petitioner’s] accomplishment in driving company growth is unprecedented in our history and he is an extremely valuable asset to IMSG today and for our future.”

On appeal, the petitioner submitted an additional letter from Mr. [REDACTED] dated March 9, 2005. In this letter, Mr. Hum states

[The petitioner’s] role is critical for IMSG for maintaining our current workforce and for sustaining the growth that we have attributed to his leadership, scientific knowledge, and reputation for project success. Prior to [the petitioner’s] promotion to the Chief Scientist position, our total corporate scientific workforce had been only four scientists and then dropped to only three. At that time, we were a struggling small business, trying to establish a reputation for scientific support services in a very competitive environment and we were losing ground. Our scientific services accounted for less than 10% of our company’s workforce and every individual loss was significant. We promoted [the petitioner] to Chief Scientist in June 2001 and he immediately started building our reputation by successful implementation of projects with superior quality that went beyond our government task

leaders' expectation and, in turn, earning us opportunities for growth. By the end of 2001, he had recruited 4 more scientists who, under his leadership are still supporting NOAA. [He] has sustained this growth for us through very challenging times. . . . In 2003, when other companies supporting the NOAA/NESDIS office were losing programs, MSG, under [the petitioner's] leadership, not only sustained our projects, but add [sic] three more. . . . As a direct result of his efforts, MSG has more than tripled in size to over 135 personnel with about 75% of our employees performing support services for NOAA. He is currently directly supervising a team of 18 scientists, programmers [and] software and Web developers.

These letters combined with the previously discussed letters of Dr. [REDACTED], Dr. [REDACTED], Dr. [REDACTED] and Mr. [REDACTED] from NOAA demonstrate that the petitioner performs a critical role for MSG. The petitioner also submitted MSG's Fact Sheet which explains that the company's quality system is ISO 9001 certified. According to the sheet, MSG is certified by the Small Business Administration (SBA) as a Small Disadvantaged Business (Minority Owned) 8(a) Small Business that received the SBA's "Administrator's Award of Excellence" and was recognized as "Minority Enterprise Business of the Year" in 2001 and 2002 by the Department of Transportation Maritime Administration. MSG has also received the Hammer Award granted by the Vice President of the United States for "reinventing government." This evidence demonstrates MSG's distinguished reputation. Accordingly, the petitioner meets this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the petitioner is an accomplished scientist who has judged the work of others in his field and who plays a critical role for a distinguished company providing scientific research and development services to government agencies. However, the record does not establish that the petitioner has achieved sustained national or international acclaim as a scientist placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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.