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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: EAC 03 148 52420 Office: VERMONT SERVICE CENTER Date: AUG 12 2005

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, specifically in the area of high pressure physics. The record indicates that the petitioner is a Research Associate in the Department of Physics at Harvard University. The petitioner submitted supporting documents including copies of his academic degrees, excerpts of some of his published articles and abstracts, evidence of the citation of his work by other researchers, his membership in two scientific associations, his participation at various scientific conferences, two letters requesting the petitioner to take part in the doctoral thesis examination of a student at Uppsala University in Sweden, and five recommendation letters from scientists in his field. The director determined the evidence did not establish that the petitioner had achieved the sustained acclaim requisite to classification as an alien with extraordinary ability. On appeal, counsel submits a brief, printouts of electronic mail messages requesting copies of one of the petitioner's articles, a scientific journal article that mentions the petitioner's research, an untranslated article about the petitioner from an Indian newspaper, and two electronic

mail messages inviting the petitioner to speak about his work. 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 seven documents as evidence of his eligibility under this criterion. First, the record contains a "Certificate of Honour" awarded to the petitioner in 1987 by the Rotary Club of Ludhiana North, India for his performance on his college examination and a document certifying that the petitioner received an A- on the "Informatics Computer Systems Aptitude Test for Programming Proficiency conducted on All India level" in 1990. These certificates demonstrate recognition of the petitioner's academic achievements 16 and 13 years prior to the filing of this petition. Yet prizes or awards for academic excellence do not meet this criterion because only other students – not established scientists – are eligible for and receive such honors.

Second, the petitioner submitted a letter from Dr. R.G. Sharma, Head of the Cryogenics Division of the National Physical Laboratory in New Delhi, India, stating that the petitioner "won the best paper and presentation award in Cryogenics Conference (SNSC – 97) held at IIT [Indian Institute of Technology] Kharagpur" and a check made out to the petitioner on December 12, 1997 from the Sixteenth National Symposium on Cryogenics. A handwritten note above the photocopy of the check states, "Award for best paper and best presentation of research paper (oral presentation) at IIT Kharagpur (W. Bengal)." Even if this award was a nationally recognized award for excellence in the petitioner's field, it alone would not satisfy this criterion because it was granted nearly five years before the petition was filed and consequently does not reflect the requisite sustained acclaim.

Third, a "Certificate of Achievement" from the Physics Machine Shop of Harvard University verifies that the petitioner completed 30 hours of instruction in the safe operation of machine tools. This safety certification issued by the machine shop of one department of a private university is clearly not a nationally or internationally recognized prize or award for scientific excellence.

Fourth, the record contains two letters informing the petitioner that he was selected for summer scholarships to work on specific research projects at the Department of Physics at Uppsala University in Sweden in 2000 and 2003. The petitioner submitted no documentation of the selection criteria for these summer scholarships or other evidence that they constitute nationally or internationally recognized awards or prizes, rather than financial support for academic study.

In her determination that the petitioner did not meet this criterion, the director noted the lack of documentation establishing the significance of the submitted documents. On appeal, counsel contends the director "regard[ed] the record as incomplete, documentation is needed, therefore under the USCIS regulations, said documentation should have been requested by way of a RFE [Request for Evidence]." Although 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing," the director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. In this case, the director did not deny the petition based on insufficient evidence of eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, although notably not with evidence relevant to this criterion. Hence, it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

The record indicates that the petitioner has been recognized for his academic achievements, received two summer scholarships, obtained a safety certification, and received an award for best paper and best presentation at a national conference in his field nearly five years before his petition was filed. None of the evidence submitted documents the petitioner's receipt of nationally or internationally recognized honors reflective of the requisite sustained acclaim in his field. 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 copies of his membership certificates for the Sigma Xi Scientific Research Society (Sigma Xi) and the American Physical Society (APS). The director stated, "it does not appear that outstanding achievements were a requirement for the granting of [these] memberships." On appeal, counsel claims that such evidence should have been requested through an RFE. Yet there is no need to issue an RFE when the required documentation is clearly stated in the regulation: "membership in associations . . . which require outstanding achievements of their members." 8 C.F.R. § 204.5(h)(3)(ii). On appeal, counsel states that membership in Sigma Xi "involves a process in which 2 members review the candidate's qualifications," but the record contains no documentation of this selection process. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record is devoid of any evidence that outstanding achievements are prerequisite to membership in Sigma Xi or APS. Accordingly, the petitioner does not meet this criterion.

We note that on page nine of his appellate brief, counsel also claims that the petitioner has been elected to "the NJ Academy of Sciences." The record is devoid of any corroborative evidence to support this claim. Again, the unsupported assertions of counsel do not constitute evidence. *Id.*

(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.

On appeal, counsel claims the petitioner meets this criterion through the citation of his work by other researchers. However, citations of an alien's work in other scientists' publications rarely meet this criterion because the citing articles are primarily about the authors' own research, not the work of the alien. The petitioner submitted evidence that six articles of which he is the lead author have been cited a combined total of 19 times by other researchers (not including self-citations) and that nine articles of which he is a co-author have been cited a combined total of 39 times by other researchers (not including self-citations by the lead authors).

The record contains no evidence that the citing articles substantively review or discuss the petitioner's work, rather than cite it to establish a subsidiary point.

On appeal, the petitioner submitted an article from an Indian newspaper accompanied by an incomplete and uncertified English translation. Because the petitioner failed to submit a certified translation of the article, we cannot determine whether it supports his eligibility under this criterion. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The petitioner also submitted an additional article on appeal that was published in the June 2004 edition of *Current Science*. We cannot consider this article because it was published over a year after the petition was filed. 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). The record thus contains no evidence of published material about the petitioner and his work and he consequently 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 record contains a letter dated November 15, 2002 from Rajeev Ahuja, Associate Professor in the Department of Physics at Uppsala University in Sweden, inviting the petitioner to "take part in Licentiate thesis examination of one of my Ph.D. student [sic], for a period of two weeks, starting from 24th of Jan., 2003 to 8th of Feb., 2003." A second letter dated January 24, 2003 is entitled "Invitation Letter," is addressed to the petitioner from [redacted] and states, "My dissertation will be on 10th of Feb. between 10:00 – 12:00, your attendance as my opponent will be very much appreciated." The petitioner submitted no evidence that he actually accepted these invitations and evaluated [redacted] dissertation.

The director noted that while Professor Ahuja's invitation "indicates [the petitioner] has expertise in the field, the evidence provided does not show that he is preeminent in the field." On appeal, counsel queries, "But where is stated [sic] that such participation has to demonstrate preeminence in the field?" The director's comment reflects her understanding that the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h) must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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).

On page 15 of counsel's initial brief, he also states that the petitioner is a "referee for international journal[,] Physical review B" and on page nine of his appellate brief, counsel claims the petitioner is a "Physics Review B reviewer." The record is devoid of any evidence of the petitioner's review of manuscripts for any scientific journal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506.

The record contains evidence that the petitioner was invited to participate in the dissertation examination of one doctoral student at Uppsala University, but the petitioner submitted no evidence that he accepted this invitation and actually judged the student's work. Moreover, the evaluation of just one student's dissertation defense does

not demonstrate judgment of other scientists' work in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

On pages five and six of his initial brief, counsel claims the petitioner meets this criterion through his "breakthrough discoveries" in four areas: 1) high temperature superconductivity, 2) high pressure and high temperature mineralogy, 3) high pressure and high temperature crystallography, and 4) high pressure and low temperature physics. Evidence in the record relevant to this criterion includes copies of the petitioner's abstracts, excerpts from some of his published articles, citation of his work by other researchers, and five recommendation letters written by his supervisors and colleagues. On appeal, counsel contends that "[s]ince all of these witnesses are extraordinary, it follows that [the petitioner] is also extraordinary." An alien's extraordinary ability is not demonstrated through mere association with "extraordinary" individuals. While recommendation letters from such individuals 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 achieved sustained national or international acclaim. Accordingly, we review the petitioner's support letters as they relate to other evidence of his contributions.

Professor Ahuja of Uppsala University states that he has known the petitioner as a collaborator since 1998. Professor Ahuja explains that the petitioner has "carried out ground breaking research on high temperature superconductors, the key to revolutionizing nearly every technology; metallic hydrogen as a fuel and a high temperature superconductor; simulating the core conditions of the earth in a laboratory so that quantitative measurements can be made and theoretical studies on different materials." Peter Lazor, Associate Professor in Mineralogy at Uppsala University, who also collaborated with the petitioner during his stay at the university, describes one example "of the many breakthrough discoveries" that the petitioner has made: "The problem was how to carryout a High-Pressure Raman study on nanocrystalline CeO_2. Consider that this is a nanocrystal, that is, one billionth of a snowflake. It is under ultrahigh pressure and the scattered radiation (Raman) has to be collected so that the information that it contains can be determined. [The petitioner] accomplished [sic] and its publication in a scholarly journal was widely hailed." Although a submitted printout from the ISI Web of Science website lists the petitioner as the lead author of an article entitled "High-Pressure Raman Study on Nanocrystalline CeO_2," the printout shows that this article has been cited only twice by other researchers in the two years since its publication and the filing of this petition.

The petitioner's research on simulating the earth's core conditions is further discussed by Leonid Dubrovinsky, Professor of Earth Sciences at Beyreuth University in Germany, who states that he has known the petitioner for the last five years, during two of which the petitioner worked under his supervision at the University of Uppsala. Professor Dubrovinsky explains that "[i]n order to stimulate conditions in the core of the Earth, [the petitioner] participate [sic] in development of the methods in the field of high pressure and high temperature mineralogy using diamond anvil cells. . . . [The petitioner] contributed in design and fabrication of the graphite assemblage, which has become a standard in our field and has led to a wealth of data."

Bradford M. Clement is a professor of Earth Science at Florida International University (where the petitioner obtained his second doctoral degree) and is also the Associate Program Director of the Ocean Drilling Program at the National Science Foundation. Professor Clement states, "In this laboratory, the objective was to determine the effect of high pressure and high temperature on the morphology, structure and phase transformations of minerals. [The petitioner's] accomplishments in this field are a great achievement. He has attained a status that only the top few percent reach."

Finally, Isaac F. Silvera, Professor of Physics at Harvard University and the petitioner's current supervisor, explains that the petitioner is "now working on an effort to first pressurize hydrogen to greater than two million atmospheres and then for a short period of time heat it to temperatures of thousands of degrees with a pulsed laser, to catalyze the sample to make the transition into the metallic state. Already new methods of laser heating have been developed as this research progresses. This pioneering work is being sponsored by NASA where it has been determined that, if produced, metallic hydrogen will be the most powerful rocket fuel in nature . . . . These applications as well as the putative superconductivity will have enormous widespread technological implications because not only as a source of energy [sic], but also because of the incredible technological possibilities for a room temperature superconductor." Professor Silvera does not state that the petitioner has actually succeeded in producing metallic hydrogen and does not indicate that the petitioner is leading this research or that he personally developed the "new methods of laser heating."

The petitioner's personal statement contains a list of 25 articles published in scientific journals that he has co-authored, but the record documents only 19 of these articles through excerpts from four articles and citation information for 18 articles. The evidence shows that the petitioner is the lead author of six articles which have been cited a combined total of 19 times by other researchers (not including self-citations) and that nine articles of which he is a co-author have been cited a combined total of 39 times by other researchers (not including self-citations by the lead authors). Of the petitioner's first-authored articles, the manuscript entitled "Stability Estimation in YBCO by Stepwise SRD and Kinetic Parameters Through TGA," published in *Physica C* in 1994 has been cited seven times in the nine years since its publication and the filing of this petition. The other three articles of which the petitioner is the lead author have only been cited between one and three times each. This publication and citation record indicates that the petitioner has contributed to his field primarily through his contributions to research projects led by other scientists. The record does not demonstrate that the petitioner's contributions have garnered recognition of him by other experts in his field in a manner consistent with the requisite sustained acclaim.

The petitioner also submitted evidence that he participated in various scientific conferences and was on the organizing committee for the 2003 National Conference on Materials, Components and Applications in India. The record is devoid of any evidence that the petitioner's conference presentations or organization were exceptionally well received or recognized by other scientists as major contributions to his field. In sum, the record does not corroborate the major significance of the petitioner's contributions as described in his support letters. Accordingly, the petitioner 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.

As discussed above under the third and fifth criteria, the petitioner submitted evidence that he has co-authored 19 articles that have been published in scientific journals. He is the lead author of six of these articles. 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. To demonstrate the requisite sustained acclaim, 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.

In this case, the petitioner is the lead author of six articles which have been cited a combined total of 19 times by other researchers (not including self-citations) and a co-author of nine articles which have been cited a combined total of 39 times by other researchers (not including self-citations by the lead authors). Of the petitioner's first-authored manuscripts, the article entitled "Stability Estimation in YBCO by Stepwise SRD and Kinetic Parameters Through TGA," published in *Physica C* in 1994 has been cited seven times in the nine years since its publication and the filing of this petition. The other three articles of which the petitioner is the lead author have been cited between one and three times each. On appeal, the petitioner submitted printouts of 15 electronic mail messages from scientists in the United States and abroad requesting copies of his first-authored article, "Recovery of Superconductivity in the Water Degraded YBCO Samples," that was published in 1998 in *Physica C*. Of the petitioner's co-authored articles, only one has been cited more than 10 times. The article entitled "Insitu X-Ray Study of Thermal Expansion and Phase Transition of Iron at Multimegabar Pressure" which was published in 2000 in *Physical Review Letters* has been cited 19 times including four self-citations by the lead author. The remaining eight articles of which the petitioner is a co-author have been cited between one and seven times each. Two articles of which the petitioner is a co-author were published in *Science*, but the petitioner submits no citation information for the article published in 1999 and the record shows that the second article has only been cited four times (not including self-citations by the lead author) in the four years since its publication and the filing of this petition.

On appeal, counsel twice claims that the petitioner's papers "have been cited over 240 times," yet the record documents only 58 citations of the petitioner's work. The petitioner's publications and the citation of his articles show that his work has been recognized in his field, but the evidence does not document a publication and citation record consistent with sustained national or international acclaim. Accordingly, the petitioner 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 petitioner is a research associate in the Department of Physics at Harvard University. The petitioner's supervisor, Professor Silvera, explains that the petitioner "rose to the top" of an "intense international search" to work on the production of metallic hydrogen in Professor Silvera's laboratory. Professor Silvera also notes that "there is a shortage of people trained" the field of high pressure physics in the United States. While Professor Silvera clearly values the petitioner's contributions, he does not describe the petitioner as performing a leading or critical role for his laboratory, the Department of Physics or Harvard University as a whole. The record also contains no evidence that Professor Silvera's laboratory or the Department of Physics have distinguished reputations independent of their affiliation with Harvard University. Accordingly, the petitioner does not meet this criterion.

The record documents the petitioner's previous employment at the University of Uppsala in Sweden, but the letters of Professor Ahuja, Professor Dubrovinsky and Professor Lazor do not specify the petitioner's position or his exact role at that university. The record also contains no evidence that the University of Uppsala has a distinguished reputation.

On appeal, counsel stresses that the petitioner has "conducted research at APS (Argonne National Lab) Chicago, SRS (Daresbury Laboratories, Warrington, UK), National Synchrotron Light Source, Brookhaven National Laboratory, New York, European Synchrotron Research Facility (ESRF) Grenoble France." The petitioner's personal statement also references his work at some of these institutions, but the record contains no evidence of the petitioner's affiliation with any of these institutions or documentation of the reputation of these establishments. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of Calif.*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 has made valuable contributions to his field as evidenced by his support letters, publications and the citation of his work by other researchers. 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.