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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 02 2005
EAC 04 239 51307

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:

[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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel submits a brief and evidence, the vast majority of which was already part of the record of proceeding. For the reasons discussed below, we concur with the director that the petitioner has not established that he meets at least three of the regulatory criteria as required for eligibility. Rather, we find that the petitioner has established only that he meets the scholarly articles criterion set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

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

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

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. The record reveals that the petitioner was working as a postdoctoral researcher at the time of filing, generally considered an entry level training position for recent Ph.D. graduates. While nothing in the statute or regulations precludes someone at the beginning of their postdoctoral career from establishing eligibility, we will not narrow the petitioner's field to recent Ph.D. graduates. Rather, the petitioner must compare with the most experienced and renowned members of the field.

At the outset, we acknowledge that as a postdoctoral researcher at Southern Methodist University (SMU), the petitioner resides at Cornell University, participating in the university's associated particle detector (CLEO). According to the National Science Foundation materials in the record, CLEO is a collaboration consisting of 150 researchers from 25 U.S. institutions. Other than published presentations credited to the presenter "on behalf of the CLEO Collaboration," CLEO's published articles are credited to approximately 150 authors. We recognize that science is typically advanced by collaborations and do not discount scientific work simply because it resulted from a collaboration. In situations where there are an unusually high number of credited authors, however, the petitioner must establish the significance of his own role within the collaboration beyond simple participation.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.[1]

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner initially asserted that the citations of his work serve to meet this criterion. He also referenced "230 results" of his work in the 2004 version of *Review of Particle Physics* and "33 results" that "will miss the deadline of the 2004 version." Finally, he relied on the comments of reviewers of his submitted manuscripts.

The director concluded that the petitioner's citation record was not indicative of national or international acclaim. On appeal, counsel asserts that the petitioner's citation record is impressive, but does not specifically state that citations can serve to meet this criterion.

While we concur with the director that the petitioner does not meet this criterion, we withdraw any implication that typical citations can serve to meet this criterion. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner.

As evidence of the "230 results," the petitioner submits several pages from an article in *Physics Letters B* with highlighted citations of CLEO collaboration results and other technical equations. This article does not mention the petitioner by name and cannot be considered an article "about" the petitioner.

Finally, the peer reviews of the petitioner's manuscripts are not published materials.

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

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

The petitioner submitted e-mail messages between himself and other CLEO collaborators regarding "paper committees." The director determined that this evidence was not indicative of the petitioner's preeminence in the field.

On appeal, the petitioner submits a letter from David G. Cassel, a professor at Cornell University, affirming the petitioner's participation on two CLEO Paper Committees. Professor Cassel reiterates the prestige of the CLEO collaboration and asserts that any "publication by the collaboration must be validated in a rigorous process by other recognized experts in the specific field within the collaboration before it is presented to the public."

One of the petitioner's initial references, James Alexander, a professor at Cornell and CLEO collaborator, indicates that CLEO produces between 25 and 30 publications per year. As each of these publications will be submitted only after review by a Paper Committee made up of CLEO collaborators, the petitioner has not established that serving on two such committees during a period of four years as a collaborator is notable.

Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, 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.

As noted by the director, the petitioner relies on his publication record and letters from collaborators to meet this criterion. 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 (Comm. 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.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

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. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). Thus, the mere assertion that the petitioner's work is original is insufficient.

The petitioner obtained his Ph.D. from the Chinese Institute of High Energy Physics (IHEP), location of the international BES collaboration. While working towards his Ph.D., the petitioner was the first to observe "more than 10 $\psi(2S)$ decay channels." Zhengguo Zhao, then head of the IHEP Physics division, asserts that the "observation and study of these decay channels are important contributions to the understanding of strong interaction." He notes that this work has been published. Alan J. Weinstein, a professor at the California Institute of Technology and a CLEO collaborator, asserts that the petitioner's "detailed and challenging measurements of the decays of charmonium particles (the $\psi(2S)$ and X_co mesons)," major contributions to the field, were remarkable achievements "for such a young scientist." Finally, Professor Zhao asserts that based on this work, the petitioner "was appointed to chair [the] BES $\psi(2S)$ Physics Analysis Group from January 2000 till [sic] his graduation." Professor Zhao notes that the petitioner was the only Ph.D. student appointed to chair a BES group in its 20-year history. Any Ph.D. thesis or other research, however, in order to be accepted for graduation or publication, 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. Moreover, as stated above, we will not narrow the petitioner's field to Ph.D. students or postdoctoral researchers. Thus, the fact that he may compare well with other Ph.D. students in being appointed to chair a physics group for BES does not necessarily place him at the top of the field nationally or internationally.

Professor Weinstein praises the petitioner's work with the CLEO collaboration, including the "first observation of a very important class of decays of the B meson (to the $D^{(*)}K^*$ final state) which will (in the future) give key information about the mechanism of CP violation in quark decays." Professor Weinstein further asserts that this complex work "earned the confidence of the entire collaboration." Professor Weinstein further asserts that the petitioner "pioneered the use of CLEO new, state-of-the-art Ring Imaging Cernkov Counter, an exceedingly complex and precise device for distinguishing charged pions from charged kaons." According to Professor Weinstein, the petitioner's results were among the first results CLEO obtained using this device. Other references praise specific decay results obtained by the petitioner.

In summary, however, Professor Weinstein states that the petitioner's accomplishments in several subfields is "exceptional for new PhD's" with any one of those accomplishments demonstrating his status "as one of the best and brightest postdoctoral scholars studying elementary particles in the United States." Professor Weinstein speculates that the petitioner will "play an ever more significant role in CLEO and in future major scientific projects," suggesting the petitioner has yet to reach the pinnacle of his field.

Similarly, the remaining letters attest to the petitioner's skill given the early stage of his career, but do not place him at the top of the field. Richard Stroynowski, a professor at SMU, ranks the petitioner as one of the "best postdoctoral fellows we ever had at SMU" and "within [the] top 15-20% of all postdoctoral researchers working currently on the CLEO project." As stated above, however, we will not narrow the petitioner's field to postdoctoral researchers. Professor Stroynowski characterizes the petitioner as "very productive" and notes that he has authored published articles in refereed journals. While Professor Stroynowski identifies the petitioner's area of research, heavy quarks and leptons, he does not identify a specific contribution to this work that has significantly impacted the field of physics.

Ian P. J. Shipsey, a professor at Purdue University, co-spokesperson of CLEO and Fellow of the American Physical Society,[2] asserts that the petitioner's intellectual capabilities and achievements place him at the top of the "fifteen highly selected and very talented research associates" with whom Professor Shipsey has worked.

The references also discuss the petitioner's technical contributions to CLEO. Yongsheng Gao, an assistant professor at SMU, asserts that the petitioner "proposed the best procedure for particle identification which is widely adopted by the collaboration." James Alexander, a professor at Cornell, asserts that the petitioner has contributed to the "technological underpinnings of elementary particle physics through his detailed examination of charged particle tracking phenomena in the CLEO detector." Professor Alexander continues that the petitioner's technical contributions "have leveraged the work of the entire remainder of the Collaboration and been a significant factor in the steady stream of publications resulting from the CLEO dataset." Professor Shipsey provides a similar assessment. Richard Galik, a professor at Cornell, however, asserts that "[e]very collaborator spends time helping understand, maintain, and calibrate the experimental apparatus."

On appeal, counsel asserts that the petitioner's work is the continuation of work pioneered by Nobel Laureates Samuel Ting and Burton Richter. The fact that the petitioner works in a subfield pioneered by Nobel Laureates, however, does not establish his own acclaim. Not every physicist focusing on relativity, now a basic principle of physics, enjoys the acclaim of Albert Einstein.

Counsel further notes the prestige of the journals publishing the petitioner's work. We will not infer the significance of an individual article from the publication in which it appears. Rather, we look for evidence of the impact of the specific article itself, such as evidence that it is widely cited. For the reasons discussed below, we are satisfied that the petitioner meets the separate scholarly articles criterion set forth at 8 C.F.R. § 204.5(h)(3)(vi). A presumption that meeting the scholarly articles criterion necessitates a finding that an alien meets this criterion, however, would negate the regulatory requirement that an alien meet three separate criteria. The lack of evidence of widespread citation of the articles on which the petitioner appears as the primary author, as opposed to one of approximately 150 coauthors, is not consistent with the petitioner's individual recognition in the field for contributions of major significance.

The record establishes the international prestige of the CLEO collaboration and the petitioner's contributions to that collaboration, comparable to the contributions of the top postdoctoral researchers within the collaboration. The classification sought, however, requires that the petitioner enjoy individualized acclaim nationally or internationally. The record does not establish that the petitioner is nationally or internationally acclaimed in the field independent of the reputation of the CLEO collaboration. The record does not reflect that other large accelerator collaborations recognize the petitioner's work individually as a contribution of major significance to the field of physics. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner submitted evidence of his authorship of numerous published articles and evidence that his presentations have also been published. The petitioner also submitted evidence of citations, although the format

[2] The achievements of the petitioner's references suggest that the top of his field is considerably higher than the level he has attained.

of this evidence makes it difficult to identify the citations as citations of articles authored by the petitioner. Nevertheless, we are persuaded that the petitioner is a credited author of heavily cited articles. The director did not separately discuss this criterion; rather he referenced his discussion of the contributions criterion set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(v). In that previous discussion, the director concluded that the petitioner had not established his role in the published articles of the CLEO collaboration.

On appeal, counsel asserts that the petitioner was the "key" or corresponding author of 17 out of 80 of his published articles. Counsel further notes the prestige of the CLEO collaboration and the journals that published the collaboration's results. Finally, counsel notes that the petitioner's work has been cited.

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). Based on a review of the record, we are only able to confirm five articles where the petitioner is the primary or corresponding author. Nevertheless, given the number of total articles authored by the petitioner and the heavy citation of some of those articles, although not those that list the petitioner as the primary author, we are persuaded that the petitioner meets this criterion.

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

The petitioner relies on his role with BES to meet this criterion. Initially, Professor Zhao asserts that the petitioner was appointed to chair the BES $\psi(2S)$ Physics Analysis Group from January of 2000 until his graduation. As noted above, the petitioner was the only Ph.D. candidate to be appointed as the chair of a physics group in the 20-year history of BES. On appeal, Professor Zhao asserts that as chair, the petitioner was "responsible for evaluation and determination of the quality of scientific discoveries before submission for publication." Professor Zhao further asserts that the $\psi(2S)$ Physics Analysis Group "is the most active group at BES and has published a series of significant scientific discoveries which help understand the strong interactions of matter."

As stated above, this role suggests that the petitioner ranks highly with other Ph.D. students, but the record is less clear that this role is indicative of or consistent with national or international acclaim. Specifically, Professor Zhao does not indicate how many groups exist within BES or provide the hierarchy of BES such that we can determine whether every group chair serves a leading or critical role for BES as a whole, beyond the obvious requirement that the results for each group be competently evaluated prior to submission for publication.

Thus, while we do not question the national distinguished reputation of BES, the petitioner has not established that he meets this criterion through playing a leading or critical role for that collaboration.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a physicist 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

postdoctoral research associate, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.