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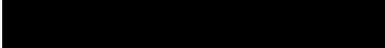
U.S. Citizenship
and Immigration
Services

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FILE:  Office: NEBRASKA SERVICE CENTER Date: **JUL 12 2005**

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Director
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 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.

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 earned sustained national or international acclaim at the very top level.

This petition, filed on December 5, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an electrical engineer. The petitioner's field of expertise is "electric machines and drives." At the time of filing, the petitioner was working as a Senior Project Engineer for Globe Motors of Dayton, Ohio. The petitioner earned a Ph.D. in Engineering from the University of Akron in December 2002.

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 pertaining to the following criteria.

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

We note here that the plain wording of this criterion requires “nationally or internationally recognized” prizes or awards for excellence in the field. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

The petitioner submitted a Certificate of Merit issued by the University of Akron’s Department of Electrical and Computer Engineering on April 23, 2002 in “recognition and appreciation of [the petitioner’s] performance as a Teaching Assistant” at the University of Akron. This award is reflective of departmental recognition, rather than national or international recognition. In respect to awards from universities and other learning institutions, Citizenship and Immigration Services (CIS) views academic awards as local or institutional honors rather than internationally recognized awards for the reason that they are limited to the individual school or institution presenting the award. We cannot ignore that the petitioner’s award was presented for his efforts as a teaching assistant and graduate research assistant. Graduate study is not a field of endeavor, but, rather, advanced training for future employment in a field of endeavor. We cannot artificially restrict the petitioner’s field to exclude all those professionals who had long since completed their graduate studies and therefore did not compete for a departmental graduate student award.

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, the 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. Finally, 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 submitted evidence of his membership in the Institute of Electrical and Electronics Engineers (IEEE). The record, however, contains no evidence of the bylaws or admission requirements for this organization. There is no evidence showing that membership in the IEEE requires outstanding achievement in the engineering field or that the petitioner was evaluated by national or international experts in consideration of his membership.¹

¹ Information from the IEEE’S website, www.ieee.org/portal/site/membport (accessed June 28, 2005), states:

Member

The grade of Member is limited to those who have satisfied IEEE-specified educational requirements and/or who have demonstrated professional competence in IEEE-designated fields of interest. For admission or transfer to the grade of Member, a candidate shall be either:

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.

[REDACTED] Department of Electrical and Computer Engineering, Virginia Tech, and Program Chair of the Nineteenth Annual IEEE Applied Power Electronics Conference and Exposition (APEC 2004), states:

I have come to know [the petitioner] for his work as the reviewer of the Nineteenth Annual IEEE Applied Power Electronics Conference and Exposition (APEC 2004). . . . As the Program Chair of the APEC, my responsibility is to screen the quality of technical papers in the field of electrical engineering for publications in the IEEE. These papers are judged by the selected international renowned experts, who have achieved a high level of stature in their research areas. It was my great pleasure to have [the petitioner] review the papers on the area of power electronics and motor drives. I should acknowledge the well-thought and clear judgment by [the petitioner] to bring in high-quality papers to APEC and the entire power electronics community.

[REDACTED] Senior Staff Research Engineer, Delphi Research Laboratories, and Chairman of the IEEE Industry Applications Society (IAS) Electric Machines Committee, states:

I first became acquainted with [the petitioner's] scientific contributions during a research project that associated our research institution and the University of Akron. . . . I watched how [the petitioner], though only beginning on his Ph.D. studies at the time, tackled the problem.

* * *

As the chairman of the Electric Machines Committee of the IEEE Industry Applications Society, it is my responsibility to screen technical papers in the field of machines and drives for publication in the

An individual who shall have received a baccalaureate (or equivalent) or higher degree from an institution, and in an IEEE-designated field, which is included in the REP (Reference List of Educational Programs) List defined in IEEE Bylaw 1-104.10 or

An individual who shall have received a baccalaureate (or equivalent) or higher degree from an institution not included in the REP List and who has at least three years of professional work experience engaged in teaching, creating, developing, practicing or managing in an IEEE-designated field(s) included in the REP List,

An individual who, through at least six years of, professional work experience in an IEEE-designated field(s) included in the REP List, has demonstrated competence in teaching, creating, developing, practicing or managing in that field(s), or

An executive who, for at least six years, has had under his/her direction important technical, engineering, or research work in IEEE-designated fields included in the REP List.

IEEE IAS Transactions. I can personally attest to the rigorous process and in-depth scrutiny that underlies the paper review process. . . . [The petitioner's] advice is carefully integrated in our committee assessment, and he has gained our constant respect. I remember in particular the case of a paper on switched reluctance motor design using the so-called progressive quadratic response surface method, where he was able to sway the committee's opinion by pointing to the mathematical confusion of a local optimum for a global design solution, which invalidated the paper's design approach.

and do not specifically identify the manuscripts reviewed by the petitioner, nor do they indicate the number of individuals selected to review papers for their committees.

The director's decision stated:

[Citizenship and Immigration Services] agrees that review of manuscripts is relevant to the judging criterion, but it is not uncommon for scientific journals to require, or Ph.D.-level experts to participate in, manuscript peer-reviews. For example, has served as a reviewer for 16 journals. . . . Similarly, in contrast to responsibility as Program Chair of the APEC 2004 conference, the petitioner's role of reviewer of manuscripts in connection with that conference was . . . not at the most senior level. While not dispositive, the petitioner's screening or lesser judging role, in relation to more senior or responsible individuals, does not support a claim to being one of that small percentage who have risen to the very top of the field of electrical engineering. Moreover, even if the reviews had been at the higher level, their recency and number cannot reasonably evince sustained acclaim.

On appeal states:

Unfortunately, from my letter you inferred that [the petitioner's] role was a minor one, still subjected to "higher committee assessment." It is true that our committee does ask more than one expert for any given paper. This is not, however, because the expert's judgment is put into question, or relegated to a role somehow second to somebody "more expert" or "more senior." In that sense, [the petitioner's] opinions have never been appealed, rereviewed, or otherwise assessed. Especially in view of his intellectual rigor and talent, and broad knowledge of our field, his views have always been taken directly into account in judging paper submissions.

The only reason for the "committee assessment" I mentioned in my original letter, that is, our relying on more than one opinion, is to ensure fairness and to avoid giving the possible impression of arbitrary judgment, which could arise if only one reviewer read any particular paper. Therefore, my role as committee chairman organizing the reviews, is more of an administrative role than an actual technical role. My technical expertise, in a sense, is limited to identifying top world experts to review the more difficult papers. This is precisely what I did when I asked [the petitioner] to read the papers he reviewed for the committee.

We cannot ignore earlier statement that he first became aware of the petitioner's work through their participation in a joint project involving the University of and employer. We further note that and the petitioner have coauthored two published papers and a patent

application together since 2002. Therefore, it is certainly not unreasonable to conclude that the petitioner's direct collaboration with [REDACTED] played a role in his selection as an IEEE reviewer.

As previously noted, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. In this instance, we note that peer review of manuscripts is a routine element of the process by which articles are selected for publication or presentation at a scientific conference. Occasional participation in peer review of this kind does not automatically demonstrate that the petitioner has earned sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of scientists who publish themselves in scientific journals or participate in scientific conferences. Normally a conference committee or journal will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The conference committee or publication may accept or reject any reviewer's comments in determining whether to accept or reject submitted papers. For example, we cannot ignore [REDACTED] earlier observation that the petitioner "was able to sway the committee's opinion by pointing to the mathematical confusion of a local optimum for a global design solution." This statement indicates that the petitioner did not hold final authority for the acceptance of conference papers.

The petitioner's appellate submission does not address the director's observations comparing the review activities of the petitioner with those of [REDACTED] Associate Professor of Electrical and Computer Engineering, University of Akron, or with those of [REDACTED]. The fundamental nature of this highly restrictive visa classification, however, demands comparison between the petitioner and others in his field. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has peer-reviewed an unusually large number of manuscripts for publication or conference presentation, chaired various conference committees, received multiple independent requests for his services from a substantial number of journals or conferences, or served in an editorial position for a distinguished journal (in the same manner as, for example, [REDACTED] Professor of Electrical Engineering, Texas A&M University, who serves as the Editor of *IEEE Transactions on Energy Conversion* and Associate Editor of *IEEE Transactions on Power Electronics*), we cannot conclude that the petitioner meets this criterion

The petitioner's appellate submission also failed to address the director's observation that "even if the reviews had been at the higher level, their recentness and number cannot reasonably evince sustained acclaim." We concur with the director's finding that the petitioner's limited and recent review activity is not indicative of *sustained* national or international acclaim.

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

The petitioner submitted several letters in support of the petition. We cite representative examples here.

[REDACTED] Professor, Department of Electrical and Computer Engineering, University of Akron, states:

I have known [the petitioner] since May, 1999 when he came to the University of Akron to pursue his Ph.D. studies under my supervision. I served as his academic advisor for his doctorate degree, which he completed in December 2002. As the supervisor of Ph.D. dissertation committee, it is my observation that he can associate new concepts easily and is capable of pursuing duties and research with little or no guidance.

* * *

[The petitioner] developed innovative methods of controlling a switched reluctance motor designed for the next generation automotive application as part of his Ph.D. research work. [The petitioner] contributed significantly towards the theoretical analysis and modeling as well as for the experimental verification of the project.

Senior Research Engineer, NASA Glenn Research Center, states:

I have known [the petitioner's] Ph.D. research advisor, Professor [redacted] for more than several years through our membership in the Institute of Electrical and Electronics Engineers (IEEE) and in its Technical Committees where we have had many technical interactions. . . . At the recently held IEEE's Industry Application Society's (IAS) Annual Conference in Salt Lake City . . . I had the distinct pleasure of attending [the petitioner's] technical presentation in one of our Technical Sessions.

* * *

[The petitioner's] expertise has the potential for significant and lasting contributions to terrestrial and aerospace technology advancements with the U.S., with attendant economic benefits and technological edge for the nation. His contributions-to-date to the U.S. automobile industry constitute a measure of high promise, and suggest more impressive and practical milestones to come, if given the chance to bloom beyond his current experience.

[redacted] assertions regarding the "potential" and "promise" of the petitioner's work are not adequate to establish that his findings are already nationally or internationally acclaimed as a major contribution. The nature of such comments is certainly no indicator that the petitioner "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). With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how his past efforts already rise to the level of a contribution of major significance. Such observations are not adequate to distinguish the petitioner's contributions from those of established engineering professionals. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

[redacted] who met the petitioner at an IEEE IAS conference in 2001, states that the petitioner's Ph.D. research involved "developing DSP [digital signal processing] based four quadrant control of switched reluctance motor drives, which are suitable for electromechanical actuators and traction type loads." [redacted] further states: "[The petitioner] developed a DSP based indirect position encoding technique for

switched reluctance motor drive which has a great potential for low-cost applications in automotive and home appliance industries.”

We accept that petitioner’s engineering research has yielded some useful and valid results; however, it is apparent that any manuscript, in order to be accepted in for publication or presentation, must offer new and useful information to the pool of knowledge. It does not follow that every scientist or engineer whose scholarly research is accepted for publication or presentation has made a major contribution in his field. The record contains no evidence showing that the petitioner’s innovations are widely utilized in industry or hailed by leading manufacturers as a major contribution.

Professor of Electrical Engineering, University of Glasgow, states that he is “personally and professionally acquainted with the managers who hired [the petitioner].” further states:

The most important evidence of the recognition of [the petitioner’s] work in the engineering community is the papers he has published in various conferences of the Institution of Electrical and Electrical Engineers [sic], which is the most important worldwide forum for the disclosure of advanced research in the field of electric machines and power electronics.

In regard to the petitioner’s published papers and conference presentations, we note that in the fields of science and engineering, acclaim is generally not established by the mere act of publication or presenting one’s work at a conference. The record contains no documentation demonstrating that the presentation of one’s work is unusual for recent Ph.D. graduates or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top engineering researchers. Participation in scientific conferences and symposia of the petitioner’s kind is routine and expected in the scientific community. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level. The record contains no evidence showing that the petitioner’s conference presentations commanded an unusual level of attention in comparison to other conference participants or that the petitioner has served as a keynote speaker at a national or international engineering conference. Nor is there any indication that the petitioner’s publications are viewed throughout his field as significantly influential.

In regard to the petitioner’s two patent applications, we note that anyone may file a patent application, regardless of whether the invention constitutes a significant contribution. According to statistics released by the U.S. Patent and Trademark Office (USPTO), which are available on its website at www.uspto.gov, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, the USPTO received 345,732 applications and granted 183,975 patents. Therefore, given the amount of patent applications that the USPTO receives on an annual basis, we find it implausible that simply filing a patent automatically qualifies as a contribution of major significance in the field of electrical engineering. In this case, there is no evidence showing that the patent applications for the petitioner’s innovations were approved by the USPTO or showing the extent to which these innovations have been implemented in the electric machines and drives industry.

In regard to the letters of support, we note that almost all of the testimonials were written by individuals with ties to the petitioner or his superiors. With regard to the personal recommendation of individuals affiliated with institutions where the petitioner has studied and worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner's reputation is primarily limited to his personal acquaintances and those of his superiors, then he has not achieved national or international acclaim, regardless of the expertise of his witnesses. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

The plain wording of this criterion requires not only that the petitioner's electronic solutions be "original," but that they are of "major significance in the field." We accept that the petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's work may eventually have practical applications does not persuasively distinguish him from other competent engineering professionals. Without extensive documentation showing that the petitioner's engineering innovations have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of *major* significance.

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

On appeal, the petitioner states that he has co-authored five articles published in IEEE conference proceedings and two articles published in *IEEE Transactions on Power Electronics* and *IEEE Transactions on Industry Applications*. We do not find, however, that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater scientific community's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own publications. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work and are familiar with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater field, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed. In the present case, there is no evidence showing that the petitioner's published papers are widely cited.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

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 the national or international level. 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.