

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B2

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JUN 02 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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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.

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

This petition, filed on August 12, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a scientist. The petitioner earned her Ph.D. in Materials Science and Engineering from the Rensselaer Polytechnic Institute (RPI) in August 2002. After earning her Ph.D., the petitioner joined IBM as an Advisory Scientist and Engineer.

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, she claims, meets 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.

The petitioner submitted a letter from [REDACTED] Assistant Dean, School of Engineering, RPI, informing the petitioner of her selection "to receive the 1999 Amoco Fellowship." [REDACTED] states: "The Amoco Fellowship recognizes outstanding female scholars who show promise in the field of materials science and engineering." The plain wording of this criterion, however, requires "excellence in the field" rather than "promise in the field." 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 nationally or internationally recognized awards for the reason that they are limited to the individual school or institution presenting the awards.

The petitioner submitted a certificate from India's National Council of Educational Research and Training reflecting that, while attending high school, she was awarded a National Talent Search Scholarship to fund her high school and undergraduate studies. The petitioner also submitted two "Certificates of Merit" reflecting that she scored in "the top 0.1 percent" of high school students taking the "senior school" and "secondary school" examinations. We note here that competition for the preceding certificates and scholarship was limited to high school students. The preceding certificates and scholarship were presented not to established individuals with active professional careers, but rather to students in pursuit of an educational degree. We cannot artificially restrict the petitioner's field to exclude all those professional scientists who have long since completed their educational training and therefore do not compete for student awards.

The petitioner provided a letter from the Dean of Students at the Indian Institute of Technology indicating that she was "ranked 2nd in her class of 28 students" pursuing a Bachelor of Technology degree in Metallurgical Engineering. The petitioner also submitted a "Candidate Certificate" from the Graduate School of RPI stating that she "satisfactorily completed the candidacy examination and residency requirements for the degree of Doctor of Philosophy." The petitioner included a copy of her graduate transcript showing a 4.0 grade point average at RPI. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. An educational degree may indicate that the petitioner has fulfilled certain academic requirements at a given university, but it does not constitute a nationally or internationally recognized prize or award for excellence in the field of endeavor. Aside from being institutional in scope, rather than national or international in scope, the academic degrees conferred upon the petitioner offer no meaningful comparison between her and experienced professionals in the field of materials science and engineering who have long since completed their educational training (such as, for example, those who hold a professorship in materials science and engineering).

On appeal, the petitioner submits a certificate showing that the Materials Research Society (MRS) presented her with a Graduate Student Silver Award at the 2002 MRS Fall Meeting. This evidence, however, came into existence subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971).

There is no indication that the petitioner has received any significant award for which she would have faced competition from throughout her field, rather than her approximate age group within that field. The visa

classification sought by the petitioner is intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. We find no evidence to establish that the petitioner has received a nationally or internationally recognized prize or award for excellence in the field of materials science and engineering.

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 her membership in the New York Gamma Chapter of Alpha Sigma Mu (ASM) and her student membership in the RPI Chapter of the MRS.

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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. 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 record contains no evidence of the bylaws or the official membership requirements of ASM or the MRS to show that these societies require outstanding achievements of their members. The petitioner has not shown that she was admitted to membership in these organizations based on her outstanding achievement in the field rather than her scholastic achievements. Furthermore, it appears that the petitioner was evaluated and admitted to membership at the local chapter level rather than the national or international level (as required by the regulation). The record contains no evidence to establish that these societies require outstanding achievement of their members in the same manner as highly exclusive associations such as the U.S. National Academy of Sciences.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

The petitioner submitted a six-paragraph piece that appeared in the "Research/Researchers" section of the September 2000 issue of *MRS Bulletin*. The record contains no data showing the national or international distribution of this publication. The petitioner's name is mentioned only once in this article as part of a two-sentence quote attributed to her. The petitioner's research supervisor at RPI, [REDACTED], was quoted

much more extensively. We note here that the plain wording of this criterion requires “published materials about the alien.” In this instance, the petitioner herself was not the primary subject of this article. We further note that the statute and regulations require the petitioner’s acclaim to be *sustained*. A single published piece relating to work conducted by [REDACTED] research group at RPI is not adequate to demonstrate the petitioner’s *sustained* acclaim in the national media.

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] Distinguished Professor of Physics, RPI, which states:

[The petitioner] has acted as a judge of the work of others in the field of materials science. She was on the interview panel for hiring technical staff for RPI’s microfabrication clean room laboratory. Also recently, [the petitioner] was on a team who judged the dissertation of a foreign Ph.D. student in the area of low dielectric constant polymer (from Singapore).

In support of Professor [REDACTED] claims, the petitioner submitted a letter from [REDACTED] General Manager, Microfabrication Clean Room Facility, who states that his facility sought to “hire a Semiconductor Equipment Processing Technician” and that the petitioner “headed a four-member panel of senior graduate researchers who participated in interviewing various candidates for the position.” The petitioner also submitted the cover page of the doctoral thesis prepared by the foreign Ph.D. student from Singapore.

We do not find that evaluating the dissertation of a Ph.D. candidate or serving on a panel of graduate students formed to interview candidates for an RPI equipment processing technician position is adequate to demonstrate that the petitioner is a nationally or internationally acclaimed scientist, nor would serving in these capacities carry the same weight as evaluating established scientific professionals at the national or international level. For example, evaluating tenured research professors is of far greater weight than evaluating an equipment technician or a doctoral candidate.

On appeal, the petitioner submits e-mails from October of 2003 and May of 2004 reflecting that she reviewed a paper for possible publication in *Electrochemical and Solid-State Letters* and that she was requested to review a paper for an MRS symposium. This evidence came into existence subsequent to the petition’s filing date. See *Matter of Katigbak* at 45. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

Even if we were to accept the preceding e-mails as evidence (which we do not), we note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. 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 her field. Reviewing manuscripts is recognized as a professional obligation of scientists who publish themselves in scientific journals. For example, authors who repeatedly decline requests to review will be asked to submit their own manuscripts to other journals. Normally a journal’s editorial staff 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 publication may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers.

Without evidence that sets the petitioner apart from others in her field as of this petition's filing date, such as evidence that she has peer-reviewed an unusually large number of manuscripts for publication in various scientific journals, received multiple independent requests for her services from a substantial number of journals, or served in an editorial position for a distinguished journal (in the same manner as [REDACTED] who served as Associate Editor for the *Journal of the Electrochemical Society*), 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.

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

On appeal, Professor [REDACTED] of RPI states: "The varied top-tier journals that [the petitioner] has published in clearly demonstrates that [the petitioner's] research has wide implications beyond the immediate field of microelectronics"

We accept that petitioner's work has yielded some useful and valid results; however, it is apparent that any Ph.D. thesis or journal article, in order to be accepted in for publication, must offer new and useful information to the pool of knowledge. It does not follow that every individual whose scholarly research is accepted for publication has made a major contribution in her field. Without extensive documentation showing that the petitioner's published findings have been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that she fulfills this criterion. The petitioner's publications will be further addressed under the next criterion.

Professor [REDACTED] further states that he has "seldom encountered a student with more potential and promise than the petitioner."

[REDACTED] Senior Engineering Project Manager for Unit Process Development, Semiconductor Research and Development Center, IBM Systems and Technology Group, asserts that the petitioner is "a rising star in engineering."

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 her past efforts rise to the level of a contribution of major significance. In the present case, it has not been shown that petitioner's past contributions far exceed those of established scientists in her field. Assertions from witnesses that the petitioner has a promising future do not establish eligibility, for the regulations clearly call for evidence that the petitioner already enjoys major success and national acclaim.

[REDACTED] Professor of Materials Science and Engineering, RPI, states:

[The petitioner] has already made quite an impact by making key research discoveries one in the area of electrical resistivity of very thin copper (published in *Electrochemical and Solid-State Letters* in 2000) and the other in the area of electrical drift in polymeric materials Her most recent discovery of plasma effects on surfaces of polymers is another unique discovery and may earn us a U.S. patent.

In regard to the petitioner's patent application, 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 materials science and engineering. In this case, there is no evidence showing that the patent application for the petitioner's innovation was approved by the USPTO, that the innovation described in the invention disclosure is being widely utilized on a national or international scale, or that the innovation is hailed throughout the industry as a major contribution.

In regard to the letters of support offered with this petition, we note that almost all of these letters were written by individuals having direct ties to the petitioner (such as her professors from RPI, co-workers at IBM, or former research collaborators). This fact indicates that while the petitioner's work is valued by those close to her, others outside her immediate circle are largely unaware of her research and do not attribute the same level of importance to her work. With regard to the personal recommendation of individuals from 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 her contributions outside of her affiliated institutions. If the petitioner's reputation is mostly limited to those institutions, then she has not achieved national or international acclaim regardless of the expertise of her employers, collaborators, and former professors.

In conclusion, we find that the documentation presented in regard to this criterion is not adequate to support a finding that the petitioner's work in materials science and engineering is nationally or internationally recognized throughout this field as a major contribution.

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 her authorship of articles appearing in publications such as the *Journal of the Electrochemical Society*, *Electrochemical and Solid-State Letters*, and *Applied Physics Letters*.

We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater research 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. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, however, would demonstrate widespread interest in, and reliance on, the petitioner's work. 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 research community, then it is reasonable to conclude that the alien's work is not nationally or internationally acclaimed.

On appeal, the petitioner provides evidence of an aggregate total of 40 cites to ten of her published articles. The majority of these citations came into existence subsequent to the petition's filing date. *See Matter of Katigbak* at 45. Furthermore, approximately half of the citations presented on appeal are self-citations by the petitioner or citations from her collaborators at RPI. Self-citation is a normal, expected practice among researchers in the scientific community. Self-citation and citation by one's collaborators cannot, however, demonstrate the response of independent researchers. While the citation indices provided by the petitioner demonstrate a small degree of interest in her published work, she has not shown that an aggregate total of twenty independent citations of ten articles elevates her to a level above almost all other researchers in her field at the national or international level. We accept that the petitioner has authored several published articles over the past few years, but the weight of this evidence is diminished by a lack of evidence showing that these articles had significantly influenced her field as of the petition's filing date.

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

The petitioner initially claimed that two of her conference presentations satisfied this criterion. We have consistently found, however, that this particular criterion applies to the visual arts rather than scientific or engineering research. In the fields of science and engineering, acclaim is generally not established by the mere act of presenting one's work at a conference. The record contains no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at conferences where the petitioner spoke was a privilege extended to only a few top scientists or engineers. 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 her 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 participants or that the petitioner has served as a keynote speaker at a national science or engineering conference.

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

On appeal, the petitioner asserts that she played a leading or critical role on projects for IBM and RPI. In regard to the petitioner's work for IBM, we note that she did not commence employment at IBM until after the petition's filing date. Subsequent developments in the alien's career cannot retroactively establish that she was already eligible for the classification sought as of the filing date. *See Matter of Katigbak* at 45.

We cannot ignore that the petitioner's role at RPI was that of a graduate student. Such a role represents temporary training for a future professional career in a field of endeavor. The record contains no evidence showing the extent to which the petitioner exercised substantial control over personnel or research decisions executed on behalf of RPI. Nor is there evidence showing that the petitioner directly secured significant amounts of research funding as a principal investigator (in the same manner as her professors at RPI). We

note here that the majority of witnesses in this case hold higher positions of authority as research supervisors, directors, and heads in their respective divisions or departments. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of her colleagues in the materials science and engineering field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner's role to that of her witnesses. In this case, it is immediately apparent that the importance of the role of individuals such as Professors [REDACTED] and [REDACTED] far exceeded that of the petitioner.

For the above reasons, we find that the petitioner's evidence falls short of establishing that she has performed in a leading or critical role for a distinguished organization, or that her involvement has earned her sustained national or international acclaim.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in her field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientist or engineer who has applied for a patent, published her research, participated in a scientific conference, or earned the respect of her immediate colleagues is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field. However respected the petitioner may be and whatever future promise her career may hold, the petitioner has not yet reached the top of her field. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

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 she 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 herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.