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U.S. Citizenship  
and Immigration  
Services

PHOTOCOPY

JUN 13 2005



FILE: EAC 03 082 51347 Office: VERMONT SERVICE CENTER Date:

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:



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.

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 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 postdoctoral fellow. While we do not find that postdoctoral researchers are precluded from establishing eligibility, we will not limit the petitioner's field to those in the early stages of their postdoctoral careers.

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.<sup>1</sup>

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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

In his initial cover letter, counsel indicated that Exhibit C included the petitioner's "degrees, awards and offer letters." Exhibit C contains the petitioner's degrees and job offer letters, but no awards. On her curriculum vitae, the petitioner lists the following awards:

- 1993 Guanghua Scholarship Award for Graduate student
- 1992 Outstanding Graduate Student Award
- 1991 Best Performance Award in Thermal Knowledge Competition
- 1990 Award for Academic Excellence
- 1987-1992 First Prize Scholarship Awards

The director concluded that the above awards were all for academic achievements and, thus, could not qualify as awards for outstanding achievements in the field of endeavor. On appeal, counsel concedes that the awards were for academic achievements, but asserts that "some of them were also national in scope." Counsel does not explain which of the awards were national in scope. 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).

We concur with the director that academic awards and scholarships cannot serve to meet this criterion. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for scholarships and student awards, even if national in scope, is limited to other students. Experienced experts in the field are not seeking student awards or scholarships. Similarly, experienced experts do not compete for fellowships and competitive postdoctoral appointments. Thus, they cannot establish that a petitioner is one of the very few at the top of his field.

Moreover, as stated above, the petitioner has not submitted the awards themselves. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 addition, the petitioner has not submitted evidence regarding the significance of these awards, such as media coverage of the award selections. As such, the petitioner has not established that she received these awards or their significance.

In light of the above, the petitioner has not established that she meets this criterion.

*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.*

Counsel asserted that the petitioner is a member of the American Society of Mechanical Engineers (ASME). Counsel lists this membership on her curriculum vitae. The membership itself is not in the record. The director concluded that the petitioner had not established that ASME requires outstanding achievements of its members. On appeal, counsel states that he will not "contest that this is a weak category for this professional." According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the membership must be in an association

that requires outstanding achievements of its members. The petitioner submitted no evidence of her membership in ASME or its membership requirements. Thus, we concur with the director that the petitioner has not established that she meets this criterion.

*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 director noted the lack of evidence that the petitioner's work had been cited and then concluded that citations cannot serve to meet this criterion. Counsel does not contest that the record lacks evidence relating to this criterion on appeal and we concur with the director's analysis.

*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 evidence that her supervisor, [REDACTED] passed on to the petitioner review requests specifically addressed to [REDACTED]. The petitioner also submitted evidence that she completed these reviews. The director rejected this evidence, noting that the petitioner's opinions were not directly solicited.

On appeal, counsel asserts that "the statute" only requires that the petitioner judge the work of others. Counsel concludes that how the petitioner was selected to review the work "is not a statutory consideration."

This office consistently finds that Citizenship and Immigration Services (CIS) is justified in evaluating the evidence submitted to meet a particular *regulatory* criterion as to whether it is indicative of or uniquely consistent with national or international acclaim, the *statutory* basis of eligibility. Not every review or evaluation of the work of others is indicative of national or international acclaim and is often inherent to the occupation. For example, every instructor or coach evaluates her students or athletes. Similarly, every supervisor evaluates her subordinates. It would undermine the obviously exclusive purpose of the statute, however, to conclude that every instructor, coach or supervisor meets this criterion based solely on the alien's occupation. Thus, a presumption that any and all review meets this criterion is untenable.

The concept of "acclaim" requires that the petitioner is known beyond those she directly works with. The petitioner's supervisor was the individual solicited to complete the reviews. That the supervisor passed on that responsibility to the petitioner is not evidence of the petitioner's own recognition in the field. Moreover, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in her field, such as evidence that she 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.*

The director acknowledged the submission of articles and several reference letters. The director concluded that only one of the petitioner's articles had actually been published. Regarding the reference letters, the director concluded that reference letters prepared in support of the petition could not form the cornerstone of a successful claim for the classification sought without the submission of evidence reflecting national or international acclaim, such as evidence that the alien is widely cited. The director further noted that acclaim required notoriety "apart from his personal and professional associates."

On appeal, counsel asserts that the conclusion that only one article was published is "nonsense." He does not address the evidence included in Exhibit B of the initial submission, but rather his own characterization of that evidence in his original cover letter. Specifically, he notes that his original cover letter stated that there were ten publications, including one in submission and one accepted. As stated above, however, counsel's assertions are not evidence and his own statements regarding what evidence is included in the various exhibits is not determinative. Exhibit B includes the following:

1. An article entitled "Analysis of Supercritical Startup Behavior for Cryogenic Heat Pipes," published in the *Journal of Thermophysics and Heat Transfer*.
2. Two copies of an article entitled "Modeling of Heat Pipe Startup Transients: Frozen and Supercritical." The petitioner indicates on her curriculum vitae that this article appeared in the proceedings of a 1997 conference. The copies of the article, however, begin on page one, have no journal identification and, thus, do not demonstrate that this article was published in a peer-reviewed journal.
3. An article entitled "Numerical Study of Capillary Rewetting in Porous Media." This article is not paginated and does not have a journal identification. Thus, the copy of this article does establish that it was published in a peer-reviewed journal.
4. An article entitled "Numerical Investigation of the Steady State Operation of A Cylindrical Capillary Pumped Loop Evaporator." The petitioner asserts on her curriculum vitae that this work was presented at an ASME conference. The article indicates that it was copyrighted in 2000 by ASME, but the article has no journal identification and begins on page one. As such, it is not clear that this article was published in a peer-reviewed journal. Nevertheless, conference presentations are comparable to published articles.
5. An abstract entitled "Effects of Wick Thermal Conductivity on the Capillary Pumped Loop Evaporator." This abstract appears on page 4.3-1, but the publication is identified as Clemson University, Mechanical Engineering. The petitioner has not established that this article appeared in a peer-reviewed journal that is circulated beyond Clemson University.
6. An article entitled "Theoretical and Experimental on Cool Storage Materials for Air Conditioning System" presented at a 1998 conference and included in the published proceedings of that conference.
7. An article entitled "Integral Method Solutions for Rewetting of Finite Length Surfaces with Uniform Heating." The article, which begins on page one, has its own cover, indicating that it was presented at the 1996 National Heat Transfer Conference. The article pages, however, have no journal identification. Regardless, we find conference presentations to be comparable evidence to published articles.

As is clear from the above summary of the seven articles actually included in Exhibit B, as opposed to counsel's characterization of that exhibit, the director's conclusion that the evidence only demonstrated one publication in the *Journal of Thermophysics and Heat Transfer* is not "nonsense." The article listed at number one above is the only article demonstrably published as of the date of filing. Nevertheless, as noted above, we consider conference presentations to constitute comparable evidence of published articles. Thus, the article listed at number six above and the presentations listed at numbers four and seven above are comparable evidence of scholarly articles and will be considered as such in this decision.

Subsequently in his brief, counsel asserts:

The fact that the scientific articles are themselves evidence of original scientific contributions is irrelevant. The statute defines two categories that can essentially be met with the same evidence. This is the law. Rewriting the statute is not permitted.

The "law" requires extensive documentation reflecting sustained national or international acclaim. The regulations provide ten categories of evidence that can be used to demonstrate such acclaim. Asserting that evidence directly relating to one criterion is presumptive evidence to meet another, less related criterion, would appear to undermine the statutory requirement for extensive documentation and the regulatory requirement that a petitioner meet at least three criteria. While a researcher whose publication record is indicative of national or international acclaim will often have made a contribution of major significance, we do not presume that every researcher able to publish her work, which is nearly every competent researcher, has made a contribution of major significance.

In addition to the articles, the petitioner submitted the above-mentioned reference letters. Counsel fails to counter any of the director's analysis relating to the reference letters, dismissing it as "boilerplate nonsense" that has "nothing whatsoever to do with this case." As the petitioner relies almost entirely on the submission of reference letters prepared for this petition to elevate herself above others in the field, we find that the director's discussion of the probative value of such evidence, whether boilerplate or not, is highly relevant to this case.

We will evaluate the letters below. We emphasize upfront, however, that the letters must be evaluated, not simply counted. Letters from independent experts who were previously aware of the petitioner's reputation are more persuasive evidence of acclaim than letters from colleagues. Similarly, experts who identify specific contributions and affirm their own reliance of the petitioner's work, or at least explain the impact of the petitioner's work, are more persuasive than letters that provide general praise.

The petitioner obtained her Bachelor's and Master's degrees from Tsinghua University. In 2000, the petitioner obtained her Ph.D. from Clemson University and in 2001 the petitioner obtained a second Master's degree from Worcester Polytechnic Institute. At the time of filing the petitioner was a postdoctoral fellow at the University of Connecticut.

██████████ Head of the Thermal Engineering Department at Tsinghua University, discusses the petitioner's work on design criteria for optical fibers, which must undergo specific heat processes that directly effect the quality of the fiber through the flow field, temperature distribution and the dopant diffusion of the drawing process. The complexity of this process reduces the accuracy of numerical simulations; thus, a solid background in heat transfer and fluid flow as well as excellent programming skills are required to attempt an accurate simulation. According to ██████████ the petitioner "is the first person in the world to investigate the dopant

diffusion in the preform and in the fiber.” The results of this work “will certainly provide an important and necessary guideline to the optical fiber industry in terms of improving the bandwidth and reducing the optical loss during information transmission.” While predictions of future contributions are insufficient, [REDACTED] also addresses the petitioner’s past work. Specifically, [REDACTED] that her numerical simulations for advanced thermal control systems, such as cryogenic heat pipes and capillary pumped loops, “provided important design guidelines for these advanced thermal controls systems widely used in spacecrafts and electronics” and “received worldwide attention.” It is insufficient merely to claim generally that the petitioner’s work received international attention, the petitioner must demonstrate such attention through objective evidence such as frequent citation or discussion in the scientific literature. At the very least, the reference letters must provide specific examples of such recognition.

[REDACTED] continues that the petitioner “proposed a new practical cool storage material for an air conditioning system.” The material “has the advantage of high potential energy of liquid-solid phase transition, excellent thermal physical properties and reliability.” Most significantly, “it has a higher freezing point than the most widely used cool storage material-water, therefore it can be used to enhance the efficiency of the refrigerator and greatly reduce [the] cost of air conditioning systems.” The petitioner submitted a foreign patent for this material. The record, however, includes no evidence that manufacturers have licensed or expressed an interest in licensing this material. The highly exclusive nature of this classification, as evident from the statutory requirement for national or international acclaim and the regulatory requirement that the original contributions be of “major significance” places petitioners on notice of the requirement to establish the significance of their original contributions.

[REDACTED] the petitioner’s advisor at Clemson University, asserts that the petitioner developed “two completely original models for advanced thermal control systems.” One model relates to the supercritical startup process of cryogenic heat pipes while the other provides information regarding the condition under which the heat pipes can be successfully started. [REDACTED] notes that this work has been published and asserts that it has been “cited and served as important guidelines for other researchers.” This assertion should be easily documented, such as through the submission of a citation index or letters from independent researchers who have applied these models. The record contains no such evidence. We note that the director’s decision placed the petitioner on notice of the lack of citations, but she submits no such evidence on appeal.

Other members of the petitioner’s thesis committee provide similar information, asserting that the petitioner has advanced the understanding of capillary pumped systems. While the petitioner’s research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be of “major significance.” We must presume that this phrase 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). We cannot conclude that every funded or published research project constitutes a contribution of *major significance*. To hold otherwise would render the regulatory language at 8 C.F.R. § 204.5(h)(3)(v) superfluous in contradiction of the principles of statutory construction expressed in the Supreme Court cases cited in this paragraph that are equally applicable to regulatory construction.

At the University of Connecticut, the petitioner works in the laboratory of [REDACTED]. Pitchumani explains that he selected the petitioner based on her mechanical engineering and computer science abilities. At the University of Connecticut, the petitioner is “responsible in developing a theoretical model to

describe the extremely complicated heat and mass transfer phenomena, which involves the integration of state-of-the-art fluid flow, convection, radiation and dopant diffusion methodologies, in the fabrication process of optical fibers.” [REDACTED] explains the challenges in this project and asserts that the petitioner has already made “significant contributions.” Specifically, the petitioner “successfully identified the curvilinear velocity as the best coupling velocity for the pressure field, and by replacing Cartesian velocity with curvilinear velocity, the number of computation grid points has been reduced from about twenty four hundred to six thousand.” [REDACTED] does not explain how going from 2,400 to 6,000 is a “reduction.” Regardless, according to [REDACTED] the resulting program “is far more efficient in terms of less computational effort and memory requirement” than existing algorithms. [REDACTED] praises the petitioner’s abilities and asserts that without her, the project would end.

The petitioner submitted her work with [REDACTED] for publication in 2002. As of the date of filing, it had not been published. In fact, the petitioner submits no evidence on appeal that it has been published. Thus, this work has not appeared in a peer-reviewed journal and has not been disseminated to the field. As such, we cannot gauge its impact on the field and we cannot conclude that it has garnered the petitioner any acclaim beyond her immediate circle of colleagues.

The petitioner also submitted several letters from members of the field who do not appear to have worked with the petitioner, although the petitioner did not submit the curriculum vitae of these references. [REDACTED] a senior hydraulic/flow engineer at the Alden Research Laboratory in Massachusetts, affirms that the petitioner is the “first one to completely model the combination of dopant diffusion with flow and heat transfer in the optical fiber fabrication process.” He further asserts that this work “will” benefit the optical fiber industry and discusses the importance of advanced thermal control systems to spacecraft engineering and electronics. He does not claim to be applying the petitioner’s models or provide examples of optical fiber manufacturers who are.

[REDACTED] University, discusses the petitioner’s work on capillary pumped loop evaporators. [REDACTED] asserts that the petitioner “was the first person to perform complete simulation on this extremely complex problem, and her discovery in this field was really a breakthrough.” He explains that the petitioner’s work “has provided extremely important data and design guidelines for the capillary pumped loop manufacturing industry.” If true, it can be expected that patent applications and other journal articles would be citing the petitioner’s work. As stated above, the record contains no such citation evidence. [REDACTED] does not claim to be using the petitioner’s work as guidelines and does not provide any example of a company that is.

The remaining letters reiterate the assertions discussed above. The record shows that the petitioner is respected by her colleagues and has made useful contributions in her field of endeavor. The petitioner’s field, however, 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. The record does not establish that the petitioner has already accomplished a groundbreaking advance in mechanical engineering that has had a demonstrable impact on the field. Thus, we find that the petitioner has not established that she 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 director referenced his discussion relating to the petitioner's contributions. On appeal, counsel asserts that the petitioner meets this criterion "with 10 publications in top journals." As discussed above, this characterization is not sufficiently documented. Rather, the petitioner has documented the equivalent of four published articles: one published article in a peer-reviewed journal, an article published in conference proceedings, and two conference presentations.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

As stated by the director, uncontested on appeal, the record contains no evidence that any researchers, independent or otherwise, have cited the petitioner's work. Thus, we concur with the director that the petitioner has not demonstrated that her record of publication is indicative of or uniquely consistent with national or international acclaim. Therefore, the petitioner has not demonstrated that she meets this criterion. Even if we were to accept that the mere act of publication in a peer-reviewed journal, without evidence of the article's impact, were sufficient to meet this criterion (and we do not), it is only one criterion. For the reasons discussed above and below, the evidence falls far short of establishing that the petitioner meets any additional criteria. A petitioner must meet at least three criteria to establish eligibility.

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

Counsel relies on the reference letters discussed above to meet this criterion. We have already considered the petitioner's purported contributions to the field above. At issue for this criterion are the role the petitioner was hired to fill and the reputation of the entity that hired her. At the time of filing, the petitioner was a postdoctoral fellow. We cannot conclude that every postdoctoral fellow plays a leading or critical role for the entire institution where she works. Thus, we concur with the director that the petitioner does not meet this criterion.

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 herself as a postdoctoral fellow 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 indicates that the petitioner shows talent as a postdoctoral fellow, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field, including those who have completed the postdoctoral phase of their careers. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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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.