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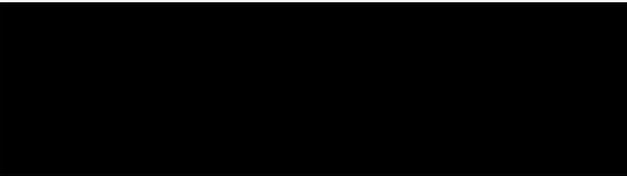


FILE: LIN 03 184 52142 Office: NEBRASKA SERVICE CENTER Date: JUN 24 2005

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:



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.

for 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.

On appeal, counsel asserts that strict adherence to the regulatory criteria discussed below “leaves no room for tangible *x factors*.” Counsel then notes that the petitioner “is actively involved in research that is postured to have a profoundly positive benefit on the scientific research community in the United States.” The intrinsic merit and potential benefits of research in the petitioner’s field, while not in dispute, is not a factor for the classification sought. Nothing in the statute or regulations suggests that an alien who works in an important area or whose work has the potential for benefiting the United States is exempt from demonstrating the sustained national or international acclaim through extensive documentation required by the statute.

Counsel further asserts that under the standards used by the director, “perhaps several individuals each year would meet your current definition of extraordinary.” Counsel then notes that Congress allotted 40,000 visas per year in this classification. The 40,000 visa allocation is a maximum and is not indicative of how many aliens should qualify. Moreover, we note that these visas are allocated for aliens in this classification in five separate areas: the sciences, arts, education, business, or athletics. Thus, Congress did not allocate visas in this classification for 40,000 mechanical engineers.

Counsel’s specific assertions relating to the regulatory criteria will be discussed below. For the reasons set forth below, we concur with the director’s analysis in all but one of the regulatory criteria. Moreover, while the director used the wrong standard in evaluating the petitioner’s salary, the petitioner still fails to meet that criterion for the reasons discussed below.

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.

On appeal, counsel asserts that the director erred by implying that “each category addressed needs to be indicative of an individual who is [an] internationally renowned expert in the field of expertise.” Rather, counsel asserts that “sustained national or international acclaim is evidenced through the sum total of the documentation provided.” It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level. The regulation at 8 C.F.R. § 204.5(h)(3) asserts that a petitioner must submit evidence “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The 10 regulatory criteria then follow. This office consistently finds that the evidence submitted to meet any criterion must be evaluated as to whether it is indicative of or uniquely consistent with national or international acclaim, the standard set forth in the statute and the introduction to the criteria. Where a duty or accomplishment is inherent to the alien’s occupation such that fulfilling the duty or accomplishment is not indicative of one’s reputation in the field, we have consistently held that it cannot serve to meet the relevant criterion.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a “mechanical engineer researcher.” 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

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

The director concluded that no evidence was submitted relating to this criterion. We note that the petitioner received a teaching award. The record suggests the award is based mostly on the number of years of experience as a teacher and does not appear to be a nationally recognized award for excellence in the petitioner’s field of engineering. As such, the petitioner has not established that he 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 asserts that the invitation to include the petitioner in “Who’s Who in Science and Engineering” serves to meet this criterion. Counsel asserts that “[p]ublication in ‘Who’s Who in Science and Engineering’ requires outstanding achievements and confers a true mark of distinction upon a member.” The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of*

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

Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The letter from the publisher, Marquis, asserts that the petitioner was selected based on his "outstanding achievements."

The petitioner also submitted his membership in the Chinese Society of Mechanical Engineers (CSME). The petitioner failed to provide the membership requirements for this society. In his request for additional evidence, the director determined the petitioner had not established the exclusive nature of his "memberships." In response, counsel asserted that the impact of the petitioner's area of work "is lost when all of the focus is on issues such as *the requirements for his professional society memberships*." (Emphasis in original.) The director concluded that the petitioner did not meet this criterion. Counsel reiterates the above quote on appeal.

The membership requirements for the associations of which the petitioner is a member are not a distraction from the ultimate issue of the petitioner's eligibility as counsel implies. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires that the memberships be in associations that require outstanding achievements of their members as judged by national or international experts. We must presume that this phrase is not superfluous. See *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). Thus, it is the petitioner's burden to demonstrate that his memberships fully comply with the regulatory criterion in its entirety.

Without evidence from ██████ explaining what constitutes an "outstanding achievement," we cannot evaluate this vague claim. Moreover, nothing in the invitation letter indicates that ██████ relies on national or international experts in the petitioner's field to select invitees, an integral part of meeting this criterion according to the plain language of the regulation set forth at 8 C.F.R. § 204.5(h)(3)(ii). Regardless, publication in a directory is not a "membership" in an association and is not comparable evidence to such membership. Rather, this evidence is best considered pursuant to the criterion set forth at 8 C.F.R. § 204.5(h)(3)(iii) relating to published materials. The record contains no evidence regarding the membership requirements for CSME. As such, the petitioner has not demonstrated that his membership in CSME can serve to meet 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.

As stated above, publication in a biographical dictionary is better considered under this criterion than under the membership criterion. Nevertheless, appearing as one of thousands, or even hundreds of other successful individuals in a frequently published directory is not evidence of national acclaim. The petitioner has not demonstrated that the directory is anything more than a vanity press.

On appeal, the petitioner submits additional evidence relating to this criterion. The materials all date from after the date of filing and cannot establish the petitioner's eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Thus, we cannot consider these materials. Regardless, the petitioner submitted no circulation data for the publication in which the article appeared. Thus, the petitioner has not established that it constitutes major media.

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

The petitioner authored a textbook entitled "Unigraphics/Cam." As evidence of the petitioner's notoriety in the field, counsel references a letter from a professor at the University of Wisconsin, Madison, asserting that he "became aware" of the petitioner's work and extended an invitation to the petitioner as a visiting scholar. Professor Lih-Sheng Turng continues:

While pursuing his Ph.D. degree at National Tsing-Hua University, one of the best universities in Taiwan, [the petitioner] introduced the Neural Network Models (an Artificial Intelligence technique) for prediction and improvement of part surface finish with electrical discharge machining. [The petitioner's] research involves using computer algorithms that mimics [sic] the way information is processed in the nervous system that has the ability to learn and use that to predict the appropriate conditions to produce successful products. He has also performed work in terms of Design of Experiments that allows identification of crucial processing parameters with much less number of experimental runs.

In his request for additional evidence, the director noted that publication is typical in the petitioner's field and concluded that the evidence submitted did not indicate that the petitioner's contributions were of major significance.

In response, counsel asserts that "only a small percent of researchers publish a textbook that is currently in use as an instructional tool for Mechanical Engineering students in Taiwan." The petitioner submitted a certificate indicating the petitioner's book sold 1,633 copies in Taiwan and 6,000 copies in China. The director questioned the authorship of the certificate, which he called an "article," under the scholarly articles criterion discussed below.

On appeal, counsel asserts that the director failed to consider the petitioner's textbook under this criterion as counsel presented it. Counsel misunderstood the director's concern over the certificate and submits a translation of the petitioner's entire book. The director, however, was inquiring as to the source of the certificate, not the book.

The petitioner must demonstrate not only that he has made an original contribution but that it is of major significance. Thus, the petitioner must not only demonstrate that he is the author of a textbook, but its impact on the field. The publisher's certificate indicating that the petitioner's book sold 1,633 copies in Taiwan and 6,000 in China is not persuasive. We note that the petitioner's technology school alone has 10,230 students. Without evidence that this sales data represents sales comparable with the most influential textbooks in mechanical engineering, we cannot conclude that the petitioner's sales numbers are significant.

Moreover, while the petitioner's articles were submitted for the criterion discussed below, we note here that the record lacks evidence that these articles have been cited by other independent researchers in the field. Thus, the petitioner has not established that his work has been influential in the field such that it can be considered 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.

The petitioner submitted evidence that he has authored eight published articles (including conference presentations), four reports and a book. In his request for additional evidence, the director requested evidence demonstrating how this publication history “exceeds that of others in the field.” In response, counsel notes that the petitioner is an engineer, not a medical researcher, and asserts that each criterion should not be evaluated as to whether the evidence alone demonstrates national acclaim. Counsel further asserts that the fact that the petitioner published work while a student “amplifies” the significance of his contributions.

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 our position that publication of scholarly articles, even while a student, is not automatically evidence of sustained acclaim; we must consider the research community’s reaction to those articles.

As stated above, the record contains no evidence that the petitioner’s work has been cited by independent researchers or at all. As such, we concur with the director that the petitioner has not met this criterion.

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

Initially, counsel asserted that the petitioner met this criterion through two scientific presentations. The director concluded that the record lacked evidence that the petitioner was invited based on his stature in the field. Counsel did not respond to this concern either in response to the director’s request for additional evidence or on appeal. We find that this criterion is limited to those claiming extraordinary ability in the visual arts. The petitioner’s scientific conference presentations are comparable to scholarly articles and have been considered above.

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

Initially, the petitioner submitted his appointments as a zero dollar honorary associate/fellow at the University of Wisconsin, Madison and as an associate professor at the National Chin-Yi Institute of Technology in Taiwan (NCIT) as of August 1, 2002. The director requested evidence that the petitioner’s role was “critical or essential” and that the employers had a distinguished reputation nationally. In response, the petitioner submitted evidence regarding the reputation of NCIT and the petitioner’s projects at that institution.

Specifically, the petitioner submitted evidence that NCIT was founded in 1971 as a vocational junior college, was nationalized in 1992 and “promoted” to a two-year college in 1999. Another exhibit of unknown origin labeled “Evidence of Outstanding in National Chin-Yi Institute of Technology” indicates that NCIT includes a two-year program, a four-year program and a graduate program with 10,230 students. The same exhibit indicates that the petitioner “wrote many research and improving educational quality projects near 5 years.” The exhibit also details a 2003 project to build a Precision Manufacturing and Material Applications Research Center at NCIT and indicates that the petitioner was the director of a research group for Nanotechnology and

Nontraditional Machining Technology in 2002. This exhibit is unsigned and does not identify the source of this information. A certificate following the exhibit, however, confirms that the petitioner is "the principle's special assistant, responsible for promoting technology development affairs, effective since November 1st 2003." A coversheet for the project identifies [REDACTED] as the project director, with the petitioner as the contact individual. Appendix F lists nine research groups at NCIT and identifies the petitioner as the director of the Nanotechnology and Nontraditional Machining Technology.

The director concluded that the petitioner had not established either that NCIT enjoys a distinguished reputation or that the petitioner plays a leading or critical role for NCIT. On appeal, counsel reiterates the claim that NCIT has a two-year program, a four-year program and a graduate student and that it has over 10,000 students. Counsel also reiterates that the petitioner was the director of a project and attracted \$583,000 in funding to NCIT.

As stated above, another individual is listed as project director on the project coversheet submitted. Moreover, the petitioner has not established that his appointments other than as associate professor occurred prior to the date of filing. As stated above, the petitioner must establish his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. In addition, the official materials regarding NCIT do not indicate that it has a four-year program or a graduate program. Rather, in 1999 it was promoted to be a two-year college. The record lacks media coverage or other independent evidence of its national reputation. As such, we concur with the director that the petitioner has not established that NCIT enjoys a distinguished reputation nationally.

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted evidence that he earned a consolidated gross income of 1,837,515 New Taiwan dollars in 1999, 1,964,369 New Taiwan dollars in 2000 and 1,929,783 New Taiwan dollars in 2001. The tax returns list the petitioner's spouse and the record contains no indication that the consolidated gross income is exclusively the petitioner's wages, excluding his spouse's income, interest, or other possible income sources. The petitioner submitted evidence that the average associate professor in Taiwan earns an annual salary, including benefits and bonuses, of 918,477 New Taiwan dollars. The 67th percentile for this occupation is 1,102,859 New Taiwan dollars. The director requested evidence as to how the petitioner's salary compared with salaries for his occupation in the United States. In response, counsel asserted that this request was not based on law.

The director concluded that the petitioner had not demonstrated his income during the period when he demonstrated the average income for his occupation. On appeal, counsel reiterates previous assertions. The petitioner submits tax documentation for 2002.

First, the director's statement that the petitioner must establish a significantly high remuneration regardless of geographic location is overly broad. The standard for this classification is national or international acclaim. Thus, national acclaim is sufficient. As such, while a petitioner must supply national, not merely local, wage data, he need not compare the alien's wages with U.S. wages where the alien is not employed in the United States.

Nevertheless, as stated above, the petitioner's tax documentation prior to 2002 does not establish his remuneration from his occupation. The petitioner's spouse is listed on the form and there is no indication whether her income is included. Moreover, "consolidated gross income" can include income that does not result from one's employment, such as investment income. Without evidence of the petitioner's wages, employment benefits and bonuses, exclusive of other unrelated income, we cannot compare his remuneration with that of others in his field in Taiwan. As can be seen from the evidence for 2002 submitted on appeal, the petitioner's consolidated gross income did, in fact, include considerable income beyond his occupational income.

On appeal, the petitioner provides evidence that his consolidated gross income for 2002 was 2,230,065 New Taiwan dollars. Once again, the petitioner's spouse is identified on the tax document. The petitioner also submitted a breakdown of his 2002 income. Only two amounts are attributed to his wages: 1,428,453 New Taiwan dollars and 37,600 New Taiwan dollars. Both amounts are attributed to employment with NCIT. The remaining income is business profit, his spouse's income and interest.

Thus, the petitioner's remuneration from the occupation for which he provides comparative remuneration was 1,466,053 New Taiwan dollars. While far less than the 2,230,065 New Taiwan dollars claimed by counsel, we acknowledge that it is 363,194 New Taiwan dollars more (33 percent higher) than the 67th percentile for an associate professor. The petitioner, however, cannot simply compare his salary with entry-level positions in his field. Rather, he must compare his salary with all professors, including full professors. He has not done so. On appeal, the petitioner submits evidence that mechanical engineers in Taiwan average wages of 1,408,382 New Taiwan dollars, only slightly less than the petitioner's occupational income, and total compensation (wages, bonuses and benefits) of 1,622,382 New Taiwan dollars, more than the petitioner's occupational income.

In light of the above, the petitioner has not established that he meets 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 himself as a mechanical engineer 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 mechanical engineer, 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.