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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE: [Redacted] EAC 03 028 54608

Office: VERMONT SERVICE CENTER

Date: MAY 18 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:

[Redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 November 1, 2002, seeks to classify the petitioner as an alien with extraordinary ability as an environmental chemistry researcher. The petitioner earned his Ph.D. in Environmental Sciences from Zhejiang University in 1999. At the time of filing, the petitioner was working as a postdoctoral research associate in the laboratory of Dr. Ann Lemley, Professor of Environmental Toxicology, Cornell University.

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.

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 evidence showing that he was “selected as runner-up winner of the 2002 ACS [American Chemical Society] Agrochemicals Division Young Scientist’s Research Recognition Award.” Information provided by the petitioner from the ACS’ website states:

The Agrochemicals Division organizes an annual competition for the Young Scientist Pre- and Post-doctoral Research Awards. The purpose of the awards . . . is to recognize outstanding young agrochemical researchers and to encourage their participation in the Division. The 2002 awardees . . . will present their work during a special Young Scientists Recognition Symposium at the 223rd ACS National Meeting in Orlando, FL.

In response to the director’s request for evidence, the petitioner submitted a letter from Dr. Allan Felsot, Professor of Entomology and Environmental Toxicology, Washington State University, and Chair of the ACS’ Division of Agrochemicals Young Scientist Research Recognition Award. He states: “During the year that [the petitioner] was an awardee, our committee had received 8 applications. . . . The top two applicants are awarded a small grant, a travel stipend, a complimentary membership in the American Chemical Society, and a plaque.” We note that the petitioner was recognized not by outside nomination, demonstrating the field’s regard for his ability, but upon his application to the Agrochemical Division award committee.

The petitioner also submitted evidence showing that his Ph.D. dissertation was honored in 2002 by the Graduate Office of the Chinese Ministry of Education as part of a group one of one hundred “Outstanding Doctorate Degree Dissertations” for the period from “September 1999 to August 2000.” The petitioner provided a listing showing the one hundred Ph.D. dissertations selected for this academic honor.

According to the evidence provided by the petitioner, competition for the above awards was limited to recent Ph.D. graduates and post-doctoral researchers. Such awards are presented not to established researchers with active professional careers, but rather to recent university graduates or to those pursuing advanced scientific training in a temporary research position. We cannot artificially restrict the petitioner’s field to exclude all those professional scientists who have long since completed their educational and postdoctoral training and therefore do not compete for such honors. There is no indication that the petitioner has received any significant award for which he would have faced competition from throughout his field, rather than his 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.

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 September 2, 2002 article in *Chemical and Engineering News* entitled "Ridding the World of Unwanted Chemicals." The petitioner's name is mentioned only twice in this article and he was not among the several scientists that were quoted in the piece. The plain wording of this criterion, however, requires "published materials about the alien." In this instance, the petitioner himself was clearly not the primary subject of this article.

Counsel asserts that three sentences about the petitioner's honor as a runner-up winner of the 2002 ACS Agrochemicals Division Young Scientist's Research Recognition Award appearing in the "Agrochemicals Division" part of the ACS website constitutes qualifying evidence in regard to this criterion. The plain wording of this criterion, however, requires "published materials." A website posting of three sentences does not meet this requirement. It is further noted that more space was devoted to the accomplishments of the "first place winner" of this award.

Counsel states: "*China Education Daily*, on July 6, 2002, listed [the petitioner's] name and his Ph.D. dissertation as one of the one hundred most outstanding Ph.D. dissertations." The piece in *China Education Daily* was about the overall competition and listed the 99 other recipients in the same manner as the petitioner. Clearly, the petitioner was not the primary subject of this article.

In response to the director's request for evidence, the petitioner submitted a review article and two research papers from 2003 that cite the petitioner's work. This evidence came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); see *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Aside from the issue of when this evidence came into existence, we note that the petitioner was not the primary subject of the preceding articles. Research papers which cite the petitioner's work are primarily about the author's own work, not the petitioner's work. As such, they cannot be considered qualifying published material about the petitioner's work. We cannot ignore that the articles citing the petitioner's work similarly referenced numerous other authors. In the petitioner's field, it is the nature of research work to build upon work that has gone before. In some instances, prior work is expanded upon or supported. In other instances, prior work is superseded by the findings in current research work. In either case, the current researcher normally cites the work of the prior researchers. Clearly this is not the same thing as published material written about an individual's work in the field. This type of material does not discuss the merits of an individual's work, the individual's standing in the field, or any significant impact that his or her work has had on work in the field. Citations of the petitioner's work will be addressed under a separate criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petition was accompanied by correspondence from the Associate Editors of the *Journal of Environmental Quality* and the *Journal of Agricultural and Food Chemistry* reflecting that the petitioner was requested to review a total of two manuscripts. These letters request that, if the petitioner himself is unable to complete the requested manuscript review, he pass "it to one of his colleagues" or suggest "another qualified reviewer." One of the letters was signed by Dr. Jay Gan, Assistant Professor, Department of Environmental Sciences, University of

California, Riverside (UCR), and Associate Editor for the *Journal of Environmental Quality*.¹ Given the petitioner's close relationship to Dr. Gan, we cannot conclude that the petitioner's notoriety as a top researcher resulted in his being selected as a reviewer for the *Journal of Environmental Quality*. It would be more reasonable to conclude that the petitioner was selected because his former research mentor at UCR serves in an editorial position for this journal.

We note here 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 his field.² 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.

In response to the director's request for evidence, the petitioner submitted correspondence from the *Journal of Agricultural and Food Chemistry*, *Environmental Science & Technology*, and the *Journal of Environmental Quality* indicating that the petitioner reviewed manuscripts for these journals in 2003 and 2004. The petitioner's response to the director's request for evidence states: "After submission of [the petitioner's] petition in Nov. 2002, he has been invited to review another 4 more papers for publication." This new evidence came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); 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.

Without evidence that sets the petitioner apart from others in his field as of this petition's filing date, such as (for example) evidence that he has peer-reviewed an unusually large number of manuscripts for publication in various scientific journals, received multiple independent requests for his services from a substantial number of journals, or served in an editorial position for a distinguished journal (in the same manner as Dr. Gan, for example), we cannot conclude that he 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.

Dr. Ann Lemley states:

[The petitioner] has been working in my laboratory since July, 2000 as a Postdoctoral Research Associate . . . to study the degradation and toxicity evaluation of pesticide wastewater.

¹ In a letter offered in support of this petition, Dr. Gan states: "I came to know [the petitioner] when he first joined my research group in 1999. We worked closely for one year on various research projects."

² According to the ACS, "[r]eviewing manuscripts is recognized as a professional obligation of scientists who publish themselves in the literature. Authors who repeatedly decline requests to review will be asked to submit their own manuscripts to other journals."

* * *

[The petitioner] has been directly responsible for outstanding advances in my laboratory research group in the past two years. His ability to conceptualize problems and apply his excellent background in physical chemistry and his experience in research to pesticide degradation has move these efforts to an entirely new level. [The petitioner] began by asking critical questions about the methodology and its theoretical base and proceeded to develop a theoretical model that describes degradation kinetics extremely well. This model has been published in *Environmental Science & Technology*

Many of the individuals offering letters of support cite the petitioner's published articles as evidence of his original contributions. Published work, however, falls under the next criterion, a criterion that we find the evidence in this case adequately satisfies. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for published work and contributions, Citizenship and Immigration Services (CIS) clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the petitioner's published works and citations under the next criterion.

Dr. Scott Yates, Professor of Soil Physics, Department of Environmental Sciences, UCR, states: "[The petitioner] was brought to our research group to conduct studies on the transformation of fumigants and chloroacetanilide herbicides by sodium thiosulfate. These novel research inquiries provided important information on the reaction kinetics, reaction mechanisms, and toxicity of the reaction byproducts."

Dr. Jay Gan states:

[The petitioner's] discovery on the detoxification of halogenated contaminants by thiosulfate salts is potentially an extremely useful method that may be used for decontamination and pollution prevention. His work greatly advanced our understanding of using benign chemical methods for environmental remediation and restoration. The uniqueness of this research is also shown in the award of a U.S. patent for our discovery (U.S. Patent No. [REDACTED])

The record, however, contains no evidence showing that the petitioner's method is widely utilized or that it is hailed as a major achievement throughout the environmental remediation industry. 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 method may eventually have practical applications does not persuasively distinguish him from other competent researchers.

Dr. Gan's final statement as quoted above implies that the petitioner contributed to a UCR patent (i.e., the phrase "the award of a U.S. patent for *our* discovery" [emphasis added]). Counsel, in a letter accompanying the petition, states: "[The petitioner's] work in University of California, Riverside resulted in a U.S. patent (No. [REDACTED]) . . ." ³ While both counsel and Dr. Gan assert that the petitioner played a role in obtaining this

³ The assertion that the petitioner contributed to the discovery cited in U.S. patent number 5,904,909 is a blatant attempt to misrepresent the facts of this case. According to the U.S. Patent and Trademark Office, Professors Yates and Gan

patent, the record contains no evidence to support their assertions, which are contradicted by the official records of the U.S. Patent and Trademark Office. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Dr. Allan Felsot, Professor, Department of Entomology, Washington State University, states:

[The petitioner's] most recent collaboration with Dr. Lemley of Cornell University has led to an extraordinarily novel and "green" method for degrading liquid pesticide waste. . . . In short, [the petitioner] has taken a comparatively old waste degradation method that itself arguably produced copious acidic waste, and brilliantly modified it so that herbicide contaminants are rendered harmless but no extra waste is produced.

The record, however, contains no evidence showing that the petitioner holds a patent for this method, or that it has been widely implemented or hailed as a major contribution in the agricultural industry.

Chin-Pao Huang, Distinguished Professor of Environmental Engineering, University of Delaware, states:

[The petitioner's] first paper about Fenton technology was published in 2001 in *Environmental Science & Technology* In this paper, he developed a kinetic model for the anodic Fenton process. . . . The success of his model has brought tremendous attention and activities at Cornell University.

* * *

[The petitioner's] recent work that appears in *Environmental Science & Technology* . . . is another significant contribution. He has discovered the weak interaction between triazine/triazinon herbicides and ferric ion, which widely exists in the environment. This discovery brings insights into the environmental fate of triazine/triazinon herbicides.

A letter from Dr. Aldos Barefoot, Research Fellow at DuPont Crop Protection, who met the petitioner at an ACS meeting, also discusses the petitioner's publication record.

We accept that petitioner's published work has yielded some useful and valid results; however, it is apparent that any 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 his field. Without extensive documentation showing that the

were the inventors of this patent. The patent, entitled "Methods for Removing and Decomposing Methyl Bromide from Fumigation," was filed on August 21, 1997, long before the petitioner entered the U.S. or worked in Professors Yates and Gan's research group at UCR. See the U.S. Patent and Trademark Office website, <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=/netathtml/srchnum.htm&r=1&f=G&l=50&s1=5,904,909.WK> U.&OS=PN/5,904,909&RS=PN/5,904,909 (accessed April 28, 2005).

petitioner's findings 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.

In regard to the letters of support offered with this petition, we note that the majority of the letters of support were written by immediate colleagues or professional acquaintances of the petitioner. This fact indicates that while the petitioner's work is valued by those close to him, others outside his immediate circle are largely unaware of his research and do not attribute the same level of importance to his work. With regard to the personal recommendation of individuals from institutions where the petitioner has 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 mostly limited to those institutions, then he has not achieved national or international acclaim. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

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 environmental chemistry 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 the petitioner's authorship of articles appearing in publications such as *Environmental Science & Technology*, *Journal of Agricultural and Food Chemistry*, *Environmental Toxicology and Chemistry*, and *Proceedings of the National Academy of Sciences of the U.S.A.* 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 field's reaction to those articles. When judging the influence and impact that the petitioner's published 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. In the present case, the petitioner provided scientific citation indices showing that his research articles are frequently cited. Based on the frequent citation of his published work, we find that that the petitioner's evidence is adequate to satisfy this criterion.

In this case, we find that the evidence presented satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientist who has published in reputable journals or earned the respect of a handful of his 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. In this case, a simple comparison of the petitioner's achievements with those of Dr. Lemley and Dr. Yates, for example, shows that their level of professional accomplishment far exceeds that of the petitioner. However respected the petitioner may be and whatever future promise his career may hold, the petitioner has not yet reached the very top of his 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 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 as an environmental chemistry researcher 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.