



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
LIN 04 157 51079

Office: NEBRASKA SERVICE CENTER

Date: NOV 23 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

PUBLIC COPY

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.

Mari Johnson

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, the petitioner asserts that he will submit a brief and/or evidence to this office within 30 days. The petitioner dated the appeal August 2, 2005. As of this date, more than three months later, this office has received nothing further. The petitioner's only specific response to the director's bases of denial is that the director should have considered the petitioner's achievements that postdated the date of filing because the efforts towards those achievements began prior to the date of filing.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). That decision provides:

Congress did not intend that a petition that was properly deni[able] because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation.

Id. Such reasoning has been applied to other types of immigrant petitions. See e.g. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Similarly, the reasoning has been codified at 8 C.F.R. § 103.2(b)(12). In *Matter of Katigbak*, 14 I&N Dec. at 49, the Commissioner found that the education level required must have been acquired prior to the priority date, not merely progress towards that goal. Similarly, the pertinent regulations require specific evidence of achievements, such as awards or prizes. Regardless of whether the work recognized by an award was performed prior to the priority date, an award issued after the priority date cannot be considered. To hold otherwise would be to allow individuals to file petitions based on the speculation that their work might be recognized by an award prior to a decision denying the petition or even in time to submit the award on appeal. Thus, we find that the petitioner's sole specific assertion of error on the part of the director is not persuasive.

The petitioner also asserts generally that the director's decision was inconsistent with the evidence provided and that the director inappropriately applied the law. While we will briefly address the evidence and the appropriate standard below, the petitioner's assertions in this regard are too vague to address in any detail.

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 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 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's initial submission did not address the regulatory criteria. He submitted his curriculum vitae, three published articles, two articles posted on the Internet (at the Social Science Research Network Electronic Library) with evidence of downloads, a request to complete a survey from the National Science Foundation,¹ a request from the Institute of Chartered Financial Analyst of India to reprint one of the petitioner's articles, an e-mail addressed to the petitioner from [REDACTED] Editor of [REDACTED] Kluwer Academic Publishers, expressing interest in reviewing a more detailed proposal for a book, the petitioner's Ph.D. and Master's degree, certificates of appreciation from Ohio Department of Education and the Public Utilities Commission of Ohio (PUCO), letters from the petitioner's colleagues in Ohio, evidence of articles pending publication, a webcrawler search of the petitioner's name, evidence that the petitioner has reviewed an article for *Agricultural Economics* and a brief review of the petitioner's project at the Ohio State University posted on an Internet newsletter sponsored by The Science & Environmental Policy Project (SEPP). The comments in the newsletter suggest that SEPP is a group dedicated to discounting the negative effects of green house gases and global warming.

In response to the director's request for evidence, the petitioner submitted evidence of awards, a request to serve on a doctoral research committee, acceptance to present his work at a conference and published articles, all of which postdate the date of filing. The petitioner also submitted evidence that he received the Shamsul Islam

¹ While the request to complete the survey states that another responder cannot be substituted for the petitioner, the letter makes clear that the petitioner was randomly selected from among individuals holding science and engineering doctoral degrees.

Memorial Gold Medal in 1988 at the time of his undergraduate graduation and a reference letter from a government official in Bangladesh. The regulatory criteria follow.

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 the petitioner's post-filing awards could not be considered and that the awards issued prior to the date of filing were student or employee awards. On appeal, the petitioner's sole challenge is that the director should have considered the post-filing awards because the work serving as the bases of those awards predates the date of filing.

We concur with the director that the 1988 medal and certificates from the Ohio Department of Education and PUCO recognize student and employee achievements and are not national or international in scope whereby the petitioner competed with the most renowned members of his field nationally or internationally.

For the reasons discussed above, we further concur with the director that awards issued after the date of filing cannot be considered. Regardless, those awards are not persuasive. The post-filing awards include first prize (20,000 taka²) in an open essay competition sponsored by Bangladesh Agricultural University (BAU) on "Multilateral Institutions vs. Environmental Sustainability in Bangladesh" and a \$3,000 grant from the University of Dhaka for research relating to future research relating to training classroom teachers in Bangladesh.

The \$3,000 grant is not an award for excellence in the petitioner's field of claimed expertise, research on green house gas emissions. Moreover, a grant is designed to fund future work, not recognize past achievement. Thus, it cannot serve to meet this criterion. Similarly, regarding the award from BAU, it is not clear that an essay contest represents excellence in the field of research. Moreover, other than the "open" nature of the competition, the record lacks evidence that essay contests sponsored by BAU are recognized nationally in Bangladesh or internationally. Not every competition that is "open" is recognized nationally or internationally, such that winning is indicative of national or international acclaim in the field.³

In light of the above, we concur with the director that the petitioner has not established eligibility under 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.

In response to the director's request for additional evidence, the petitioner asserts that his service on a doctoral research committee serves as evidence "of participation / serving as a member or expert to an exclusive committee." The director rejected this evidence because it occurred after the date of filing and because serving on a dissertation committee "falls substantially below the regulatory standard."

² Approximately \$300 according to the current exchange rate at www.oanda.com.

³ A prize amount of \$300 is not suggestive of a nationally or internationally recognized award.

We concur with the director on both points. As discussed above, achievements after the date of filing cannot serve to establish the petitioner's eligibility as of that date. Moreover, serving on a dissertation committee falls more appropriately under the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), which will be discussed below. Such service is not a membership in an exclusive association whereby recognized national or international experts in the field elect members based on the candidates' achievements in the field.

In light of the above, we concur with the director that the petitioner has not established that he 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 concluded that the petitioner had failed to submit any evidence relating to this criterion. The petitioner does not specifically challenge this finding on appeal. We note that the petitioner did submit a reference to his work on the SEPP website newsletter. The record, however, does not establish that SEPP's website constitutes major media. Thus, we concur with the director that the petitioner has not established that he meets this 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 director concluded that the petitioner's review of an article for a single journal did not set him apart from others in the field. We will consider this evidence and the evidence that the petitioner, after the date of filing, was invited to serve on a doctoral committee.

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 his field, such as evidence that he 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.

Regarding the invitation to serve on a doctoral committee, we reiterate that it postdates the date of filing. Moreover, the invitation from Professor [REDACTED] is addressed to the petitioner's first name, suggesting personal, as opposed to professional, familiarity. The letter from the doctoral student whose dissertation the petitioner is to review writes that [REDACTED] the petitioner's "ex-boss" recommended the petitioner for the committee. While the student assures the petitioner that he will arrange funding for the petitioner's travel, he does not indicate, as implied by the petitioner, that the government of Bangladesh will cover the costs. Without additional evidence regarding the significance of this request, we cannot conclude that it is indicative of the petitioner's national or international acclaim.

In light of the above, we concur with the director that the petitioner has not established 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 director found that the reference letters from his immediate circle of colleagues were not sufficiently supported with independent objective evidence that the petitioner's contributions are recognized as having major significance in his field. The petitioner does not specifically contest this conclusion on appeal and we concur with the director. The letters attest to the petitioner's academic success, the usefulness of his Ph.D. training, his potential to positively influence future policies, the promising nature of the projects on which he has worked and the importance of his *area* of research. They do not, however, imply that he has already had a major impact on the field as a whole. [REDACTED] Senior Assistant Secretary, [REDACTED] in Bangladesh, attests to the petitioner's contributions to projects with [REDACTED]. She does not, however, provide any details regarding this work or explain how it has already impacted the field.

The petitioner's field 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. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" 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). To be considered a contribution of major significance in the field, it can be expected that other experts in the field would be discussing the work in trade publications or applying the work in their own published research. Without letters from independent experts in the field or other objective evidence of the petitioner's impact in the field, such as evidence of frequent citation, we cannot conclude that his work has already been recognized as having major significance in the field.

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

As stated above, the petitioner submits evidence that he had authored four articles published in print journals as of the date of filing and two articles posted at www.ssm.com.⁴ We acknowledge that the petitioner continues to publish and has been invited to present his work at a conference, although we cannot consider any work published or presented after the date of filing for the reasons discussed above. Similarly, while the petitioner may be pursuing publication of a book, there is no evidence that the publishing company that agreed to review a more detailed proposal has accepted the book for publication or that the book has been published. As such, the evidence relating to the petitioner's attempt to publish a book has minimal value. The director concluded that the petitioner's publication record was not indicative of national or international acclaim.

Ultimately, the publication of one's work is inherent to the field of research. Thus, for researchers, this office typically looks for evidence of the impact a researcher's articles have had in the field. We concur with the director that the webcrawler printout does little to establish the impact of the petitioner's articles. Far more persuasive would be evidence of wide and frequent citation.⁵

⁴ We have reviewed this website. The website itself indicates that it posts submitted abstracts for working and forthcoming papers as well as some published papers.

⁵ While we are under no obligation to do so, we attempted to verify whether the petitioner has been widely and frequently cited. While GoogleScholar.com is not comprehensive, we were unable to verify more than a single independent citation

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

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

The director concluded that this criterion does not relate to the petitioner's field. The petitioner does not specifically contest this finding on appeal and we concur with the director.

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

In response to the director's request for additional evidence, the petitioner claimed to have played a critical role for "research projects." The petitioner references the letter from [REDACTED] and his certificates of appreciation from the Ohio Department of Education and PUCO.

The director concluded that the petitioner had not established that he held a senior position with [REDACTED] or an entity in Ohio. On appeal, the petitioner does not specifically contest this determination.

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii), a petitioner must demonstrate the nature of the position he was hired to fill and the reputation of the entity that hired him. The letter from Ms. [REDACTED] dated January 28, 2005, asserts that a certificate of appreciation is attached in recognition for guidance in developing computable models related to research projects in Bangladesh. The letter asserts that without the petitioner's input and guidance from the Ohio State University, the projects on which she served as a team leader would have been "impossible." Finally, [REDACTED] asserts that [REDACTED] will include the petitioner's efforts in its annual progress report. At issue is the role or position the petitioner held with [REDACTED]. We concur with the director that the petitioner has not established a senior role with that ministry.

The certificate from the Ohio Department of Education merely recognizes five years of service. The certificate is not indicative of the petitioner's leading or critical role for the Ohio Department of Education as a whole. Similarly, the certificate from PUCO recognizes "services rendered to the Market Monitoring and Assessment Division." Once again, the certificate does not suggest the petitioner played a leading or critical role for PUCO as a whole. The record reflects that the petitioner worked for PUCO as a Ph.D. intern and that PUCO sponsored his Ph.D. dissertation through that internship. [REDACTED] the petitioner's supervisor at PUCO, asserts that the petitioner's work was "one among such a series of promising research projects for the development of new information, insight and innovative solutions to a very complex and costly problem." The record is not persuasive that a Ph.D. intern working on a series of promising projects is working in a leading or critical position for a public utility company.

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

of the petitioner's work. This number is not indicative of national or international acclaim. Regardless, it is the petitioner's burden to demonstrate the significance of his publication record.

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

The director concluded that the petitioner had not submitted evidence relating to this criterion. The petitioner does not specifically contest this finding on appeal and we concur with the director.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The director concluded that this criterion does not relate to the petitioner's field. The petitioner does not specifically contest this finding on appeal and we concur with the director.

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 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 indicates that the petitioner shows talent as a researcher, 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.