



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

B2

FILE: [REDACTED]  
WAC 05 029 53355

Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 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.

*Maui Plunson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California 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. 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 an assistant professor of computer science. 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>

---

<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.*

The petitioner initially submitted her curriculum vitae listing academic honors and her 1986 "Appointment to the Pool for Scientists and Technologists constituted by the Council of Scientific and Industrial Research." Neither counsel nor the petitioner, however, previously asserted that this evidence serves to meet this criterion prior to the appeal. As such, the director concluded that the record did not address this criterion.

On appeal, counsel asserts that the beneficiary received awards from her alma mater, the Indian Institute of Technology (IIT), in 1990 and 1992. Counsel further asserted that the beneficiary received a research award in 1996 from the Council of Scientific and Industrial Research (CSIR) and the Sharma Prize in 1999 from the Institution of Engineers in India. The petitioner submits her own statement attesting to two travel grants in 1990, one from the Department of Science and Technology for work performed at IIT and the other from CSIR. In the same statement, the petitioner asserts that the other "award" from CSIR was "in the form of a temporary position as [sic] 'scientist pool.'" According to the petitioner, acceptance for the scientist pool is based on an entrance examination and a research proposal. Finally, the petitioner references an award at IIT based on her academic standing.

The petitioner resubmits the scientific pool appointment, materials from the Indian Institution of Engineers listing the petitioner as a winter 1999 rank holder as "First SECTION A NON-DIPLOMA" and evidence that the U.S. television show 60 Minutes has reported on the prestige of IIT.

The record does not contain the beneficiary's travel grants in 1990, the student research awards claimed by the petitioner or the 1992 award referenced by counsel. 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)). Moreover, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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).

Regardless, academic study is not a field of endeavor, but training for a future field of endeavor. As such, student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, competition for student awards is limited to other students. Experienced experts in the field are not seeking these awards.

The materials for the scientist pool reflect that the beneficiary was appointed to this pool and given a salary for two years or until the beneficiary secured a job, whichever occurred earlier. Thus, this appointment appears to be a type of temporary employment for promising but unemployed scientists rather than an award for excellence in the field. Even if we accepted the petitioner's unsupported assertion that the appointment was based on an entrance exam and research proposal, the appointment is still not recognition for past "excellence in the field," as required by the regulation at 8 C.F.R. § 204.5(h)(3)(i). More specifically, test scores are not an accomplishment in the field and a research proposal relates to future work.

While the petitioner submitted some documentation regarding some type of recognition in 1999 as "First SECTION A NON-DIPLOMA," the materials do not reference a Sharma prize and the record is absent any evidence regarding the significance or scope of this "prize."

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.*

Initially, the petitioner submitted evidence of her membership in the International Society for Computers and Their Applications (ISCA). On April 20, 2005, the director requested evidence of any memberships and "evidence of the minimum requirements and criteria used to apply for membership in the association(s) in which the alien claims membership." The petitioner's response did not address this criterion.

On appeal, counsel notes the petitioner's participation in conferences sponsored by professional associations and concludes that the petitioner "has clearly been [a] distinguished member in prestigious organizations." Even if this statement is true, such membership would not necessarily satisfy the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) for the reasons discussed below.

The petitioner submits evidence of her membership in the Institute of Electrical and Electronics Engineers (IEEE) and the Association for Computing Machinery (ACM) and evidence that she served on a program committee for an IEEE conference and presented her work at a ISCA conference after the date of filing. The petitioner also submits materials regarding the above associations and their journals.

The petitioner's role with the above professional associations and their general reputation in the field is irrelevant for this criterion. It is significant that none of the materials submitted on appeal address the requirements for membership in the above associations. Such requirements are the only relevant factor once membership is established, according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Regardless, the regulation put counsel and the petitioner on notice that such evidence is required and the director specifically requested the membership requirements of any association of which the petitioner is a member. The petitioner did not submit the requested evidence in her response to that request. As such, even if the petitioner had submitted the membership requirements on appeal, we would not be able to consider them. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The record does not reflect that the above organizations require outstanding achievements of their general membership. Thus, 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.*

Initially, the petitioner asserted that she has been recognized in a leading Indian newspaper, *Financial Express* and in *Business Sphere*. The petitioner submitted the 1995 article "The Search for Heads" published in the *Financial Express*. The article includes one section about the petitioner and her company, Allure. While the petitioner indicates on her curriculum vitae that she was a software developer for the Allure Computer Center from September 1993 to August 1996, the 1995 article quotes the petitioner as characterizing Allure as "a career consultant agency rather than a mere placement agency." The article continues that the petitioner's engineering and computer science background "stands her in good stead in providing placements to the people belonging to

these areas with elan.” The May 1992 article in *Business Sphere* is about Desein Pvt. Ltd. The petitioner is pictured on the company’s own promotional materials, but the article in *Business Sphere* does not mention the petitioner by name and cannot, in any sense, be considered an article “about” her.

The director requested evidence of the circulation for any publication that featured the petitioner. The petitioner’s response does not include such data. Rather, the petitioner asserted that the article actually relates to a separate criterion, which we will address below.

The director concluded that the petitioner was not claiming to meet this criterion. On appeal, counsel asserts that the circulation data is being submitted on appeal. Such evidence, however, was not included in the materials submitted on appeal. Regardless, the director specifically requested such evidence in the request for additional evidence. As such, we could not consider such evidence on appeal. *Matter of Soriano*, 19 I&N Dec. at 764; *Matter of Obaigbena*, 19 I&N Dec. at 533.

For the reasons stated above, the petitioner has not established that *Financial Express* is major media. Moreover, the article is primarily about the “corporatization” of the Indian economy, not the petitioner or her career placement firm. Significantly, the petitioner seeks employment in the United States as a professor of computer science. Thus, even if we were to consider the 1995 article to be about the petitioner, it does not relate to her work in the field of computer science. While the article mentions her background in this field, the portion of the article relating to the petitioner focuses on her success running a career placement agency.

In light of the above, the petitioner has not established that she 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 record reflects that the petitioner has refereed articles for the 2003 ISCA 18<sup>th</sup> International conference. The request came from [REDACTED] at Winona State University where the petitioner was working at the time. More significantly, in 2003, the petitioner was also requested to review a paper submitted to the 16<sup>th</sup> International Conference on Computer Applications in Industry and Engineering (CAINE). The petitioner has also consistently reviewed computer programming books for Prentice Hall.

The director concluded that peer review is inherent to the field and, thus, that the petitioner’s peer review responsibilities could not serve to meet this criterion. On appeal, counsel notes that the author of the books reviewed by the petitioner is well known in the field and concludes that the petitioner’s expertise must be of an extraordinary level to review the work of someone acclaimed.

We concur with the director that peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. As such, we require evidence that sets the petitioner apart from others in her field. Such evidence typically includes evidence that the petitioner has reviewed an unusually large number of articles or book chapters, received independent requests from a substantial number of journals or book publishers, or served in an editorial position for a distinguished journal or book.

An editorial position would have been far more persuasive than a reviewer position. That said, the petitioner is credited in the book as a reviewer and the other reviewers are individuals employed at distinguished computer firms in the United States. The initial e-mail from the editor indicates that the author, [REDACTED]

specifically suggested the petitioner as a referee. [REDACTED] brief biography at the back of the book does not indicate any connection to the petitioner. The petitioner is continually requested to review books in her field for Prentice Hall. Thus, we are satisfied that the petitioner meets this single criterion. An alien, however, must meet three criteria in order to be eligible for the classification sought. For the reasons discussed above and below, the petitioner falls far short of meeting any other criterion.

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

While the petitioner initially submitted reference letters, she did not claim to meet this criterion either initially or in response to the director's request for additional evidence. The director concluded that the record did not address this criterion.

On appeal, counsel states:

[The beneficiary] must be measured in the context of her publications. The publications where her works appear accept only papers with original scientific contribution of major significance. In other words, the mere publications [sic] of her works in the magazine or journals is a testament to the extraordinary and original scientific contributions of the alien.

Counsel is not persuasive. First, the publication of scholarly articles is a separate criterion, which will be discussed below. While we do not contest that the criteria are related, original contributions are often published in scholarly articles, we will not presume that evidence relating to one criterion automatically establishes a second criterion. To conclude otherwise would negate the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria to be eligible for this exclusive classification. Second, we will not presume the influence of an article from the journal in which it appears. Other evidence demonstrating the influence of the actual article, such as wide and frequent citation or letters from independent experts who can establish the influence of the petitioner's work, is required.

More specifically, the petitioner's field, like most science, 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 of science, it can be expected that the results would have already been reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The record contains no evidence that any of the petitioner's articles or conference presentations have been cited. Thus, the petitioner's publication record alone is not indicative of a contribution of major significance. We will, however, also consider the petitioner's reference letters. In examining these letters, we note that letters from independent experts are more persuasive evidence of acclaim than letters from colleagues and that letters from independent experts who were previously aware of the petitioner's work are more persuasive than letters from independent experts who are providing an opinion based on a review of the petitioner's credentials.

The petitioner's letters are all from her students and academic colleagues and merely attest to her skill as a teacher and the importance of her area of study. These letters do not attest to any specific contribution to the field as a whole or explain how the petitioner's work has influenced the field of computer science. Thus, 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 petitioner listed 11 articles published in journals and conference proceedings on her curriculum vitae. The petitioner submitted two published articles. She also submitted what appear to be two conferences presentations, however the presentation text is not paginated and does not contain the name of the proceedings. We acknowledge, however, that the record does contain evidence that the conferences accepted the petitioner's work for presentation. Finally, the petitioner submitted a third manuscript, "Applying Data Mining Techniques to Risk Analysis," with no indication that it was actually published. On appeal, the petitioner submits seven manuscripts. The only two articles that show signs of being published, pagination and the journal title, are the same two referenced above, published in *Engineering Optimization* and copyrighted by the IEEE.

Even assuming that all 11 articles have been published as claimed, 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.

The record contains no evidence that any independent experts have cited the petitioner's work. Thus, the petitioner has not established that she meets this criterion.

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

The petitioner did not initially claim to meet this criterion either initially or in response to the director's request for additional evidence. The director concluded that this criterion does not relate to the petitioner's field. On appeal, counsel claims, for the first time, that the petitioner does meet this criterion. Counsel relies on the petitioner's conference presentations and an alleged book. The record contains no evidence that the petitioner's 14-page article, "Comparison of Branch and Bound and Iterative Heuristic Algorithms for Floor Allocation of Activity Clusters in Multistorey Buildings," published in *Engineering Optimization* has also been published as a book.

Regarding the conference presentations, we note first that the conference presentations referenced by counsel on appeal occurred after the date of filing and cannot be considered evidence of 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). That said, we acknowledge that the petitioner may have presented her work at conferences prior to the date of filing. Nevertheless, scientific or technology conferences are not artistic exhibits or showcases. Rather, we find conference presentations and books to be comparable to the authorship of scholarly articles pursuant to the

regulation at 8 C.F.R. § 204.5(h)(3)(vi) and we have considered the petitioner's conference presentations under that regulation above. Considering the same evidence as comparable evidence to meet more than one criterion would negate the regulatory requirement that a petitioner meet at least three criteria. Thus, we concur with the director that conference presentations and books cannot serve to meet this criterion, which clearly relates to the visual arts.

*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 leading or critical role for Allure, asserting that the article in *Financial Express* characterized Allure as "a leading executive search firm." The director concluded that the petitioner had not established that Allure enjoys a distinguished reputation.

On appeal, counsel does not challenge this assertion. Rather, counsel asserts, for the first time in this proceeding, that the petitioner's faculty positions serve to meet this criterion. The petitioner submits a letter from the Institute of Technology and Management inviting the petitioner to serve as a "Distinguished Visiting / Consulting Faculty," a letter from California Lutheran University notifying the petitioner of a \$1,050 grant to complete a project or travel and letters from universities offering the petitioner assistant professor positions as well as evidence of the petitioner's employment in those positions.

We concur with the director that the record lacks evidence of Allure's reputation nationally in India. As stated above, the petitioner has not submitted any evidence that *Financial Express* is a nationally circulated publication and, contrary to the petitioner's assertion quoted above, the article does not characterize Allure as a "leading executive search firm." Rather, the article characterizes ABC Consultants, Ltd. in this manner.

Assuming the universities where the petitioner has worked have distinguished reputations, we cannot conclude that every instructor or assistant professor plays a leading or critical role for the university as a whole beyond the obvious need for a university to employ competent faculty members.

In light of the above, the petitioner has not established that she 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.*

Initially, the petitioner submitted an April 26, 2004 job offer from California Lutheran University listing a salary of \$68,000, although the accompanying 2004 contract between the petitioner and that university lists her total compensation as only \$42,656. The petitioner also submitted job offer letters from Winona State University and Bowie State University listing a salary of \$53,336 and \$55,000 respectively.

In response to the director's request for additional evidence, the petitioner asserts that her \$68,000 nine-month salary plus \$6,000 per summer course at California Lutheran University and her \$57,263 nine-month salary plus \$7,730 per summer course at St. Cloud State University serves to meet this criterion. The petitioner compares her wages with the median expected salaries for assistant professors in computer science (\$61,699) and the expected salary for an assistant professor at St. Cloud State University in 2001-2002 (\$47,700).

The director noted that the information provided by the petitioner indicates that the 75th percentile for assistant professors was higher than the wages earned by the petitioner. Thus, the director concluded that the petitioner had not established comparatively high remuneration.

On appeal, counsel asserts that the petitioner “has commanded a high salary for a faculty [member] who has just entered the profession as opposed to those who have been in the field for a considerable length of time.”

Counsel is not persuasive. We will not narrow the petitioner’s field to those just starting out. To meet this criterion, the petitioner’s remuneration must compare with the top remuneration in the field, regardless of experience level. Moreover, the petitioner obtained her Ph.D. in 1988, began working as an instructor in India in 1996, worked as an assistant professor in India from 1997 to 2001 and began working as an assistant professor in the United States in 2001. Thus, as of the date of filing, November 8, 2004, the petitioner was not just entering the field.

We concur with the director that the petitioner’s wages were far below the 75<sup>th</sup> percentile nationwide.<sup>2</sup> Thus, the petitioner has not established that she 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 herself as a computer science professor 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 an assistant professor of computer science, but is not persuasive that the petitioner’s achievements set her significantly above almost all others in her 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.

---

<sup>2</sup> We need not address whether a salary comparable with the 75<sup>th</sup> percentile of assistant professors would be sufficient as the petitioner’s salary was below that level.