U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 07 2006
EAC 05 106 51051

IN RE: Petitioner:
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

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.

Marie Johnson

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 and business as a business development manager. The director determined that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. On appeal, the petitioner submits a letter and additional evidence, which does not overcome the deficiencies of his case. The appeal will be dismissed for the following reasons.

Section 203(b) of the Act states, in pertinent part:

> (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 into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

We address the evidence submitted and the petitioner's claims in the following discussion of the regulatory criteria relevant to the petitioner's case. The petitioner does not claim eligibility under any criteria not discussed below.

(i) 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 a certificate purportedly honoring his article, "Transnational Corporation's Functions in Light Product Exporting," and presented jointly by the China Association of International Trade, the Economic Research Institute of Light Industry Ministry, the International Trade Research Institute of Foreign Ministry, and the China Light Industry Association on September 25, 1988. The petitioner also submitted an award certificate purportedly presented to the petitioner as a "Scientific Advanced Individual" by the Shanghai Gao Qiao Petrochemical Company of SINOPEC in December 1986.

The copies of these two certificates are printed in Chinese and were submitted with uncertified English translations. Any document containing a foreign language that is submitted to Citizenship and Immigration Services (CIS) must be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claim. *Id* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Moreover, even if the record established the national or international recognition of the petitioner's awards, they do not demonstrate the requisite sustained acclaim because they were presented to the petitioner 19 and 17 years before this petition was filed. Consequently, the petitioner does not meet this criterion.

(ii) 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.

The record contains a purported copy of the petitioner's membership certificate for the Chinese Petroleum Society (CPS) issued in November 1990. The copy of the certificate is printed in Chinese and was submitted with an uncertified English translation. Again, without a translation certified pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether this document supports the petitioner's eligibility under this criterion. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, the petitioner states that the CPS requires outstanding achievements of its members, as judged by recognized national experts and submits a printout from the Society's website. The CPS

printout is in Chinese and is accompanied by a document entitled, "Rules of the Chinese Petroleum Society." It is not clear whether this document is contained on the CPS website or if it is an uncertified English translation of the Chinese website printout. Regardless, the membership criteria listed on the CPS Rules document does not describe outstanding achievements. Rather, the document states that an individual member must be working in the field and have "certain influence or [be] an engineer, lecturer, assistant researcher and other outstanding scientific workers etc. [sic]" Individual members must submit an application, be introduced by another member and be "inspected and reviewed by the council or authorized organization." The petitioner submitted no evidence that these criteria require outstanding achievements as judged by national experts, rather than professional credentials that many individuals in the petitioner's field may possess. Accordingly, the petitioner does not meet this criterion.

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

The petitioner submitted a document in Chinese which purportedly evidences his judgment of "Chemical Plant Project's Testing and Commissioning 2,000 ton/year ABS Extruded Plant Project." The document was submitted with an uncertified and incomplete English translation. Again, without a translation certified pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether this document supports the petitioner's eligibility under this criterion. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The petitioner submitted no other evidence that he has judged the work of other individuals in his field in a manner consistent with sustained national or international acclaim. Consequently, the petitioner does not meet this criterion.

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

On appeal, the petitioner claims he has extraordinary ability in the sciences because he was awarded a patent for a pot/boiler energy saving cover by the Patent Bureau of the People's Republic of China. The petitioner submitted a copy of a patent certificate awarded to him and another individual on January 31, 1993. The certificate is printed in Chinese and was submitted with an uncertified translation. Without a translation certified pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether this document supports the petitioner's eligibility under this criterion. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Even if the petitioner's patent were properly documented, it alone would not suffice to meet this criterion. To establish eligibility under this category by virtue of patents, a petitioner must not only show that his work has been granted a patent, but that the patented invention constitutes a scientific contribution of major significance in his or her field. The significance of the patented invention must be determined on a case-by-case basis. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm. 1998). The petitioner submitted no evidence that his pot/boiler energy saving cover was manufactured, commercially successful, or otherwise had a major impact on his field.

On appeal, the petitioner also submits four recommendation letters from his former teachers and employers. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

In a letter dated October 25, 1988, [redacted] Professor and Leader of the Catalytic Group at the East China Chemical Technology University in Shanghai, China, states that he was the petitioner's instructor. [redacted] explains that the petitioner found that "if we could maintain the primary activity of catalyst (normally it's high but short-lived), we could increase catalyst activity greatly and got the other way to choose catalyst [sic]." [redacted] reports that the petitioner's comments were "creative and useful very much [sic]." In another letter dated October 25, 1988, [redacted] Professor and Chief of High Pressure Laboratory at the East China Chemical Technology University, states that he "very appreciate [sic] that [the petitioner] dared to mention his own idea to choose Catalyst in high pressure for Fluid Catalylic [sic] Cracking (FCC) of Oil Refinery." [redacted] explains that the petitioner's idea was very useful to their research. The record contains no corroborative evidence of the petitioner's work in this area and the letters of [redacted] and [redacted] are of limited probative value because they were written over 16 years before this petition was filed.

In his letter dated August 8, 1992, [redacted] Chief of the Equipment Department at the Shanghai Gao Qiao Petrochemical Corporation, states that he was the petitioner's supervisor and that the petitioner was responsible for Energy Saving Technology in his department for eight years. [redacted] explains that the petitioner "often adopted new technology and materials in his job to save energy effectively and reduced petrochemical and chemical fluid leaking obviously, thus reduced air pollution greatly; He [sic] was awarded as Advanced Scientific Individual." As discussed above under the first criterion, we cannot consider the evidence regarding the petitioner's purported Advanced Scientific Individual award because it was submitted without certified translation. The record is also devoid of any evidence to support [redacted] statement that the petitioner greatly reduced air pollution during his tenure at the Shanghai Gao Qiao Petrochemical Corporation. [redacted] letter is also of limited probative value because it was written over 12 years before this petition was filed.

In a letter dated December 18, 2001, [redacted] Director of United Professional Services, Pte. Ltd. in Singapore, states that the petitioner was a project engineer with his company and "showed commitment and diligence in performing [his] duties, including water and wastewater treatment project designing, fabrication, installation and commissioning, and adopted new products to save energy and monies." Although he praises the petitioner's work, [redacted] does not indicate that the petitioner made any

original scientific or business related contributions of major significance to his field while at United Professional Services.

The petitioner submitted copies of two articles that he co-authored with other individuals. These articles were printed in Chinese and submitted with uncertified and incomplete translations. Without translations certified pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), we cannot determine whether these documents support the petitioner's eligibility under this criterion. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Even if the articles were properly translated, however, the record does not demonstrate that they made major contributions to the petitioner's field. The petitioner submitted no evidence that the articles, dated 1989 and 1991, have been widely cited by other experts or that they otherwise significantly impacted his field in a manner consistent with the requisite sustained acclaim. Accordingly, the petitioner does not meet this criterion.

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

As noted above under the fifth criterion, the petitioner submitted copies of two articles he co-authored in Chinese. The articles were submitted without translations certified pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Consequently, we cannot determine whether these documents support the petitioner's eligibility under this criterion. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Moreover, the articles are dated 14 and 16 years before this petition was filed and the record indicates that only the 1991 article was published. The petitioner submitted no evidence that his single published article has been widely cited or is otherwise indicative of his sustained national or international acclaim. Accordingly, the petitioner does not meet this criterion.

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

On appeal, the petitioner states, "I had high salary in Singapore in 1997, compared to others for average salary about $2,000 - $2,500, at same period. Because I got high Salary in Singapore, not in China, so it was internationally." The record does not support this claim. The record contains a letter dated August 2, 1997 from Megaway Development Pte. Ltd. in Singapore which confirms that the petitioner was employed by the company as a production manager and that his monthly salary was S$3,000. The petitioner claims that the average salary at that time was "about $2,000 - $2,500," but the record contains no evidence to corroborate this claim. Simply going on record without supporting documentary evidence is not sufficient to meet 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)). The petitioner's claim is misguided in two additional respects. First, the relevant comparison is not to the average salary of all workers in Singapore at that time, but to individuals at the top of the petitioner's field, such that his salary would demonstrate national acclaim. Second, the petitioner submits no evidence that his 1997 salary in Singapore was higher than other

individuals similarly employed in his field in other countries. The mere fact that the petitioner was a Chinese citizen employed in Singapore does not show that his salary reflected international acclaim.

The record also contains no evidence that the petitioner continued to command a high salary consistent with sustained national or international acclaim in the over seven years between his 1997 employment in Singapore and the date this petition was filed. The petitioner submitted a letter dated April 15, 2004 from Rotary Engineering Limited in Singapore, which certifies that the petitioner was employed as a project engineer for the company and that his basic monthly salary was $2,500. The record is devoid of any evidence that this salary is significantly higher than other project engineers in the petitioner's field in Singapore or comparable to such individuals at the very top of their field in Singapore. Accordingly, the petitioner does not meet this criterion.

Director's Comments Concerning "Some Chinese Cultural Companies" in Flushing, New York

In his decision, the director stated:

> [T]his service has also discerned that some Chinese cultural companies, many located in the borough of Flushing in New York City and claiming to do business in the United States, abandoned both immigrant and nonimmigrant petitions when questioned about the bona fides of their businesses. Therefore, this casts your alleged profession in a dubious light owing to your address in the United States.

The petitioner submitted a copy of an Application for Alien Employment Certification for the petitioner filed by Max-Cell New York, Incorporated located in Flushing, New York. The record contains no evidence that Max-Cell is a "Chinese cultural company." Rather, the Form ETA 750 states that the nature of Max-Cell's business is "trading and developing." The record contains no evidence that the petitioner is associated with any Chinese cultural companies in Flushing. Denial of this petition cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 n. 2 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director's comments were inappropriate and are hereby withdrawn.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The record in this case does not establish that the petitioner has achieved sustained national or international acclaim as a scientist or business development manager placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his 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.