



U.S. Citizenship
and Immigration
Services

Bz

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

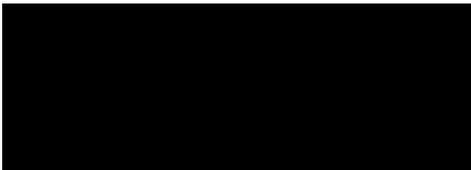


FILE: LIN 04 143 53587 Office: NEBRASKA SERVICE CENTER Date: APR 07 2006

IN RE: Petitioner:
Beneficiary:

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.

Mari Johnson

S 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 as a mechanical engineering researcher. 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 do not overcome the deficiencies of his petition. Consequently, 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.

(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 petitioner initially claimed to meet this criterion through his membership in the Institute of Electrical and Electronics Engineers (IEEE) and the International Association for the Advancement of Methods for System Analysis and Design (IAASMAD). The petitioner submitted a copy of his IEEE membership card and a printout from the IEEE website, which states that IEEE membership (at the "grade of Member") is limited to individuals who have received a baccalaureate or equivalent or higher degree in an IEEE-designated field and/or who have three to six years of professional experience in an IEEE-designated field. These criteria do not describe outstanding achievements in the petitioner's field, but rather a certain level of professional credentials and experience, which the record does not demonstrate to be outstanding achievements in the petitioner's field.

In his recommendation letter submitted with the petition, [REDACTED] Distinguished Professor of Mechanical Engineering at Zhejiang University in Hangzhou, China and chairman of the Chinese section and Board member of Country Representatives of IAASMAD, attests that IAASMAD membership "requires professional maturity and significant contributions, as being judged by internationally recognized experts in the related field." In response to the director's Request for Evidence (RFE), the petitioner submitted a letter from [REDACTED] Secretary of IAAMSAD, who confirms the petitioner's IAAMSAD membership and includes an excerpt from the association's website, which states that IAAMSAD membership "is open to everybody with a Masters or Doctoral degree in an appropriate field from a recognized tertiary establishment and with good [sic] publishing tract record." Again, these criteria describe a level of professional credentials and accomplishments, which the record does not show to be outstanding achievements in the petitioner's field.

The record does not indicate that the petitioner's two memberships were awarded based on his outstanding achievements, as judged by recognized national or international experts in his field and the petitioner does not reassert his eligibility under this category on appeal. 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 evidence that from 2002 to 2004 he reviewed six manuscripts for the following journals: *IEEE Transactions on Systems, Man and Cybernetics – Part B*, *International Journal of Systems Science*, *Journal of the Franklin Institute*, and *Iranian Journal of Electrical and Computer Engineering*. Three recommendation letters submitted with the petition state that the

petitioner has also been a reviewer for the *International Journal of Robust and Nonlinear Control* and the *International Journal of Stability and Control*, but the record contains no corroborative evidence of the petitioner's review of any manuscripts for these two journals.

In addition, the record shows that the petitioner has been an associate editor of the *International Journal of Computers, Systems and Signals* (IJCSS) since 2000. The petitioner claims that he was the guest editor of a special issue of IJCSS that was to be published in December 2003, but the record contains no evidence of the actual publication of that issue. The record includes a printout from the website of IJCSS, which states:

Selection of the members of the Editorial Board is [the] discretionary right of Co-Editors-in-Chiefs, since they are responsible for the overall performance of the journal. This selection is crucial for the journal's success. Members are selected from experts in the field, documented by excellent research performance and publication records. Joining the Editorial Board of IJCSS is by invitation only.

This printout lists Professor [REDACTED] the petitioner's former postdoctoral fellowship supervisor, as one of the two Co-Editors-in-Chief of IJCSS. In his recommendation letter submitted with the petition, Professor Bajic states:

Because of his excellent knowledge of several fields and his very sharp and lucid reviews, we elected him as a permanent reviewer of the international journal *Stability and Control: Theory and Applications* [SACTA]. Moreover, he is elected on my recommendation to the Editorial Board of the *International Journal of Computers, Systems and Signals* [IJCSS]. We also jointly edited a volume on Artificial Intelligence in 1999.

The petitioner's curriculum vitae states that he was Professor Bajic's co-editor for "Development and Practice of Artificial Intelligence Techniques," published by IAAMSAD in 1999, but the only excerpts from this volume in the record are the petitioner's own articles, which he co-authored with Professor Bajic. The record thus does not demonstrate that the petitioner judged the work of other researchers in his field in editing this publication.

In his second letter submitted with the petitioner's RFE response and dated February 2, 2002, Professor Bajic includes an excerpt from the website of SACTA, which lists the petitioner as one of the journal's reviewers and states, "Selection of reviewers is a discretionary right of any of the members of the Editorial Board. However, the rule applied is that reviewers have to be competent researchers which is documented by a good track record evidenced by important publications in the field." The record does not indicate when the petitioner became a reviewer for SACTA.

With his RFE response, the petitioner submitted documentation of his review of a manuscript for *IEEE Transactions on Circuits and Systems I*, but we cannot consider this evidence because he completed his review after this petition was filed. The petitioner must establish eligibility at the time of filing; a

petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

On appeal, the petitioner claims that he has also been a reviewer for *Equine Veterinary Journal*, but the record contains no evidence of his actual review of any manuscripts for this publication. 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)).

In sum, the record shows that the petitioner reviewed six manuscripts for four journals in his field between 2002 and 2004; became an associate editor of IJCSS in 2000 and became a reviewer for SACTA on an unspecified date. The petitioner submits no evidence that the completion of six reviews over the course of three years is an outstanding or significant volume of such work that is consistent with sustained national or international acclaim in his field. In addition, the record indicates that the petitioner secured his positions on IJCSS and SACTA primarily through the recommendation of his former postdoctoral supervisor. The record thus does not persuasively establish that the petitioner has judged the work of other researchers in his field in a manner consistent with sustained national or international acclaim. Accordingly, 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.

As evidence of his eligibility under this criterion, the petitioner submitted recommendation letters from eight professionals working in his or related fields. 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.

Professor ██████ of Zhejiang University, states that he has known the petitioner since 1996 when the petitioner was his postdoctoral fellow. Professor ██████ explains that the petitioner made three "original contributions of major significance to the field of system simulation, modeling and control[.]" First, the petitioner "proposed a series of new ideas to make a breakthrough of learning of neural networks." Second, the petitioner was the first to propose "an optimal robust and stable adaptive control algorithm and finished its theoretic proof." Third, the petitioner "established a new modeling method for electro-hydraulic control systems and a novel improved dynamic friction model for general mechanical systems." Professor ██████ notes that the petitioner's work in these areas was published in three journals and presented at international conferences. The record contains no evidence that the petitioner's

articles and presentations were widely cited or otherwise had a major impact on other researchers in his field.

Professor [REDACTED] Head of the Knowledge Extraction Lab at the Institute for Infocomm Research in Singapore and Extraordinary Professor of Bioinformatics at the University of the Western Cape in South Africa, states that he selected the petitioner as the best candidate out of 35 applicants for a postdoctoral position in 1998. Professor [REDACTED] explains that during his fellowship, the petitioner "was the first one to give a theoretical proof of Lyapunov's stability for a new discrete sliding mode control" and developed several "software packages for simulation and real-time control algorithms," accomplishments which made "important original contributions of major significance to the field of system simulation, modeling and control." Professor [REDACTED] further discusses the petitioner's work on "a new methodology combining discrete sliding mode control with artificial intelligence fuzzy logic." Professor [REDACTED] notes that the petitioner's work in this area was published and presented at the International Conference on Artificial Intelligence in Durban, South Africa in 1999 and was selected as one of the best papers for the Association for the Advancement of Modelling and Simulation Techniques in Enterprises (AMSE) conference in 1999. The record contains a printout from the website of AMSE, which confirms that the petitioner's paper, co-authored with Professor [REDACTED] was one of seven presentations named "best of" the 1999 AMSE conference in South Africa.

[REDACTED] Professor in the Department of Electrical, Electronic and Computer Engineering at the University of Pretoria, South Africa, states that he has never worked with the petitioner and bases his evaluation of the petitioner's work upon his review of the petitioner's resume, publications and conference presentations. Professor [REDACTED] states that the petitioner's article, "Robust Discrete Adaptive I/O Based Sliding Mode Controller," published in *International Journal of Systems Science* in 2000 made "an original contribution of major significance to the field of industrial process control." Professor [REDACTED] also describes the petitioner's work on the "internal representation of geometry shape" as making a "great breakthrough in the sensory motor control and learning fields."

[REDACTED] Professor of Physiology, Physical Medicine and Rehabilitation and Biomedical Engineering at Northwestern University, explains that the petitioner worked with him as a research associate from 2001 to 2003 on a project entitled "Learning and adaptation of multi-joint arm movements" in which they developed the new concept of "Internal representation of geometry shape." Professor [REDACTED] states that the petitioner's work "has profound implications for our understanding of the mechanisms of sensory motor control and motor learning" and was presented at three conferences.

[REDACTED] Professor and McPhail Dressage Chair of the Department of Large Animal Clinical Sciences in the College of Veterinary Medicine at Michigan State University, states that the petitioner joined her laboratory in September 2003. Professor [REDACTED] explains that the petitioner has been working on "the three-dimensional kinematics and kinetics analysis of horses in motion, which is an unexplored field." Professor [REDACTED] states that the petitioner "quickly produced a number of original contributions" and that his work has been accepted for presentation at one international conference and

that two of his articles will be published in *Equine Veterinary Journal*. The record does not indicate that the petitioner's work in this area was presented or published before this petition was filed.

██████████ in the Quantitative Research Group at the Bank of America, states that he has known the petitioner since they were high school classmates. ██████████ explains that the petitioner's work on the "adaptive optimization learning method for neural networks and adaptive fuzzy logic inference systems . . . have a significant impact not only on engineering fields but also on financial fields such as model calibration and interest rates fluctuation analysis which are my research focuses. We are discussing the possibilities of applying [the petitioner's] approach to the price process modeling in the market place." However, the record contains no evidence that the petitioner's work has been used in the financial field.

██████████ Associate Professor in the Departments of Physical Medicine and Rehabilitation, Orthopaedic Surgery, and Biomedical Engineering at Northwestern University, states that he has not worked with the petitioner, but is familiar with his research through his publications, presentations and visits to the Sensory Motor Performance Program at Northwestern University and the Rehabilitation Institute of Chicago. Professor ██████████ summarizes and praises the petitioner's work in China and his various postdoctoral positions abroad and concludes that the petitioner is "an internationally recognized outstanding researcher with extraordinary abilities in the field of biomechanical computation and simulation."

With his RFE response, the petitioner submitted a letter from ██████████ Associate Professor in the Department of Equine Sciences at Utrecht University in The Netherlands. Because it discusses the petitioner's work on equine locomotion that was presented and published after this petition was filed, Professor ██████████ letter cannot be considered. Again, the petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

Although the remaining letters indicate that the authors highly regard the petitioner's work, the record does not establish that the petitioner's research findings have been widely recognized in his field apart from these seven individuals and in a manner consistent with sustained national or international acclaim. The record shows that the petitioner's work has been published in international journals and presented at national and international conferences in his field, but the evidence does not indicate that his publications or presentations have been widely cited by other researchers or have otherwise made original contributions of major significance to his field. 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.

Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation

itself. As frequent publication of research findings is inherent to success as an established research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent research teams or other proof that the alien's publications have had a significant impact in his field.

The petitioner claims that he has written over 70 scholarly articles that have been published in "top peer-reviewed journals and international proceedings." The petitioner lists 46 journal articles and 35 conference papers on his curriculum vitae, but did not submit evidence of all of these purported publications. 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 submitted copies of ten articles that he has co-authored and that were published in journals in his field between 1999 and 2002. The petitioner is the lead author of nine of these articles. The record also contains copies of 19 manuscripts and abstracts co-authored by the petitioner and presented at conferences in his field. The petitioner submitted a printout from the website Engineering Village 2 which indicates that the petitioner has co-authored an additional four published articles.

The petitioner initially submitted no evidence that other researchers in his field had cited his publications. On appeal, the petitioner submits evidence that five of his articles have been cited a combined total of ten times. Four of these citations occurred in articles published after the petition was filed and consequently cannot be considered. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Five other citations were made by the petitioner or his co-author, Professor ██████████ in their subsequent publications. The final citation was made by another research team in an article published in the Chinese journal, *Information and Control* in 2003.

Although the recommendation letters speak highly of some of the petitioner's publications, the record indicates that, at the time of filing, independent researchers had cited the petitioner's work only once. The petitioner has not indicated that frequent citation of related and influential research is not a common practice in the petitioner's field and the record contains no evidence that the petitioner's publications have otherwise significantly influenced his field. In addition, the petitioner claims that his articles have been published in leading journals, but he submits no documentation of the rankings, impact factors or other independent evidence of the reputation of the journals that have published his work. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Consequently, the petitioner's publication record does not reflect sustained national or international acclaim and he does not meet this criterion.

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 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.