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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:
SRC 04 135 50856

OCT 02 2008

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

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 that the petitioner had not established the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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).

In this case, the petitioner seeks classification as an alien with extraordinary ability in science and education as a researcher of operations management. The record shows that the petitioner has a doctorate in Industrial Engineering from Clemson University and was, at the time of filing, an Assistant Professor in the Department of Business Administration at Tennessee State University. 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 claims to meet this criterion through his receipt of an Institute for Supply Management (ISM) achievement award, a Plossl Research Fellowship award, and his nomination for a junior faculty award. None of these achievements meet this criterion. The petitioner submitted a copy of an ISM achievement award certificate for his completion of an educational program. The certificate notes that the program constitutes "11.50 Continuing Education Hours." The petitioner submitted no evidence that such ISM achievement awards are nationally or internationally recognized prizes or awards for excellence in his field, rather than acknowledgement of the completion of continuing professional education.

The record shows that the Plossl Research Fellowship honors the best doctoral dissertation research project in the area of integrated resource management. The petitioner submitted a letter dated August 5, 2003 that states that the petitioner's project "was not selected as the winning entry," but that he was granted a \$1,000 "special award." The Plossl Research Fellowship and the related "special award" granted to the petitioner do not meet this criterion because they are granted to students to support their doctoral studies. Fellowships, grants and other forms of competitive financial aid do not meet this criterion because they are awarded to students – not established scientists – and consequently do not reflect national or international acclaim as a scientist already at the top of his or her field.

The record documents the petitioner's nomination for a 2005 Oak Ridge Associated Universities Ralph E. Powe Junior Faculty Enhancement Award. The record is devoid of any evidence that mere nomination for this award constitutes a nationally recognized prize or award for excellence in the petitioner's field. Moreover, the evidence shows that the petitioner was nominated after this petition was filed on April 26, 2004. Accordingly, we cannot consider the nomination as evidence of his eligibility. 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). Accordingly, 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 petitioner claims to meet this criterion through his membership in ISM, the IBM Developer Research Panel and the IBM Scholars Program. The record does not demonstrate that any of these groups require outstanding achievements of their members, as judged by recognized national or international experts. The petitioner submitted a printout from the ISM website, which states that "dues-free membership" is available to educators employed full-time with an academic appointment and an educational responsibility including purchasing, materials management or other related fields. The record does not demonstrate that such qualifications constitute outstanding achievements in the petitioner's field.

The petitioner submitted a printout of an electronic mail message dated May 4, 2004 that invites the petitioner to join the IBM Developer Panel ("the Panel"). As the petitioner had not joined the Panel at the time this petition was filed, his participation on the panel 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), *Matter of Katigbak*, 14 I&N Dec. at 49. Even if the petitioner had joined the

panel prior to filing, the evidence does not establish that the Panel requires outstanding achievements of its members. Rather, an electronic mail message from the Panel's Member Coordinator simply states, "As a member of the IBM Developer research panel, you will provide input that will help IBM better meet the needs of you and your peers" by completing market research surveys.

The petitioner submitted a printout from the IBM website, which states that the IBM Scholars Program "is designed to provide faculty and researchers at higher education institutions worldwide with a wealth of academic and research offerings, resources and benefits from IBM." The record is devoid of any evidence that participation in the IBM Scholars Program is limited to those individuals with outstanding achievements in the petitioner's field. Accordingly, the petitioner does not meet this criterion.

(iii) Published material 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 petitioner claims that published materials about him can be found in at least 15 professional and major publications. As examples, the petitioner submitted two printouts from the Engineering Village 2 website that list two of his co-authored publications, but do not discuss the petitioner's work. References to an alien's scholarly articles in a citation database or website do not constitute published materials about the alien's work. 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 claims to meet this criterion through his membership on the IBM Developer Research Panel and by his review of research proposals and scholarly articles. As discussed above under the second criterion, we cannot consider the evidence regarding the petitioner's membership on the IBM Developer Research Panel because the record shows that the petitioner did not join the Panel until after this petition was filed. 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), *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner submitted evidence that, at the time of filing, he had reviewed one article for the *European Journal of Operational Research*. The petitioner also submitted evidence that he reviewed two papers for the Sixteenth Annual North American Research/Teaching Symposium on Purchasing and Supply Chain Management. However, the petitioner completed his review on November 24, 2004, over seven months after this petition was filed. Consequently, we cannot consider these reviews. The petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner claims to have reviewed other research proposals and manuscripts, but the record contains no corroborative documentation of those other reviews. 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 review of one article for one journal in his field is not consistent with sustained national or international 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.

On appeal, the petitioner lists 11 articles that he has authored or co-authored. We cannot accept the petitioner's own list as evidence of his authorship. 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. at 165.

The record contains evidence of just one article co-authored by the petitioner that was published in the *Proceedings of the 2002 Annual Meeting of the Decision Sciences Institute*. The petitioner submitted a copy of another article that he co-authored that was published in the *Journal of Scheduling*, however, the record shows that this article was not published until after the petition was filed and consequently cannot be considered. Again, the petitioner must establish his eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. at 49.

The petitioner's authorship of one article published in the proceedings of one annual conference in his field does not reflect the requisite sustained national or international acclaim. Consequently, 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.

The petitioner submitted evidence that, at the time of filing, he was employed as an Assistant Professor with an annual salary of \$70,000 and that he had signed a contract for the following academic year with an annual salary of \$74,000. On appeal, the petitioner states that he earns "a high salary." Yet the petitioner submits no evidence of the compensation of other assistant professors in his field to corroborate his claim that his salary is high in relation to others in his field. Consequently, the petitioner 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 evidence in this case indicates that the petitioner is an accomplished researcher and professor. However, the record does not establish that the petitioner has achieved sustained national or international acclaim 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.