



U.S. Citizenship
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FILE:

[REDACTED]
SRC 07 800 17067

Office: TEXAS SERVICE CENTER Date **APR 29 2009**

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) 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.

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 has 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 physicist. 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 he claims meets the following criteria.¹

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.

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner claims to meet this criterion based on his membership in Sigma Xi and the Optics Society of America (OSA).

The petitioner submitted copies of pages from the Sigma Xi website, accessed on July 10, 2007, which described the history of the organization and its membership qualifications. The organization describes two levels of membership: full and associate. "An individual who has conducted independent investigation and written a report concerning their research is eligible for election to Associate Membership." A pamphlet from Sigma Xi (at page 3) explains that associate members "have shown potential as researchers." The rules provide that an associate member "may be promoted to Full Membership once they have published as primary author or demonstrated other noteworthy achievements in research." An individual is eligible for election to full membership if he or she "has shown noteworthy achievement as an original investigator in a field of pure or applied science." The rules further provide: "This noteworthy achievement must be evidenced by publication as a first author on two articles published in a refereed journal, patents, written reports or a thesis or dissertation."

In a May 22, 2007 letter, Executive Director of Sigma Xi, stated:

Membership in Sigma Xi is by nomination. Selected individuals who have shown potential as researchers are invited to join as associate members. Full membership is conferred upon those who have demonstrated noteworthy achievements in research. The Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers. ("Paper" includes refereed journal articles, patents or internal reports. An earned doctoral degree may be submitted for one paper. The Committee also considers time factors, career path, quality of research and similar factors.

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Nothing in the qualifications rules requires outstanding achievement of the members of the organization or that their achievements are judged by recognized national or international experts in their fields.

The petitioner's documentation reflects that he has been a member of the Optical Society of America since March 2004. A page from the organization's website, accessed on June 20, 2007, indicates that the organization was founded in 1916 and "brings together optics and photonics scientists, engineers, educators, technicians and business leaders." Another page from the website, accessed on July 10, 2007, addresses membership but does not outline requirements for membership.

The director determined that the petitioner did not meet this criterion. The petitioner does not address this criterion further on appeal. The evidence submitted does not establish that the petitioner 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.

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted documentation reflecting that he had two articles accepted for publication in the *Virtual Journal*. However, the petitioner's own published work is not about the petitioner or his work. Evidence of the publication of the petitioner's work is the subject of a different criterion and is discussed further below.

The petitioner submitted a copy of an article from the May 2007 issue of *Nature Photonics*, which describes the petitioner's work on divided-pulse amplification at Cornell University. The petitioner also submitted a copy of a page from the *Nature Photonics* webpage, accessed on June 1, 2007, which states that the publication would be launched in January 2007 and "will be a new monthly journal dedicated to this exciting field that will publish top-quality, peer-reviewed research in all areas of light generation, manipulation and detection." Thus, the petitioner's article was published in a journal that was less than one year old. The petitioner submitted no documentation to describe the journal's distribution or to otherwise establish it as a major trade publication.

The petitioner also submitted a copy of a May 1, 2007 article from photonics.com and a March 2007 article from RP Photonics *Encyclopedia of Laser Physics and Technology*, that also discuss

the petitioner's work at Cornell University. The petitioner submitted no documentation to establish that either of these publications is considered a major trade publication.

The director determined that the petitioner meets this criterion. However, the petitioner has not established that any of the publications in which his work was discussed constitute major media or a major trade publication. Further, all of the articles concerning the petitioner's work were during the first half of 2007. The petitioner submitted no evidence that he or his work was the subject of any major media or major trade publication article prior to 2007. Accordingly, the documentation submitted is not evidence of sustained national acclaim. Therefore, the petitioner's evidence does not establish that he meets this criterion, and we withdraw this determination by the director.

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 asserts that he is a reviewer of articles for the top-ranked journals, *Optics Letter*, *Optics Express* and *Applied Optics*.

The petitioner submitted a May 30, 2007 letter from [REDACTED] director of the OSA and a May 24, 2007 letter from [REDACTED] team manager of the OSA Publications Department. Both indicate that the petitioner had served as a reviewer for OSA publications and that the publications are highly ranked journals according to the 2005 *Journal Citation Reports*. A June 27, 2007 press release from OSA indicates that the journals were also highly rated for 2006 according to the *Journal Citation Reports*. Press releases are written and released by companies and thus are generally favorable to the company issuing the press release. Press releases from OSA cannot be considered independent assessments of its own publications. The petitioner submitted no other documentation to verify that these journals are highly ranked. 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)).

The petitioner also submitted documentation that, between July 14, 2006 and June 25, 2007, he had been invited to review 17 manuscripts for publication in *Optics Letter* and *Optics Express*, and that he had served as a reviewer of 16 of these manuscripts between July 24, 2006 and July 5, 2007.

The regulatory criteria are established to assist the petitioner in demonstrating national or international acclaim, and must be interpreted as a whole with the statute. Not all who sit as a judge of the work of others will have extraordinary ability or will qualify under this criterion. The AAO interprets this regulation to require that the selection and participation process for serving as the judge of the work of others in the field be indicative of national or international acclaim in the field. While the petitioner may have been invited to review the manuscripts

because of his expertise in the field, expertise does not necessarily equate with extraordinary ability in a given area. We note that the petitioner was asked to suggest others who may be willing to review the manuscripts if he was unable to do so. This suggests that the basis for the petitioner's selection was not based on the petitioner's discrete qualifications and extraordinary ability.

On appeal, the petitioner states that he is "extensively recognized as a qualified reviewer by more than 10 editors from top-ranked journals in the optics field." The petitioner submits a July 20, 2007 joint letter from [REDACTED] Topical Editor of *Optics Letters*, and [REDACTED] Director of the OSA Manuscripts Office, in which they state that peer reviewers are chosen based on the reviewer's "specific technical knowledge of the manuscript's topic." They further state:

It is common for an editor to contact numerous qualified reviewers before finding two who agree to comment on a particular paper. Knowing that good reviewers are very busy, an editor may ask the reviewer to kindly suggest a colleague who may be interested in the paper if he/she is unable to review at that time.

They confirm that the petitioner is a qualified reviewer and has specific technical knowledge regarding the topics of the manuscript that he reviewed. However, the issue is not whether the petitioner is qualified to review manuscripts but whether his selection as a reviewer is based on his outstanding ability and recognized national or international acclaim. The evidence does not establish that the petitioner was chosen as a reviewer because of his national or international reputation and accomplishments in the field.

The petitioner's evidence does not establish 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 petitioner states that he invented three important techniques:

- (a) Nonlinear chirped-pulse fiber amplifier;
- (b) Divided-pulse amplification for ultrashort pulse;
- (c) Efficient temporal pulse shaping.

The petitioner states that "[t]hese three techniques have been submitted to Cornell Center for Technology Enterprise Commercialization for patent applications. Two of them were licensed to a company to develop the advanced product, the [other] one is applied to Energy Recovery Linac."

As evidence of his accomplishments, the petitioner submitted letters of recommendation from the following:

██████████ who works in the physics department of the State University of New York at Buffalo. Dr. ██████████ stated:

The devices [the petitioner] has built, even allowing for the ensuing advancement of technology, are truly amazing. Compared to solid state lasers, fiber lasers offers many promising advantages: more reliable long-term operation, a more compact scheme, less maintenance, more sensitivity to the environment (temperature and humidity), and lower cost. Furthermore, the output laser from fibers shows excellent beam quality. The development of fiber lasers and fiber amplifiers will further stimulate applications in scientific fields and industries described below. [The petitioner] has a rare combination of the ability to conceive/design hardware, and the ability to make it work in a practical manner

[The petitioner has succeeded in developing [] a femtosecond laser using a very long cavity, and the highest repetition rate single mode fiber laser (as of last winter) based on harmonic mode-locking technique. [He] was also the first to discover and demonstrate the compensation between the nonlinear phase shift and third-order dispersion. These important result leads to the technology of nonlinear chirped-pulse amplification. . . .

Recently, [the petitioner] and other colleagues obtained another exciting result. They invented a new device to shape high power ultrashort pulses for the photocathode of the next generation advanced light source . . . Shared pulses will essentially improve the efficiency of generating “coherent electron bunches.” He has told me about a new method to amplify ultrashort pulse: Divided-Pulse Application. With this method, a few picosecond pulses are able to be amplified with minimum nonlinear distortion . . . Any one of these developments would indicate superior performance – taken as a whole, they indicate that he has outstanding promise. The entire field of short-pulsed lasers is key to modern communications, and the are of “Coherent Electron Bunches” is one of particular interest to me, since its application in so-called “Synchrotron Light Sources: offers the possibility of fabricating much smaller electronic devices than are currently being produced industrially. This technology may well be the method by which chips are fabricated for computers in ten or twenty years.

- ██████████ a professor and Director of Graduate Studies in the Department of Applied and Engineering Physics at Cornell University. Dr. ██████████ stated:

In collaboration with other students, [the petitioner] has made a number of advances in femtosecond-pulse fiber lasers . . . The most significant of these are the following:

- He showed that excessive nonlinear phase shift, which limits the pulse energy available from fiber lasers, can be compensated by the dispersion of fiber.

This will allow fiber amplifiers to generate pulse energies that compete with solid-state lasers.

He invented a new technique for avoiding deleterious nonlinear effects in fiber amplifiers, based on division of an initial pulse into many copies, and then recombination of the pulse after amplification. This work was highlighted in articles in *Nature Photonics* and *Photonics Spectra*.

- He developed a fiber laser that emits pulses at 1.3 GHz repetition rate, for the first stage of the new Energy Recovery Linac to be built at Cornell.

further stated that patent applications have been filed for several of the petitioner's advances. However, the petitioner submitted no documentation to indicate that patents had been issued for any of his techniques.

- , an associate professor in the Cornell University School of Applied and Engineering Physics. states:

[The petitioner] had participated [in] the project "high energy fiber laser and fiber amplifier by chirped-pulse amplification," designed to "research and develop microJoule or milliJoule fiber laser and amplifier for ultrashort pulse in order to achieve million or higher watts of peak pulse. This project will significantly promote the applications of picosecond or femtosecond pulse fiber laser into scientific fields: chemistry, biology and physics, and industries: micromachining, semiconductor, and engineering. The development of ultrashort pulse fiber laser dramatically reduces the cost and significantly increases the stability of the ultrashort pulse laser source. He is playing a key role in this project. [The petitioner] proposed and demonstrated that nonlinear phase shifts and third-order dispersion could compensate each other in short-pulse fiber amplifiers. This compensation could be exploited in any implementation of chirped-pulse amplification, with stretching and compression accomplished with diffraction gratings, single-mode fiber, microstructure fiber, fiber Bragg gratings, etc. The nonlinear phase shift accumulated in the amplifier would be compensated by the third-order dispersion of the combination of a fiber stretcher and grating compressor. The result lead [sic] to the new technique: nonlinear chirped-pulse amplification: pulse could reach higher energy and tolerate large nonlinear phase shift in fiber at the presence of third-order dispersion. This technique produced high quality and high energy pulses in fiber system.

- a research associate at Cornell University in Cornell High Energy Synchrotron Source and Laboratory of Elementary Particle Physics. states that he is a colleague of the petitioner, and that:

His main research in our team was to develop a high power laser system for producing exceptional electronic beam in the photocathode gun for the Energy Recovery Linac. [The petitioner] has invented a novel technique to shape picosecond (10-12 second) pulse by birefringent crystals. The method produces various pulse durations and pulse shapes to meet the requirements of Energy Recovery Linear Accelerator. This pulse shaping technique is crucial to the performance of the next generation advanced light sources based on the linear accelerator technology.

[The petitioner] has also developed the related laser and amplification techniques. He succeeded in developing 50 MHz 2 picosecond fiber laser, which meets the stringent requirements imposed by the accelerator. He has employed the technique of harmonic mode-locking to generate over a billion Hertz repetition rate of high quality laser pulses. This method has successfully resolved the problem of low repetition rate typical for the fiber lasers.

[He] has pioneered a technique called Divided Pulse Amplification. This is an important area of research with hundreds of laser scientists working on. [He] has put forth, and experimentally verified an efficient novel approach that overcomes the problem of excessive nonlinear phase shifts in amplifiers for ultrashort pulses. The petitioner's] research has been acknowledged and highlighted in high profile peer-reviewed journals.

- [REDACTED] a physicist at Thomas Jefferson National Accelerator Facility (Jefferson Lab), who states that the petitioner's "pioneering research represents [a] significant development in the field." [REDACTED] stated that this is evident in the publication of the petitioner's articles in various reputable journals, and the "rigorous selection criteria for papers accepted" for publication. [REDACTED] also states that the petitioner's selection as a peer reviewer undergoes an even more stringent and selective and underscores his level of accomplishment.

There is little doubt that the petitioner has contributed innovative ideas and techniques to his field, and that these techniques have had an impact on research. However, the evidence presented by the petitioner is not persuasive that these contributions constitute a contribution of major significance in the field. Although the petitioner states that some of his techniques have been licensed and that Cornell University has applied for patents for some of them, licensing and patents, without more, do not establish that the techniques and innovations are of major significance to the field. The petitioner submitted no documentary evidence of how these licensed techniques have made a major impact on the field or have been a major stepping stone in the development of laser technology and research.

The petitioner states that his published work has been cited by others and that this is also evidence of his contributions of major significance. He indicates on appeal that one of his articles was cited six times within a two-year period. However, the petitioner provided no documentary evidence to corroborate these citations. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence submitted does not establish that the petitioner 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 states that he has authored more than eleven scientific research papers and made nine conference papers presented at major international conferences. The petitioner submitted documentation of his research work published in the April 15, 2006, February 15, 2007, and April 1, 2007 issues of *Optics Letters*; in the June 27, 2005 issue of *Optics Express*; and in the June 2000, July 2001, and September 2001 issues of the *Chinese Journal of Lasers*. The issues of the *Chinese Journal of Lasers* are not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3). Two other documents indicate that the petitioner submitted manuscripts for publication and another indicates that the paper is to be published in the *Journal of the Optical Society of America*; however, the petitioner submitted no evidence that these documents have been published.

As discussed previously, although documentation from the OSA indicates that their journals are highly related, the petitioner submitted no documentary evidence to confirm that *Optics Letters* and *Optics Express* are major trade publications. Further, the petitioner submitted no documentation that the *Chinese Journal of Lasers* is considered a major trade publication.

The documentation submitted does not establish that the petitioner meets this criterion. We withdraw the director's determination to the contrary.

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 a copy of a May 30, 2007 "offer of employment" from SUNX Limited, a Japanese company offering him employment first in the United States as a visiting scientist at Cornell University and then in Japan. The SUNX limited letter offered the petitioner the position of research and development (R&D) manager at an annual salary of \$100,000 beginning June 1, 2007. The petitioner asserts that his \$100,000 annual salary is significantly higher than others in the field and therefore qualifies him for this criterion.

The criterion requires the petitioner to establish that he "has commanded" a high salary relative to others in the field. The petition was filed on June 17, 2007. The petitioner must demonstrate that he commanded a high salary prior to that date. 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). The petitioner submitted no documentation of his salary prior to the job offer from SUNX Limited.

Furthermore, even if the petitioner could establish that he commanded this salary prior to the filing date of the petition, the evidence does not establish that the salary was high relative to others in the field. The petitioner submitted a copy of a page from the website of the U.S. Department of Labor Employment and Training Administration indicating that, in 2005, R&D scientists in the education industry in the Syracuse, New York metropolitan statistical area (MSA) earned a maximum of \$59,466 in 2005. The petitioner also submitted a partial report from the American Institute of Physics in its February 2007 publication, indicating that individuals with a PhD degree in physics and astronomy earned \$90,000 in private industry in 2003 and 2004. A salary survey from payscale.com, accessed on June 13, 2007, indicated that the median salary of physicists with PhDs ranged from \$72,608 for those with less than a year of experience to \$117,174 for those with 20 years or more of experience. On appeal, the petitioner submits a copy of a webpage from salary.com, accessed on July 21, 2007, indicating that a "typical Physicist I" in the United States earned a salary of up to \$52,957. The document indicates that the salary could be "dramatically affected by compensable factors such as employee size, industry, employee credentials, years of experience and others."

The evidence provided does not indicate that the petitioner has commanded a salary significantly higher in relation to others in the field. It is not clear that the documentation provided compares similar positions and similar industries. The position offered to the petitioner is that of R&D manager. The petitioner submitted no documentation regarding the salary earned by other such managers.

The petitioner has therefore failed to establish that he meets this criterion.

The petitioner submitted other documentation reflecting that he was the recipient of outstanding student awards in 1995 and 1996 from his university in China, and a fellowship to State University of New York at Buffalo from 2002 to 2003. However, the petitioner does not claim, and we do not find, that these scholastic awards are applicable to any of the applicable criteria.

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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a physicist 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 is a learned and innovative scientist, 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.