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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 25 2009**
SRC 08 800 00050

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.

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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, we uphold the director’s decision in this matter. We reach this decision by considering the evidence under the individual regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3) and in the aggregate.

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). 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 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 senior device engineer. 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, internationally 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 initially submitted academic awards, published articles, evidence of citations of those articles, professional association and honor society memberships, evidence of manuscript review, reference letters and other evidence. On August 20, 2008, the director issued a notice of intent to deny the petition (NOID). In response, counsel submitted a brief and additional evidence. On September 30, 2008, the director issued the final notice of denial. The instant appeal followed. Throughout the proceeding, the petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Initially, counsel asserted that the petitioner meets this criterion through his receipt of an Outstanding Masters Student certificate from Louisiana Tech University, graduate assistantships from the same university and scholarships from Zhejiang University. The NOID advised that academic awards for which only students compete cannot be considered lesser nationally or internationally recognized prizes or awards for excellence in the petitioner's field. Counsel did not challenge this conclusion in his response. The director's final notice of denial reiterated the concerns stated in the NOID. The petitioner does not address this criterion on appeal.

We concur with the director that academic recognition and scholarships that reflect academic accomplishments and for which the most accomplished and renowned members of the field do not compete cannot serve to meet this criterion. Thus, the petitioner has not established that he 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.

The petitioner initially submitted evidence of his membership in Sigma Xi and information confirming that membership is conferred upon individuals who have shown a "noteworthy achievement." The materials continue, however, that membership generally requires two first-authored, refereed papers or patents, one of which can be a Ph.D. thesis. A welcome letter addressed to the petitioner advises that Sigma Xi has 65,000 active members. The petitioner also submitted his membership card for the

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

American Physical Society (APS). The APS materials submitted indicate that membership classes include teachers, other persons professionally trained in physics and engaged in its advancement, persons engaged in lines of work related to physics and persons who are not professionally engaged in either physics or related lines but whose interest and activity in the science would make them desirable members. Finally, the petitioner submitted evidence of his membership in the Institute of Electrical and Electronics Engineers (IEEE). The materials about IEEE do not address membership criteria but reveal that it has more than 370,000 members.

The NOID advised that the evidence submitted did not establish that the petitioner's memberships were qualifying. In response, counsel focused on Sigma Xi, noting that membership is by "invitation only." While the petitioner submitted evidence supporting counsel's assertion, the Sigma Xi materials further state:

An individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science is eligible for election to Full Membership. 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.

The director did not discuss this criterion in the final decision. On appeal, the petitioner reiterates that his Sigma Xi membership should serve to meet this criterion and further asserts that he has been nominated to membership in the American Chemical Society (ACS), "the most prestigious chemical society in the world." The petitioner submitted a blank application for membership addressed to the petitioner signed by the Chair of the ACS Membership Affairs Committee and the Director of the Division of Membership and Scientific Advancement as nominators. The member categories on this form reveal that regular members must have a degree in chemical or related sciences, certification as a teacher of chemical science or relevant work experience.

A degree, teacher certification or life experience are not outstanding achievements. The membership promotion of sending the petitioner a pre-signed application does not overcome the fact that the actual membership requirements for ACS are minimal. Similarly, the petitioner has not established that APS or IEEE has exclusive membership requirements rather than being open to members of the profession.

Finally, while Sigma Xi may require what it defines as "noteworthy" achievements, this membership cannot serve to meet this criterion. The materials submitted reveal that a noteworthy achievement can include a published article, a patent or a thesis or dissertation. We are not persuaded that these are outstanding achievements in science, which typically requires a thesis or dissertation for an advanced degree and whose members must typically publish original work to continue in the field. Moreover, the petitioner has not demonstrated that nationally or internationally recognized experts in the field judge the accomplishments of prospective members as opposed to merely confirming the nominee's authorship of the necessary thesis, dissertation, published article or patent.

In response to the NOID, the petitioner submitted a letter from [REDACTED] an associate professor at Louisiana Tech University, where the petitioner obtained his Ph.D. [REDACTED] notes that more than 200 members of Sigma Xi are Nobel Laureates and that “many more have earned election to the National Academies of Sciences and Engineering.”

The prestige of the Nobel Prize is not in dispute. It remains, however, that the petitioner is not a recipient of the Nobel Prize. Thus, its significance is irrelevant. That Sigma Xi includes members who have won the Nobel Prize does not impart that distinction to the vast majority (99.7 percent) of its members who have not been so recognized. Similarly, the petitioner has not documented that he is a member of the National Academy of Sciences or the National Academy of Engineering.

In light of the above, the petitioner has not established that he meets this criterion.

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 initially submitted evidence that the petitioner's articles are consistently cited. The petitioner also submitted printouts of computer files purportedly showing downloaded web pages listing the petitioner's work under “Current Articles on Nanodevices” on the University of Minnesota's website, on the foreign language online TND Newsletter and on a third foreign language website. The petitioner did not provide certified translations, or any translations, of the foreign language material pursuant to 8 C.F.R. § 204.5(h)(3)(iii) and 8 C.F.R. § 103.2(b)(3). The petitioner also submitted evidence that his articles are available at various websites.

The NOID advised that the published material must be primarily about the petitioner and, thus, citations cannot serve to meet this criterion. In response, counsel asserts that citations should be considered under this criterion because they demonstrate the dissemination, impact, importance and exposure of the petitioner's work in the field. Counsel also asserts that the petitioner was featured in the TND Newsletter and the Chinese Journal *Materials Science and Engineering of Powder Metallurgy* which “reference his accomplishments concerning Self-assembly of metallic nanowires from aqueous solution.” Counsel focuses on the TND Newsletter, asserting that it is a publication of the Korean Century Frontier Research and Development Program of the Ministry of Science and Technology. Counsel asserts that the petitioner's “contribution was one of the first listed in the Nano-Electronics Forum section and was one of only two research data figures in that section.” The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director reiterated that in order to meet this criterion, the published materials must be primarily about the petitioner and appear in major media. The director concluded that the petitioner had not submitted such evidence. On appeal, the petitioner reiterates the assertions of counsel in response to

the NOID and notes that one of his articles is listed as one of the top 20 most accessed articles in *Nano Letters* in 2005.

We do not contest counsel's assertion that citations are relevant evidence of the petitioner's recognition in the field. Such evidence, however, is more appropriately considered in evaluating the impact of the petitioner's contributions and scholarly articles pursuant to 8 C.F.R. §§ 204.5(h)(3)(v), (vi), and cannot meet the plain language of this criterion. Specifically, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien" relating to his work. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) (requiring published material about the alien's work). We will not interpret "published material" as including a single sentence or footnote. Rather, the phrase refers to complete materials, such as an article. Articles that cite the petitioner's work are primarily about the author's own work or, in the case of a review, recent work in the field. It cannot be credibly asserted that these articles constitute published material about the petitioner relating to his work or even published material about his work.

Inclusion of the petitioner's articles on lists of recent articles in the field or frequently accessed articles also cannot credibly be asserted to constitute published material about the petitioner relating to his work or even published material about his work. It is not even self-evident that a list constitutes published material "about" any particular subject. Significantly, the requirement in the regulation that the petitioner provide the author of the published material suggests that the regulation contemplates journalistic coverage of the petitioner rather than an Internet link or listing. The TND Newsletter lists the petitioner's work under a foreign language heading of undocumented meaning. The heading includes at least five projects. In another section, the petitioner's work is the fourth of at least five projects under another foreign language heading. We are not persuaded that these listings constitute published material about the petitioner relating to his work. Finally, the fact that the petitioner's work can be accessed on the Internet does not rise to the level of published material about the petitioner in professional, major trade journals or other major media.

In light of the above, the petitioner has not submitted evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

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 initially submitted a manuscript review request from *Chemistry of Materials* addressed to the petitioner's Ph.D. advisor, [REDACTED], and [REDACTED] electronic mail message to the petitioner thanking him for his comments on the manuscript. [REDACTED] further confirms that he and the petitioner reviewed a manuscript for *Nano Letter*. A request for assistance by or a collaborative review with the petitioner's Ph.D. advisor is not indicative of or consistent with national or international acclaim. The petitioner also submitted requests addressed to him to review manuscripts for the *Journal of Nanoparticle Research* and the *Journal of Nanoscience and Nanotechnology*.

The NOID advised that the petitioner had not established that his participation in the widespread review process sets him apart from others in his field. In response, counsel asserted that the petitioner judged the work of others as a peer reviewer and that his job did not require him to serve as a peer reviewer.

The director concluded that the petitioner had not demonstrated that his participation in the peer review process was qualifying under this criterion. On appeal, the petitioner asserts that his expertise was relied upon by prestigious journals, for which he ensured the accuracy and overall quality of the manuscripts reviewed.

The evidence submitted under this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005). We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field and, by itself, is not indicative of or consistent with sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed manuscripts for a journal that credits a small group of elite reviewers, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

In light of the above, the petitioner has not demonstrated 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 submitted reference letters, his published articles, citation record, "Report of Invention Form" and a Declaration for Utility or Design Patent Application. The director concluded that the petitioner had not demonstrated that his original research and innovations constitute contributions of *major* significance in the field. On appeal, the petitioner notes articles that have built on his work, prestigious laboratories that have requested reprints of his work and the submission of reference letters from independent members of 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. 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 regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). As discussed below, the director found that the petitioner meets this criterion and we concur with that determination. We will not presume, however, that meeting the scholarly articles

criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

Regarding the patent disclosure and application, as stated above, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.*

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The petitioner obtained his Ph.D. from Louisiana Tech University in 2005. The petitioner then worked as a postdoctoral researcher at the University of Virginia through April 2007. At the time of filing, the petitioner was a senior device engineer with Silicon Storage Technology, Inc.

discusses the petitioner's micro/nanoelectronics and micro/nanomanufacturing research at Louisiana Tech University. Specifically, according to [REDACTED] the petitioner focused on the fabrication of electrically-conductive nanowires. [REDACTED] explains the importance of miniaturization of electronic components in the electronics industry and the limitations on miniaturization due to costs and the laws of physics. [REDACTED] further explains that the integration of nanotechnology with silicon technology is necessary for the growth of the semiconductor industry.

asserts that the petitioner “was directly involved in discovering that highly-ordered metallic nanowire arrays can self-assemble without a template from aqueous solution.” The petitioner “was also directly involved in the successful fabrication of single metallic nanowires at predefined locations between microelectrodes.” [REDACTED] notes that this work is published and speculates that there “is excellent potential for this technology to result in real economic benefit.” Finally, [REDACTED] states that the petitioner “successfully metallized aligned DNA molecules with palladium, cobalt, and nickel, forming conductive nanowires.” While [REDACTED] notes that this work was published and represents an original contribution to nanoscience, he does not explain how it has impacted the field.

[REDACTED] a professor at the University of Virginia, discusses the petitioner’s work in Dr. [REDACTED]’s laboratory. According to [REDACTED] the petitioner worked on fabricating electronic devices from viral and cytoskeletal templates. [REDACTED] explains that the petitioner’s contributions to this work included “the application of biological and molecular genetic principles to fabricate hierarchical systems based on molecular-scale components, with precise dimensions and predictable and reproducible performance, in a way that can be scaled to billions or trillions of integrated devices, all at a low cost.” [REDACTED], a senior scientist at the University of Virginia, explains the technical obstacles that the petitioner overcame to make this project successful.

[REDACTED] Vice President of Technology Development at Silicon Storage Technology, asserts that the petitioner’s expertise is necessary for the company’s development of the next generation of flash memory devices with a dimension below 100 nanometers.

The petitioner also submitted more independent letters. [REDACTED] a professor at the University of Minnesota, explains that the petitioner assembled nanowires between microelectrodes patterned on silicon dioxide substrate, where the electric field is the strongest, thereby achieving highly conductive and uniform nanowires and allowing the creation of direct interconnection at an ambient temperature. [REDACTED] asserts that this work “is vitally important to the future of semiconductor device integration.” [REDACTED] further asserts that his own team has cited the petitioner’s work, which inspired them to solve the problem of selective positioning of nanotubes by way of an electric field. [REDACTED] also affirms the great potential of the petitioner’s biomimetic nanosystem work.

We acknowledge the submission of evidence that the petitioner is a named inventor on a patent application, but the record lacks evidence of any interest in licensing this innovation or other evidence of its impact in the field.

The record also contains evidence that the petitioner’s article on self-assembly of metallic nanowires from aqueous solution in *Nano Letters* was one of the twenty most accessed articles in that journal in 2005. This journal is the top ranked nanoscience journal by impact factor. Nevertheless, the fact that the petitioner’s article was accessed does not mean that the petitioner’s work was subsequently utilized. We acknowledge that this same article had been moderately cited as of the date of filing. The petitioner also submitted evidence that four of his other articles have been cited minimally or, in one case, moderately. The petitioner submitted two electronic mail messages from other researchers, one

confirming the author's successful use of the petitioner's methodology, the other requesting reprints of the petitioner's work.

On appeal, the petitioner submits a 2006 article by a German research team noting that the petitioner had demonstrated "that metallic nanowires with a diameter of approximately 100 nm can be directly grown from an aqueous solution by DEP" and asserting that the authors would be demonstrating that "the conditions for the direct growth of wires from an aqueous palladium salt solution can be controlled by the electrical field to obtain considerably thinner wires which exhibit one-dimensional electrical behavior." The authors later note that some of their initial work is in agreement with the petitioner's results and that they subsequently obtained considerably thinner wires. Another team at Oklahoma State University notes that the petitioner had demonstrated directed wire growth from palladium acetate in solutions containing only dissolved salt and reports that the authors built on the previous work of the petitioner and others to demonstrate a methodology for electrochemical growth of single crystal indium wires from aqueous solutions of indium acetate.

The petitioner's research is clearly original with applications in his field. According to the Department of Labor's Occupational Outlook Handbook, available online at <http://www.bls.gov/oco/ocos027.htm#nature> (accessed August 6, 2009 and incorporated into the record of proceeding), engineers develop new products. Materials engineers create and study materials even at the atomic level. *Id.* We are not persuaded that every materials engineer involved in the steady progression of nanoscience has made a contribution of major significance.

The record does not establish the type of widespread impact indicative of a contribution of major significance. Thus, the petitioner has not demonstrated that he meets this criterion. Even if we concluded that the citations and high access record of the petitioner's work was sufficient to meet this criterion, for the reasons discussed above and below, the evidence falls far short of meeting a third criterion.

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

The director considered the petitioner's publication and citation record and concluded that the petitioner meets this criterion. We affirm that conclusion.

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner relies on his professional association and honor society memberships, service as a peer reviewer, publications, citation record and the praise of his peers. is a fellow of the Institute of Physics and an editor of *Sensors and Materials*. served as a proposal review panelist for the National Science Foundation and is an editor for the *Journal of Nanoscience and*

Nanotechnology. Thus, the top of the petitioner's field appears to be significantly higher than the level he has attained.

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 himself as a senior device engineer 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 shows talent as a senior device engineer, 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.