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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 25 2009
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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:

[REDACTED]

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, Nebraska 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, counsel submits a brief and resubmits previously submitted evidence relating to citation of the petitioner’s work. For the reasons discussed below, we find that the petitioner has not established that he meets any of the regulatory criteria. While the director appears to have concluded that the petitioner meets two of those criteria (three of which are required for eligibility), the record does not support that conclusion. While we do not lightly reverse favorable findings by the director, the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Thus, the AAO is not bound to give deference to the director’s decision. Black’s Law Dictionary 725 (7th ed. 1999). Our conclusion that the petitioner has not established eligibility for the classification sought is based on a review of the evidence under the regulatory criteria and a review of the evidence 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 transportation, Intelligent Transportation Systems (ITS) Analyst. 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Initially, counsel asserted that the petitioner had been continuously recognized for his expertise “through academic awards.” Counsel listed a dissertation completion award, a travel fund award, a student paper award, scholarships and student fellowships. The director’s request for additional evidence advised that prizes or awards restricted to students could not serve to meet this criterion. In response, counsel stated: “Though not national in nature, [the petitioner] meets other criteria necessary to qualify for classification as an ‘extraordinary alien.’” Thus, the director concluded that the petitioner had acknowledged that his awards were not nationally or internationally recognized and, thus, could not serve to meet this criterion.

On appeal, counsel reiterates previous assertions and concludes: “The honors bestowed on [the petitioner] reflect the regard in which his expertise and his dedication to the field with respect to continuing to contribute his extraordinary ability to the U.S.”

It is not clear from counsel’s assertions on appeal whether she is still asserting that the petitioner meets this criterion. We concur with the director, however, that the academic recognition received by the petitioner cannot serve to meet this criterion. Experienced experts in the field are not seeking student awards or scholarships. Thus, such awards cannot establish that the petitioner is one of the very few at the top of his field.

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

In light of the above, 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.

Initially, counsel asserted that the petitioner is a member of "prestigious organizations." The petitioner submitted evidence that he is an associate member of the Institute of Transportation Engineers and the American Society of Civil Engineers (ASCE). The petitioner did not submit the requirements for associate membership in either association. In response to the director's request for additional evidence, counsel asserts that the petitioner is a member of professional organizations that require outstanding achievement in the field. Counsel references a letter from the petitioner's former Ph.D. advisor at the University of Hawaii at Manoa, [REDACTED].

[REDACTED] asserts that the petitioner has been a member of the Simulation Modeling Subcommittee of the National Academies Transportation Research Board's (TRB) Committee on Freeway Operations since 2005. [REDACTED] asserts that membership "is limited only to recognized researchers who have an established record of research achievements in freeway simulation modeling."

The petitioner also submitted a letter from [REDACTED], Chair of the Simulations Subcommittee of the TRB, confirming the petitioner's membership on that subcommittee. [REDACTED] asserts that membership "is offered to those experts who have established a superb track record of research achievements and have been well recognized by their peers in the field of traffic signal operations and simulations." [REDACTED] further asserts that TRB committees "depend on the members' voluntary efforts."

Finally, [REDACTED], in a March 18, 2008 letter addressed to the petitioner, advises the petitioner that he has been approved for membership on the Transportation & Development Institute's (T&DI) Transportation Safety Committee and thanks the petitioner "for volunteering to be a part of this committee."

The director concluded that the petitioner had not established the official membership requirements of the above committees and subcommittees and noted that the petitioner was not a member of the T&DI committee as of the date of filing. On appeal, counsel asserts that the director erred in rejecting the testimony of [REDACTED], who is independent of the petitioner.

First, we concur with the director that the petitioner's membership on the T&DI committee cannot be considered because it postdates the filing of the petition. The petitioner must establish his eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

Regardless of whether [REDACTED] is independent of the petitioner, his broad assertion that members must demonstrate a “superb track record of research achievements” is insufficient. First, a subcommittee is not an association. Thus, subcommittee “membership” by someone volunteering their services to the subcommittee cannot serve to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Moreover, the petitioner has not provided the official bylaws of the TRB establishing the minimum requirements for subcommittee membership. Finally, the petitioner has not established that recognized national or international experts judge applications or nominations for membership.

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

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 he has reviewed manuscripts for TRB annual meetings and the *Journal of Transportation Systems*. The petitioner also reviewed manuscripts for the *Journal of Infrastructure Systems* while still a doctoral student as verified by an assistant professor at the University of Hawaii at Manoa.

In response to the director’s request for additional evidence, [REDACTED], Chair of the TRB Traffic Signals Committee, notes the importance of volunteer peer reviewers. [REDACTED] Managing Editor of the *Journal of Transportation Systems*, asserts that the editors “only invite a few researchers who have outstanding research reputation and superb history of research publications in their specific field to review the manuscripts submitted for potential publication.” The petitioner, however, did not perform any reviews for this journal until May 2007, after the petition was filed. Finally, [REDACTED], Paper Review Chair for the TRB Highway Capacity and Quality of Service Committee, asserts that peer reviewers for the committee are “limited solely to those experts who have established a superb track record of research achievements.”

As stated above, the petitioner served on TSB subcommittees, but the letters attesting to these “memberships” do not reference any duties involving judging the work of others.

The director appears to have concluded that the petitioner meets this criterion. On appeal, counsel merely asserts that the petitioner meets this criterion. We find that the record does not support the director’s conclusion.

Regarding the petitioner’s review for the *Journal of Transportation Systems*, these reviews postdate the filing of the petition and cannot be considered evidence of the petitioner’s eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Regarding the remaining manuscript reviews, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted manuscripts. Thus, peer review is routine in

the field and is not necessarily indicative of or uniquely consistent with national or international acclaim. While we do not question the sincerity of the petitioner's references, the record lacks evidence that TSB or the *Journal of Infrastructure Systems* boast a small elite group of peer reviewers, such as evidence that the reviewers are credited by name in the journals or other official materials. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of manuscripts as of the date of filing, 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.

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

The petitioner submitted published articles, presentations, citations and reference letters as evidence to meet this criterion. Once again, the director appears to have concluded that the petitioner meets this criterion. On appeal, counsel reiterates the assertions made in the reference letters. For the reasons discussed below, the record does not support a finding that the petitioner meets this criterion. Specifically, as will be explained below, the most influential aspect of his work has been his data sets, which, while utilized by others, have not been shown to be more influential than other data sets in 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 civil engineering, it can be expected that the algorithms and modules would have already been reproduced and confirmed by other experts and applied in their work. Utilization of data sets, in the absence of evidence demonstrating the data sets were obtained with innovative and influential means and utilized to a far greater extent than other data sets available to the public, is insufficient.

We acknowledge that the petitioner has authored articles and presented his work at seminars. Authorship of scholarly articles is a separate criterion pursuant to 8 C.F.R. § 204.5(h)(3)(vi). Thus, authorship of scholarly articles cannot serve as presumptive evidence to meet this criterion if the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria are to have any meaning. The petitioner submitted a self-serving list of articles that cite his work. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r 1972)). Regardless, this list of citations reveals that several of the citations are self-citations by the petitioner or his coauthor. While self-citation is a normal and expected process, it cannot demonstrate the petitioner's influence beyond his own circle of collaborators. The most independent citations for any one article by the petitioner are four. As noted by the director, the petitioner provided these independent articles, which all cite the petitioner's survey results indicating that drivers claim to

slow down when driving in the rain. While the director asserted that these results are intuitive, we acknowledge that there are times when research may be required to confirm expectations. Regardless, this number of citations is not indicative of or consistent with a contribution of major significance.

As stated above, the petitioner also submitted several reference letters. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

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 received his Ph.D. from the University of Hawaii at Manoa in 2004. Subsequently, the petitioner began working for Cambridge Systematics, Inc. in California.

the petitioner's Ph.D. advisor, praises the petitioner's ability as a researcher and his academic excellence. More specifically, [REDACTED] asserts that the petitioner's survey of motorists regarding traffic signals made the front page of the *Honolulu Advertiser*. According to Dr. [REDACTED] the petitioner used this data to develop three novel methods to evaluate signalized intersections. [REDACTED] asserts that the petitioner published this work and that these methods have had "direct impacts on improving the efficiency of allocating limited funds and valuable resources to developing and improving traffic signal systems and other transportation facilities." [REDACTED] does not identify a single agency that utilizes the petitioner's methods in allocating funds. [REDACTED], another member of the petitioner's Ph.D. dissertation committee, merely **speculates that this** work will have a significant impact on the state-of-practice in this area. Similarly, [REDACTED] another member of the petitioner's Ph.D. dissertation committee, predicts that this work will help transform this area of research into a motorist-driven discipline. A contribution of major significance should already demonstrate such an impact.

In addition, [REDACTED] asserts that the petitioner developed an algorithm that can predict travel time, an important statistic for metropolitan areas in diverting traffic to un-congested roadways. While the petitioner received a regional best student paper award for this work, [REDACTED] does not identify a single metropolitan jurisdiction using this algorithm. Similarly, [REDACTED] praises an intelligent traffic control algorithm “proposed” by the petitioner, but fails to identify a jurisdiction using this algorithm. [REDACTED] asserts that the petitioner, as a research assistant, provided simulation results and recommendations to the Hawaii Department of Transportation. [REDACTED] does not, however, explain how this work rises above merely fulfilling the job duties inherent to the petitioner’s occupation at a level that can be said to be indicative of a contribution of major significance.

[REDACTED] also discusses the petitioner’s survey on protected left-turn phasing, but states that this work had yet to be published. Thus, its impact was as of yet unknown.

[REDACTED], Vice President of Cambridge Systematics, asserts that he is the principal investigator for the Next Generation Simulation (NGSIM) program funded by the U.S. Federal Highway Administration (FHWA). [REDACTED] explains that the petitioner is “a” lead researcher for this program, for which the petitioner has “successfully collected more than 10,000,000 vehicle trajectory data points using an innovative method to track vehicle movements in recorded videos.” Dr. [REDACTED] asserts that no one had previously been able to collect this data and that the data had proved “an invaluable asset for national and international transportation research and development of traffic simulation tools.”

In response to the director’s request for additional evidence, the petitioner submitted a self-serving chart listing the number of downloads for his data sets. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The petitioner did, however, also submit 16 electronic mail requests for data sets. In addition, the petitioner submitted letters from independent sources world wide attesting to their use of the petitioner’s data sets.

[REDACTED], Director of California Partners for Advanced Transit and Highways (Path), asserts that based on the petitioner’s data set, he “successfully developed an oversaturated freeway flow algorithm.” [REDACTED], Director of the Institute for Highway Engineering and Transport Planning at Graz University of Technology in Austria, asserts that he has utilized the petitioner’s NGSIM data sets for his own research purposes, successfully developing two published papers based on the research. [REDACTED], a former research associate at the Massachusetts Institutes of Technology (MIT), asserts that he and collaborators at MIT are using the petitioner’s data set to develop “traffic flow, operations, and simulation models.” [REDACTED], a professor at Technical University of Catalonia in Spain (a stakeholder of the NGSIM research project), asserts that he has used the petitioner’s data set to “develop traffic flow, operations, and simulation models.”

The above letters are notable. Without evidence regarding how many data sets are publicly available and how the utilization of the petitioner's data sets compares with other publicly available data sets, however, we cannot conclude that the data sets alone constitute a contribution of major significance. Far more persuasive would be evidence that the petitioner's methodology in collecting or utilizing this data has proven influential. We acknowledge that the petitioner is one of five coauthors of a user's manual for the data collection device. The manual is "disseminated" by FHWA "in the interest of information exchange." A notice in the manual advises that the U.S. government "assumes no liability for the use of the information contained in this document. This report does not constitute a standard, specification or regulation. The U.S. Government does not endorse products of manufacturers." The record lacks evidence that the petitioner developed this technology or that the manual is widely used.

While [redacted] asserts that the petitioner was also working on other algorithms, such as lane-changing and vehicle pre-position models, [redacted] does not assert that the petitioner completed these algorithms or that they have been widely adopted. Similarly, [redacted] asserts that the petitioner has worked on guidelines for work zones sponsored by FHWA, but does not suggest that FHWA has already adopted these guidelines.

[redacted] asserts that the petitioner developed an innovative adaptive traffic signal control algorithm, known as the fuzzy logic controller, but does not provide examples of the algorithm being applied by any jurisdiction. Similarly, [redacted] asserts that the petitioner contributed to a new microscopic simulator but does not provide any examples of its adoption.

Clearly, the petitioner's work has value. According to the Department of Labor's Occupational Outlook Handbook, available at <http://www.bls.gov/oco/ocos027.htm> (accessed June 25, 2009 and incorporated into the record of proceeding), however, it is inherent to the occupation of engineer to use science and math to develop economical solutions to technical problems and to simulate how systems operate. Thus, not every civil engineer who develops a simulation algorithm or proposes a solution to a traffic problem has made a contribution of major significance that sets him apart from other civil engineers. Without evidence of widespread application of the petitioner's engineering contributions or evidence that sets his data sets apart from other publicly available data sets, we cannot conclude 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 submitted published articles in *Transportation Research Record* and the *Journal of Transportation Engineering*. He also submitted an NG-Video User's Manual and a FHWA report listing the petitioner as a coauthor. A notice in the manual states that it is being "disseminated" by FHWA. The record also contains several manuscripts, some of which were accepted for presentation at TRB annual meetings. Finally, the petitioner submitted evidence of his conference presentations. According to the evidence submitted in response to the director's request for additional evidence, none of the petitioner's articles have been cited more than four times by independent research teams. The

director concluded that the petitioner's publication record was not indicative of or consistent with national or international acclaim and, thus, could not serve to meet this criterion.

On appeal, counsel notes that the petitioner's data sets have been widely downloaded. The petitioner's data sets, however, are not scholarly articles but collections of data.

The petitioner has not demonstrated that the publication of articles alone sets him apart from other civil engineers. ASCE alone publishes 31 civil engineering journals, described as the medium through which civil engineers exchange technical and professional knowledge. See <http://pubs.asce.org/journals/> (accessed June 25, 2009 and incorporated into the record of proceeding). Without additional evidence that sets the petitioner's publication record apart from others in the field, such as evidence that his articles are widely and frequently cited, we cannot conclude that the petitioner meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

While not addressing this criterion specifically, counsel stated in her conclusion that the petitioner "plays a vital and leading role in his ongoing work, and experts regard him as a leader in ongoing and prospective research."

At issue for this criterion are the role the petitioner was hired or selected to fill and the reputation of the organization or establishment that hired or selected him. In other words, selection for the role in and of itself should be indicative of or consistent with national or international acclaim. Counsel does not identify the organization or establishment for which the petitioner has performed a leading or critical role or the title of the role itself. ██████████, Human Resources Manager for Cambridge Systematics, confirms that the petitioner is a "Senior Professional" there. The record, however, does not include an organizational chart or other evidence that would allow us to determine whether this role is leading or critical for the organization beyond the company's obvious need to employ competent senior professionals. Previously, the petitioner worked as a research and teaching assistant. The record does not reflect that the petitioner has been hired or selected for a role that is leading or critical for an entire organization or establishment that enjoys a nationally distinguished reputation.

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 academic recognition, associate and subcommittee memberships, manuscript reviews, collection of original data, and publications. All of the petitioner's references who submit curriculum vitae list an extensive publication record. Moreover, ██████████ is a member of the U.S. National Academy of Engineering. ██████████ an associate professor at the University of Hawaii who supports the petition, has reviewed research proposals for the National Science Foundation. ██████████ is an editor for two ASCE journals. ██████████ is the founder and Scientific Director of a Barcelona-based company that designs and develops cutting-edge traffic computer simulation software. He has also served as principal

investigator for projects funded by both the Spanish government and the European Union. Thus, the top of the petitioner's field seems far 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 does not establish that the petitioner has distinguished himself as a senior transportation/ITS analyst 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 transportation/ITS analyst, 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.