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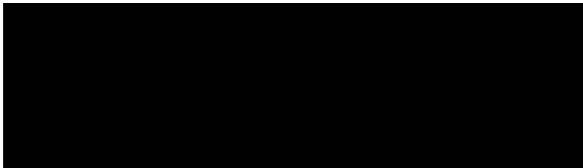
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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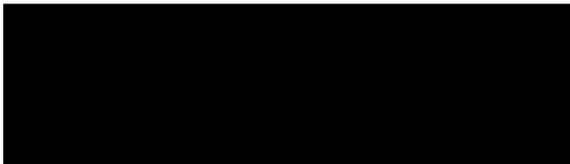


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 25 2009  
LIN 07 057 51768

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary 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 that the petitioner had not established the beneficiary's sustained national or international acclaim required for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). We address the evidence submitted and the petitioner's contentions in the following discussion of the regulatory criteria relevant to his case. The petitioner does not claim that the beneficiary is eligible under any criteria not addressed below.

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability in the sciences, specifically as a researcher. The petitioner initially submitted supporting documents including information about the petitioner, the beneficiary's resume, letters of recommendation, proof of the beneficiary's education, awards, presentations, articles written by the beneficiary and corresponding citations, and copies of patents. In response to a Request for Evidence (RFE) dated February 6, 2008, the petitioner submitted

information about publications in which the beneficiary's work appeared, additional letters of recommendation, additional awards, and additional information about the petitioner.

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

The petitioner submitted evidence of the beneficiary's receipt of the 2006 Kurt F.J. Heinrich award for Outstanding Young Microbeam Analysis Society Scientist. The petitioner presented no information about this award including who was eligible for it or how the recipient was chosen. By the name of the award, it seems to be limited to scientists that are members of the Microbeam Analysis Society ("MAS") and who are of a certain age. The petitioner presented no evidence to show how, if the competition was restricted to scientists of a particular age and societal membership, the award constitutes an award for excellence in the field if it did not allow all of those working in the field to participate. In response to the RFE, counsel refers us to a letter written by ██████████, 2006 MAS President, which states that the award is peer-nominated and is awarded to "scientists who have made outstanding contributions to a field within the broad area of microbeam analysis. The award is recognized internationally and the worldwide pool of potential nominees includes all researchers under the age of 40 working in the field of microbeam analysis."

In the original submission, counsel states that the beneficiary "received several important awards as a graduate student, including the 2000 Oxford Instruments award the AMAS-IUMAS 2000 Student Award, a 1998-2000 Australian postgraduate award, and in 1999, the Microbeam Analysis Society's distinguished scholar award." It does not appear that these awards were open to professionals but were instead restricted to students. The petitioner presented no evidence to show either who was eligible for the competitions or how, if the competitions were restricted to students, the awards constitute awards for excellence in the field if they did not allow those working in the field, i.e. professional scientists, to participate.

For all of the above reasons, the petitioner has failed to establish that the beneficiary meets this criterion.

*(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>1</sup>

In the original submission, counsel stated that the petitioner demonstrated eligibility under this criterion through citations to the beneficiary's work in scholarly articles. These articles are not primarily about the beneficiary or

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<sup>1</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

his work, but instead the articles' authors use the beneficiary's work to support their own findings. These citations will be considered in greater depth in the discussion below of 8 C.F.R. § 204.5(h)(3)(vi).

For the above stated reasons, the petitioner has failed to show that the beneficiary meets this criterion.

*(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner claims that the beneficiary meets this criterion due to his position as an adjunct professor at the State University of New York's College of Nanoscale Science and Engineering and his supervision of a graduate student at that school. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv) depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Working as a professor at a university inherently involves judging the work of students. Duties or activities which nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself such as a professor or teacher judging the work of his students.

In addition, the petitioner claims to meet this criterion due to the beneficiary's review of manuscripts and editorial work for scientific journals. Because peer review is a common feature of the publication process for many scientific journals, service as a peer reviewer in and of itself will not satisfy this criterion without evidence that the alien served on the editorial board, completed a substantial number of reviews, or has otherwise conducted peer review of other scientists' work in a manner consistent with sustained national or international acclaim. In the original submission, counsel stated that the beneficiary "referees scientific papers for the journals *Nature Materials*, *Nano Letters*, *Applied Physics Letters*, *Journal of Microscopy and Scanning*." The letter from [REDACTED] editor of *Nature Materials*, states that the beneficiary "has previously reviewed papers submitted to *Nature Materials* in his field of expertise, environmental scanning electron microscopy (ESEM) and electron beam interactions with materials." This letter does not specify how many articles were reviewed by the beneficiary. The letter from [REDACTED], editor of *Scanning*, states that the beneficiary "is a reviewer for the journal *Scanning*. Reviewers chosen by *Scanning* are experts selected from around the globe on the basis of their ability to judge the scientific quality and originality of highly technical research papers . . . ." [REDACTED] states that he views the beneficiary's work as a reviewer for *Nature Materials* as "particularly impressive" and to be chosen as a reviewer for *Applied Physics Letters* and *Nano Letters* "is also exceptional." The letter from [REDACTED] states that reviewers for *Nature Materials*, *Nano Letters* and *Applied Physics Letters* "must not only be able to judge the scientific quality and originality, but also the impact that a specific original paper will make on the field of study." None of this evidence states how many reviews have been completed by the beneficiary or shows that serving as a reviewer requires national or international acclaim as opposed to being chosen for the task because of familiarity with the subject matter.

Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

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

The petitioner submitted more than ten letters of recommendation supporting his claim of the beneficiary's eligibility under this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. U.S. Citizenship and Immigration Services (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 (Commr. 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 795-796.

Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a researcher who has sustained national or international acclaim.

The September 5, 2006 letter from [REDACTED] vice president and chief technology officer of the petitioner, states that the beneficiary "has made an important contribution to the development of detector structures designed for ultra-high resolution ESEM imaging of non-conductors, and ESEM analysis of hydrated materials [and] has made key contributions to current understanding of the information contained in ESEM images." The letter from [REDACTED] a frequent co-author of the beneficiary's and his former doctoral thesis advisor, states that the beneficiary developed "a novel ESEM-based, high resolution nanofabrication technique" and "developed the advanced theories and experimental methodologies . . . to explain ESEM charging and contrast formation phenomena." The letter from [REDACTED] a frequent collaborator of the beneficiary's, states that the beneficiary "pioneered the practice of introducing reactive gases in the chamber in order to initiate chemical reactions directed by the electron beam." The letter written by [REDACTED] states that the beneficiary made "seminal contributions to the theory of ESEM charge control and signal detection." The letter from [REDACTED], researcher at the Lawrence Livermore National Laboratory, states that the beneficiary is at the top of his field for "cutting-edge electron beam techniques and interpretation of complex results from such techniques, especially when they are applied to novel advanced materials systems." [REDACTED] further stated that the beneficiary "introduced and subsequently perfected" an ESEM theory of "charge control and the physics behind ESEM image contrast formation mechanisms." The letter from [REDACTED] states that he knows of no one but the beneficiary "who possesses the level of ESEM expertise required" to manage and lead the ESEM research projects sponsored by the petitioner.

The May 24, 2006 letter from [REDACTED] states that the beneficiary "made outstanding contributions to the understanding of ESEM charge control and electron image formation. Most notably, his work elucidated the complex mechanisms through which gaseous ions stabilize charging when a dielectric is irradiated simultaneously by energetic electrons and soft-landing ions." [REDACTED] stated that the petitioner capitalized on the beneficiary's research by developing "ultra-high resolution magnetic immersion lens ESEM, a technique that implements ESEM charge control under the conditions needed for secondary electron imaging with nanometer resolution" and that such developments amount to "timely advances in state-of-the-art techniques." The June 8, 2006 letter from [REDACTED], professor at the University of Reims, states that the beneficiary "made outstanding contributions to the field of [ESEM], . . . [by] develop[ing] models of the complex physical processes that take place when materials are probed by ESEM. . . . [T]he understanding gained from the science has helped understand information contained in ESEM images, and to improve ESEM detectors."

These letters do not provide specific examples of how the beneficiary's contributions have influenced the field of electron microscopy nor do any of them demonstrate how the beneficiary's contributions amount to contributions of major significance to the field as a whole. Even though the second group of letters were written from scientists with whom the beneficiary has not worked directly, the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

The March 31, 2008 letter from ██████ states that the beneficiary's contribution to the field is evidenced by "his impressive publication record" and the invitations issued for him to present at conferences and symposia. The letter from ██████ agrees with ██████ conclusions. While the beneficiary's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of major significance to the field as a whole. The beneficiary's field, like most science, is research-driven, and there would be little point in publishing research that did not add to the general pool of knowledge 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 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 beneficiary's work.

The petitioner also submitted evidence that patents had been applied for based on the beneficiary's work. A patent is not necessarily evidence of a track record of success and 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, (Commr. 1998). Rather, the **significance of the innovation must be determined on a case-by-case basis.** *Id.* ██████ does not indicate that they have licensed or marketed the beneficiary's patented device. The impact of the device on the scientific community is not documented in the record. In addition, the letter from ██████ states that one of the patent applications was abandoned "due to the discovery of related prior art that would have made patent enforcement impractical."

Accordingly, the petitioner failed to establish that the beneficiary meets this criterion.

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

Frequent publication of research findings is inherent to success as an established scientist and does not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent experts or other proof that the alien's publications have had a significant impact in his field. The petitioner submitted the following articles authored by the beneficiary: "Electron flux controlled switching between electron beam induced etching and deposition;" "Field-enhanced secondary electron emission: imaging defect distributions in dielectrics;" "Secondary electron imaging of nonconductors with nanometer resolution," published in the 2006 *Applied Physics Letters*; "Two-stage gas amplifier for ultrahigh resolution

low vacuum scanning electron microscopy,” published in the 2006 *Review of Scientific Instruments*; “Secondary electron contrast in low-vacuum/environmental scanning electron microscopy of dielectrics” published in the 2005 *Applied Physics Reviews*; “Charging Processes in Low Vacuum Scanning Electron Microscopy,” published in the 2004 *Microscopy and Microanalysis*; “Interpretation of secondary electron images obtained using a low vacuum SEM,” published in the 2003 *Ultramicroscopy*; “Cathodoluminescence Efficiency Dependence on Excitation Density in n-Type Gallium Nitride,” published in the 2003 *Microscopy and Microanalysis*; “Quantification of electron-ion recombination in an electron-beam-irradiated gas capacitor,” published in the 2002 *Journal of Physics*; “On the role of electron-ion recombination in low vacuum scanning electron microscopy,” published in the 2002 *Journal of Microscopy*; “X-ray spectrometry investigation of electrical isolation in GaN,” published in the 2002 *Journal of Applied Physics*; “Depth-resolved cathodoluminescence microanalysis of near-edge emission in III-nitride thin films,” published in the 2001 *Journal of Applied Physics*; “Effects of excitation density on cathodoluminescence from GaN” and “Cathodoluminescence depth profiling of ion-implanted GaN,” published in the 2001 *Applied Physics Letters*; “Imaging charge trap distributions in GaN using environmental scanning electron microscopy” and “Nanoindentation of epitaxial GaN films,” published in the 2000 *Applied Physics Letters*; “The Effects of Space Charge on Contrast in Images Obtained Using the Environmental Scanning Electron Microscope” and “The Role of Induced Contrast in Images Obtained Using the Environmental Scanning Electron Microscope,” published in the 2000 *Scanning*; “Depth profiling of GaN by cathodoluminescence microanalysis,” “Direct experimental evidence for the role of oxygen in the luminescent properties of GaN,” “Detection of Cr impurities in GaN by room temperature cathodoluminescence spectroscopy,” and “Depletion layer imaging using a gaseous secondary electron detector in an environmental scanning electron microscope,” published in the 1999 *Applied Physics Letters*; “Electron Beam Induced Impurity Electro-Migration in Unintentionally Doped GaN,” published in the 1999 *MRS Internet Journal of Nitride Semiconductor Research*; and “Monte Carlo Modeling of Cathodoluminescence Generation Using Electron Energy Loss Curves,” published in the 1998 *Scanning*.

With the original petition, the petitioner submitted a self-generated list of 155 articles citing the beneficiary’s work. From the ISI Web of Knowledge list submitted in response to the RFE, the petitioner presented evidence that the beneficiary’s articles have been cited 367 times. From that list, we are unable to determine how many independent citations were made to the beneficiary’s work as opposed to citations in one of the beneficiary’s articles to others authored by him, however, it seems as if the vast majority of citations were made by independent articles. When compared to the beneficiary’s references, however, the beneficiary’s record pales in comparison: [REDACTED] has authored “more than 150 referred articles (in International Journals), [REDACTED]” “coauthored over 125 papers,” and [REDACTED] has “published numerous (over eighty) articles in prime international journals in areas of physics, materials science, and nanotechnology.” From the information submitted about his recommenders, it seems as if the top of the profession is at least one step above the current position of the beneficiary.

To demonstrate the standing of the journals that published the beneficiary’s articles, the petitioner submitted the following letters: the letter submitted from [REDACTED], editor of *Nature Materials* states that the publication “is the leading journal in materials science.” The material submitted regarding *Microscopy and Microanalysis* indicates that it is “an [i]nternational [j]ournal for the [b]iological and [p]hysical [s]ciences.”

letter states that “applied physics and microscopy journals such as Applied Physics Letters, Nano Letters, Journal of Applied Physics, Physical Review B, Nanotechnology, Ultramicroscopy, Journal of Microscopy and Scanning . . . vets all submissions in a rigorous peer-review processes in which the editors solicit experts to anonymously review and asses [sic] each paper. . . . The criteria of originality, timeliness and impact on the field of study are particularly stringent in the journals Applied Physics Letters and Nano Letters.” The letter from states that *Nature Materials, Nano Letters, Applied Physics Letters, Journal of Applied Physics, Journal of Physics D, Physical Review B, Review of Scientific Instruments, Ultramicroscopy, Journal of Microscopy and Scanning . . .* are prestigious international journals that publish original papers submitted by academics and industry researchers from around the globe.”

While the beneficiary has published scholarly articles in professional publications, and therefore meets this criterion, his publication record does not support a finding that he is one of the small percentage at the top of his field or that he has earned sustained national or international acclaim as a scientist.

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

In order to meet this criterion, a petitioner must establish the nature of the alien’s role within the entire organization or establishment and the reputation of the organization or establishment. The information submitted about the petitioner indicates that it generated \$592.5 million in net sales in 2007 and a growth rate of 23.6% during that year. The letter from states that the petitioner “designs, manufactures, markets and services systems that are used in research, development and manufacturing of objects on the nanoscale.” The petitioner presented no other evidence of its reputation such as rankings of laboratories, news articles about the company, or other indicia of its reputation. A statement concerning earnings and growth is insufficient to establish a business’s reputation or to show that it is perceived by others within the industry as an organization with a distinguished reputation.

The letter from states that the beneficiary has made important and key contributions to certain of the petitioner’s projects. The letter from states that the beneficiary made certain discoveries for the petitioner leading to five patent applications and that he “presently manages and is the technical leader of five university ESEM research projects funded by [the petitioner].” notes that the beneficiary’s patents and papers are all “coauthored by numerous individuals” including himself. There is no evidence demonstrating how the beneficiary’s role differentiated him from the other researchers with the petitioner, let alone more senior management (including ). Although and the petitioner clearly value the beneficiary’s skills and contributions, no evidence was presented to show that the beneficiary performs in a leading or critical role for the petitioner.

Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his field. The record in this case does not establish that the beneficiary had achieved sustained national or international acclaim as a researcher placing him at the very top of his field at the time of filing. He is thus ineligible for classification as an alien

with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.