



U.S. Citizenship
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FILE: [REDACTED]
LIN 07 161 52402

Office: NEBRASKA SERVICE CENTER

Date: MAR 04 2009

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, 60898-99 (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, filed on May 15, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a Rock Mechanics Scientist. 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to 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.

The petitioner submitted a January 31, 1985 certificate from the Federal Minister of Economic Cooperation for Germany certifying that he "successfully completed" vocational and advanced training in the field of mining engineering. The petitioner has not established that this certificate was presented for excellence in the field rather than fulfillment of his training requirements. Successful completion of a training course is not tantamount to the petitioner's receipt of a nationally or internationally recognized prize or award for excellence in mining engineering.

The petitioner submitted a November 11, 2000 Certificate of Commendation from his employer, the Korea Institute of Energy Research (KIER), recognizing him "for his contribution to this Institute with his creativity, diligence, and sincerity, thus being industrious in his work, and especially for his great contribution as a person in long service." This award from the petitioner's employer reflects institutional recognition rather than national or international recognition for excellence in the field.

The petitioner submitted two "Award Conferment Verifications" from the Ministry of Commerce, Industry and Energy of the Republic of Korea. The first states that the petitioner received a Ministry of Industry Minister's Award, issuance number 43424, on December 31, 1998 for merit in "Mining Safety Management and Mine Damage Prevention." The second states that the petitioner received a Ministry of Energy Minister's Award, issuance number 3281, on March 16, 1990 for merit in the "Mining Mechanization Industry." In response to the director's request for evidence and again on appeal, the petitioner submitted information regarding the criteria for these awards. The petitioner's evidence included a March 23, 2007 letter discussing the Minister's Award from the Ministry of Commerce, Industry and Energy. This letter does not provide a name, address, telephone number, or any other information through which its author can be contacted. The petitioner also submitted documents entitled "Guidelines on the Business Awards by the Minister" and the "Government Prize

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

and Award Administration Guide.” The “Guidelines on the Business Awards by the Minister” list the “Conditions of Qualification” as follows:

1. Person who has served for more than 5 y[e]ars at the field which is applied.
2. Person who has participated in the core business of the field achieved and merited, also accompanied with patriotic sentiment of nation and sense of duty, and become an exemplary to other both in public and private life.

We note the issuance numbers of the petitioner’s Minister Awards, [REDACTED] and [REDACTED] suggesting multiple recipients. Awards regularly bestowed upon a large number of recipients are not consistent with being in “that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). Further, the petitioner has not submitted evidence showing that his award commanded a significant level of recognition beyond the presenting agencies. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* and it is his burden to establish every element of this criterion. For example, there is no evidence demonstrating that recipients of the Ministers Award were announced in professional journals or in some other manner consistent with sustained national or international acclaim at the very top his field. In this case, the evidence submitted by the petitioner does not establish that his Minister Awards constitute nationally or internationally recognized awards for excellence in his field of endeavor.

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.

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

The petitioner submitted evidence of several commissions and committees to which he was appointed, but the record does not include evidence of the official admission requirements for these organizations.

In response to the director’s request for evidence, the petitioner submitted documentation of his membership in the Korean Society for Geosystem Engineering (KSGE) and the Korean Society for Rock Mechanics (KSRM). The petitioner also submitted the societies’ articles governing their membership requirements.

Article 2 of the KSGE's articles states: "Individual members shall consist of those who are interested in the Korean Society for Geosystem Engineering and have professionally excelled in a scientific field approved by the Board of Directors." We cannot conclude that expressing interest in the Society and excelling professionally in one's field are tantamount to outstanding achievements.

Article 1, Section 6, "Member's Qualifications" of the KSRM's articles states: "Individual member: A member who has earned a Ph.D. in a related field, and has exhibited excellence in a base rock course." We cannot conclude that earning an advanced degree and exhibiting excellence in a base rock course constitute outstanding achievements.

In this case, there is no evidence showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, 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 did not initially claim to meet or submit evidence relating to this regulatory criterion. On May 17, 2007, the director issued a notice requesting evidence for this criterion and the other regulatory criteria. The petitioner's response to the director's request for evidence did not address the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the petitioner claims to meet and submits evidence addressing this regulatory criterion. For example, the petitioner's appellate submission includes evidence showing that he served as an editorial director for the *Journal of the Korean Society for Geosystem Engineering* and as an independent Ph.D. examiner for various universities. With regard to the evidence and arguments relating to the petitioner's participation as a judge of the work of others, he was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence for this criterion and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Accordingly, the petitioner has not established 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 five recommendation letters in support of his petition. These letters describe the petitioner's qualifications as a scientist, his activities in the field, and the general importance of research in the area of rock mechanics, but they fail to establish that specific work attributable to him represents original contributions of major significance in rock mechanics or the mining industry.

██████████, Director, Geoscience Engineering Division, Korean Institute of Geoscience and Mineral Resources (KIGAM), formerly the KIER, states:

I have . . . had the opportunity to work with [the petitioner] here at KIGAM where he has served as a Principal Researcher. His dedication to the field of Rock Mechanics has yielded phenomenal findings and innovative safety measures used both during mine excavation and tunnel rehabilitation. His abilities to work with different sedimentary materials and to make real world predictions as to their behavior under stress has propelled him to the very top of this very competitive and important field.

* * *

He has held the position of the Principal Researcher at the Korean Institute of Geoscience and Mineral Resources (KIGAM) since 1980 through the present date. He has established himself through meticulous research and ground breaking advances in the field of rock mechanics for over twenty years. . . . We at KIGAM have benefited tremendously from having such an extraordinary scientist on our staff.

██████████ letter does not specifically identify the petitioner's "ground breaking advances in the field of rock mechanics." While the petitioner's work 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. Any Ph.D. thesis, technical report, or published research, in order to be accepted for graduation, publication, presentation, or funding, must offer new and useful information to the pool of knowledge. It does not follow that every scientist who performs original work that adds to the general pool of knowledge for improving mining safety measures or rehabilitation methodologies has inherently made a contribution of major significance in the field.

██████████, President, KSRM, states:

[The petitioner] possesses a unique combination of skill and experience that will certainly benefit the United States. [The petitioner] is an extremely gifted and respected scientist. His work on tunneling and rehabilitation methods for large tunnels have been published and relied upon extensively worldwide. He is an intuitive thinker and researcher in the field. He has the ability to combine all of the required sciences involved in rock mechanics and develop solutions to real-world problems that face the mining and transportation industries worldwide.

██████████ letter does not specifically identify the petitioner's findings that "have been published and relied upon extensively worldwide." Regarding the petitioner's published findings, his appellate submission includes documentation from the Department of Geoenvironment System Engineering at Hanyang University, the Department of Mineral and Mining Engineering at Dong-A University, and the Department of Mineral and Energy Resources Engineering at Semyung University requesting permission to utilize the petitioner's published work in their course material and course textbooks. While this documentation shows that the petitioner's work has attracted the attention of these three

universities, there is no evidence demonstrating the actual incorporation of the petitioner's articles into their course material or their published course textbooks as of the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Nevertheless, we cannot conclude that these requests demonstrate that the petitioner's published findings were contributions of major significance in his field.

The petitioner's published work is far more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will further address the petitioner's published work and the attention it has garnered under the next criterion.

██████████ Vice President, KSGE, states:

[The petitioner's] work has provided modern construction companies the ability to safely excavate mine shafts and also to repair old tunnels that had created [sic] without the proper safety measures in place. His efforts have resulted in countless lives saved and millions of dollars in labor costs averted. Mining disasters have been a regular occurrence throughout history. It is through the work and ability of scientists like [the petitioner] that these disasters can be minimized if not avoided entirely.

██████████ Professor, Department of Energy and Resources Engineering, Dong-A University, states:

[The petitioner's] educational background and over twenty years of professional experience in the field has helped him to become of [sic] the very finest scientists in the world in the field of Rock Mechanics. He is truly at the top of his profession. He has achieved every major professional accomplishment a scientist could achieve in the field. He is published, decorated, and has held important positions in ground breaking research projects.

██████████ Professor, Department of Geosystem Engineering, Kangwon National University, states: "[The petitioner's] experiences have been as the Master of Engineering Teams, and has trained numerous technicians in the development of mines throughout Korea and Germany. . . . In my experience, very few people possess the background and skill [the petitioner] possesses . . ."

We note that the preceding five letters contain several duplicate passages. It is not clear who is the actual author of the duplicative text in these letters of support, but it is highly improbable that these five individuals independently formulated the exact same wording. While it is acknowledged that these individuals have lent their support to this petition, it remains that they did not independently prepare significant portions of their letters. As such, we find the duplicative statements to be of

limited probative value. Nevertheless, the letters of recommendation submitted by the petitioner do not specify exactly what his original contributions to his field and the mining industry have been, nor do they provide a substantive explanation indicating how any such contributions were of major significance in his 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. While the petitioner has earned the admiration of those offering letters of support, the documentation submitted by him does not establish that his work has had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other rock mechanics scientists nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 petitioner'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 scientist who has sustained national or international acclaim. Without evidence showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of contributions of major significance, we cannot conclude that he 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 evidence of his authorship of scholarly material in publications such as *Journal of the Korean Society for Geosystem Engineering* and for presentation at the Geological Society of America's Annual Meeting (2003) and the Joint Assembly of the American Geophysical Society (2006). The petitioner also submitted evidence of several reports and studies he authored as a principal researcher at the KIGAM. The director found that the record lacked evidence showing that the petitioner's work has been independently cited or has otherwise impacted his field.

On appeal, the petitioner submits evidence showing that his body of work was cited an aggregate of two times. One of these citations was a self-citation by one of the petitioner's coauthors. As discussed, the petitioner's appellate submission includes documentation from the Department of Geoenvironment System Engineering at Hanyang University, the Department of Mineral and Mining Engineering at Dong-A University, and the Department of Mineral and Energy Resources Engineering at Semyung University requesting permission to utilize the petitioner's published work in their course material and course textbooks. The preceding documentation, however, is not

sufficient to demonstrate that the petitioner's articles have attracted a level of interest in his field consistent with sustained national or international acclaim.

We concur with the director's findings for this criterion and take administrative notice of the fact that authoring scholarly articles is inherent to scientific research. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few or no citations of an alien's work may indicate that his work has gone largely unnoticed by his field. In this case, there is no evidence showing that the petitioner's articles were frequently cited, or that they appeared in major publications or other major media in a manner consistent with sustained national or international acclaim. As such, the petitioner has not established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner argues that his presentations at the Geological Society of America's Annual Meeting (2003) and the Joint Assembly of the American Geophysical Society (2006) meet this regulatory criterion. The petitioner's field, however, is not in the arts. The plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for researchers such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's conference presentations are more relevant to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi) and have already been addressed there. Nevertheless, in the fields of science and engineering, acclaim is generally not established by the mere act of presenting one's work at a conference or symposium along with scores of other participants. Nothing in the record indicates that the presentation of one's work is unusual in the petitioner's field or that invitation to present at the venues where the petitioner spoke was a privilege extended to only a few top scientists. Many professional fields regularly hold conferences and symposia to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field at the national or international level.

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

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

We withdraw the director's finding that the petitioner meets this regulatory criterion. In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The letter from [REDACTED] states that petitioner has held the position of Principal Researcher at the KIGAM since 1980. The petitioner submitted information about the KIGAM printed from its internet site, but this self-serving material is not adequate to demonstrate that the institute has a distinguished reputation. Further, while [REDACTED] states that the petitioner has performed important work in the field of rock mechanics, the record does not establish that his role in the Geotechnical Engineering Division was leading or critical for the KIGAM. There is no evidence demonstrating how the petitioner's role differentiated him from the other principal researchers in the various divisions of the KIGAM, let alone its more senior leadership (such as its directors). The documentation submitted by the petitioner does not establish that he was responsible for his employer's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). 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. 8 C.F.R. § 204.5(h)(2).

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record does not include such evidence.

Review of the record does not establish that the petitioner has distinguished himself 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Nor is there clear evidence showing that the petitioner will continue to work in his area of expertise in the United States. 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 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.