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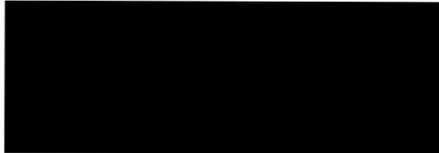
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



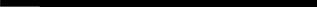
**U.S. Citizenship
and Immigration
Services**

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FILE: LIN 07 213 54131 Office: NEBRASKA SERVICE CENTER Date: **OCT 05 2009**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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).



Perry Rhew
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" 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. For the reasons discussed below, while the director relied on some boiler-plate language that does not necessarily apply to the petitioner's occupation, we uphold the director's ultimate conclusion that the petitioner has not established his eligibility for the classification sought.

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.

On appeal, counsel asserts that the requirements set forth at section 203(b)(1)(A)(ii) and (iii) of the Act are not at issue. The regulation at 8 C.F.R. § 204.5(h)(5) provides:

No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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 sole evidence that the petitioner seeks to enter the United States to continue work in the area of extraordinary ability is a statement from the petitioner affirming that he plans to continue to work in his field of mathematics education once he becomes a lawful permanent resident. This statement does not contain the detail required under 8 C.F.R. § 204.5(h)(5). While not raised 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).

In addition, counsel argues at length about the importance of the petitioner's field and the shortage of workers in the United States working in this specialty. The substantial prospective benefit is, in general, apparent from an alien's acclaim as an individual of extraordinary ability and intent to work in the field of extraordinary ability. Thus, the regulations provide no specific evidentiary requirements relating to section 203(b)(1)(A)(iii) of the Act. We will not presume a substantial prospective benefit, however, from the importance of the field and a shortage of workers in that field. Significantly, the issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 (Comm'r. 1998).

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 in mathematics education. On appeal, counsel asserts that the director erred in considering the petitioner's field to be pure mathematics research rather than limited to mathematics education. This assertion is somewhat disingenuous given that some of the contributions claimed are pure mathematical contributions. Moreover, the petitioner cannot narrow his field to such a specialized niche that comparison among the small number of individuals in that niche is meaningless. At issue is whether the petitioner enjoys national or international acclaim. While we will consider the evidence below in the context of the petitioner's specialization, we are not persuaded that the director's alleged mischaracterization of the petitioner's field prejudiced the outcome.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

Initially and in response to the director's request for additional evidence, counsel asserted that the petitioner's selection for a Fulbright Grant in 1998 under the Visiting Scholar Program serves to meet this criterion. The petitioner's proposal for the grant acknowledges his "limited expertise in the teaching of mathematics using computer technology" and provides the following objectives:

1. Acquire the necessary expertise to effectively use the software MacMath, developed at Cornell, where the petitioner proposed to perform his Fulbright-funded research;
2. Study the impact of visualization and even multimedia on the formation of some mathematical concepts;
3. Study the ability of moving some concepts from the graduate level to the beginning of differential equations;
4. Take classes to learn about any new trends in differential equations;
5. Serve his current employer, the Lebanese American University (LAU) and its engineering program in particular using the technological expertise acquired at Cornell University;
6. Serve LAU by introducing technology in the teaching of most of its mathematics courses, in particular, the calculus series.

In her letter to the Fulbright Scholar Committee, ██████████, a senior lecturer at Cornell, explains that the petitioner previously participated in Cornell's National Science Foundation Workshop on Teaching Differential Equations with Computer Experiments. ██████████ continues that the petitioner applied those techniques in Lebanon but "has not had a chance to keep up with current events and to extend those methods." Thus, ██████████ notes the petitioner's interest in following up on recent developments and contributing to future research and reports in this area. Thus, it is clear that the

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

grant's purpose was to fund future research and training opportunities for the petitioner rather than recognize his past accomplishments.

The Fulbright Program Fact Sheet indicates that the program awards 4,200 grants per year and chooses participants based on their leadership "potential." The Visiting Scholar and the Scholar in Residence Programs award grants to foreign scholars to lecture or conduct postdoctoral research in the United States. Nearly 800 scholars come to the United States under these programs.

The director's October 9, 2008 request for additional evidence advised that recognition not sought by or accessible to veterans in the field cannot serve to meet this criterion and requested evidence establishing the significance of and selection criteria for any awards the petitioner may have won.

In response, the petitioner submitted a letter from [REDACTED] Cultural Affairs Office at the U.S. Embassy in Beirut confirming that Fulbright Grants are awarded only to "extremely strong candidates." The petitioner also submitted a document entitled "What It Means To Be A 'Fulbrighter.'" This document indicates that grants are awarded based on academic and/or professional excellence and leadership potential. While the petitioner also submitted materials about the accomplishments of former Fulbright scholars, these subsequent accomplishments do not establish that the Fulbright Grant itself is a nationally or internationally recognized award or prize for excellence rather than a competitive grant to support future research.

The director concluded that the Fulbright Grant could not serve to meet this criterion as the most experienced and renowned members of the field do not compete for these grants. Counsel does not challenge this conclusion on appeal. We concur with the director that a grant designed to support research in mathematics education based on the recipient's desire to catch up with recent developments in this area cannot be viewed as an award or prize for excellence in mathematics education research. Counsel does not challenge the director's conclusion that the most experienced and renowned members of the field do not aspire to win Fulbright Grants and the record supports the director's conclusion.

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 director concluded that the petitioner's participation in the widespread peer review process could not serve to meet this criterion. On appeal, counsel notes that the petitioner provided evidence relating to this criterion beyond peer review, specifically evidence of the conferences the petitioner helped organize.

Some of the petitioner's review and organizing responsibilities were clearly internal to LAU. Internal review at the petitioner's own institution is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *Kazarian v. USCIS*, __ F. 3d __, 2009 WL

2836453, *5 (9th Cir. 2009). Moreover, we concur with the director that manuscript review for a journal is a widespread process that is not necessarily indicative of or consistent with national or international acclaim.

Nevertheless, the record contains evidence beyond evidence of internal review and participation in the widespread peer review process. For example, the petitioner's service as a member of the Scientific Committee for a conference sponsored by the Lebanese Commission of the United Nations Educational, Scientific and Cultural Office (UNESCO) and a conference in Hungary is more consistent with the petitioner's recognition beyond his own institution and colleagues. Given the evidence *in the aggregate*, we are satisfied 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.

Initially, counsel asserted that a small number of citations of the petitioner's articles and data credited to the petitioner in a text book serve to establish that the petitioner meets this criterion. The petitioner has also submitted letters from his colleagues.

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 mathematics education, it can be expected that the results would have already been adopted or at least under consideration for adoption in math curricula at independent institutions. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). We will not presume that evidence relating to or even meeting the scholarly articles criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. *See also Kazarian*, 2009 WL 2836453 at *6 (publications and presentations are insufficient absent evidence that they constitute contributions of *major significance*).

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

165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim. Vague, solicited letters from colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian*, 2009 WL 2836453 at *5.

██████████ referring to the petitioner's work at Cornell University, notes that the petitioner published novel work regarding the classification of linear iterative systems on the boundaries where behavior changes, which has no apparent relation to mathematics *education*. Regardless, the record lacks evidence of the impact of this result, such as widespread citation or letters from independent mathematicians who have utilized this result.

Regarding mathematics education, ██████████ asserts that the petitioner's Fulbright sponsored work resulted in two published papers in mathematics education. ██████████ also affirms that the two conferences the petitioner helped organize in Beirut "have been very successful in providing dialogue and dissemination throughout the Mideast." Finally, ██████████ confirms the importance of the petitioner's critique of her coauthored text, which has been successfully adopted by a number of institutions. While we do not doubt ██████████ expertise and sincere support of the petitioner, her letter does not establish the petitioner's influence beyond his circle of colleagues.

The record also contains a letter from ██████████ a professor Emeritus at California Polytechnic University where the petitioner spent his sabbatical in 2005. ██████████ asserts that the petitioner is a "distinguished teacher and role model for the many elementary and secondary mathematics teachers in the Arab world who have been his students or affected by his astute curriculum decisions at LAU." The record, however, does not include curricula guidelines outside LAU adopting the petitioner's recommendations. The fact that students have completed his courses does not distinguish him from other faculty. The record contains no objective evidence of his impact on curricula such as formal standards crediting him as an influence.

In a second letter, ██████████ discusses the petitioner's formula for generalized eigenvectors for linear 2x2 iterative systems of equations. ██████████ explains that these systems have many applications and concludes that the petitioner's result "has been useful almost from the moment [the petitioner] discovered it." ██████████ notes that the work was referenced in the text book she coauthored with Dr. ██████████. This formula does not appear to be a contribution to mathematics education, the specialty to

which counsel has requested that we narrow our inquiry. Regardless, the record contains no letters from independent sources who have applied this formula or other objective evidence of its impact in the field.

██████████, a professor at the University of Chichester in the United Kingdom, asserts that he knows the petitioner from leading workshops in Beirut. While ██████████ praises the petitioner's presentations he does not explain how the petitioner's work has had a major influence in the field.

The remaining letters constitute general praise from the petitioner's immediate circle of colleagues. These letters cannot establish specific contributions that have had a major impact in the field.

While the record includes numerous attestations of the potential impact of the petitioner's work and the importance of his field, none of the petitioner's references provide examples of how the petitioner's work is already influencing the field. While the evidence demonstrates that the petitioner is a talented researcher in mathematics education with potential, it falls short of establishing that the petitioner had already made contributions of major significance. Thus, the petitioner has not established 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.

As of the date of filing, the petitioner had authored eight published articles, five of which relate to mathematics education rather than pure mathematics. The petitioner has also presented his work at nine conferences. All of his presentations relate to mathematics education.

The petitioner has served on the faculty of LAU for several years. The Department of Labor's Occupational Outlook Handbook, 2008-2009 (accessed at www.bls.gov/oco on September 24, 2009 and incorporated into the record of proceedings), provides information about the nature of employment as a postsecondary teacher (professor) and the requirements for such a position. See www.bls.gov/oco/ocos066.htm. The handbook expressly states that faculty members are pressured to perform research and publish their work and that the professor's research record is a consideration for tenure. Moreover, the doctoral programs training students for faculty positions require a dissertation, or written report on original research. *Id.* This information reveals that original published research is expected of a university professor and does not necessarily distinguish the author from his fellow faculty members.

While we acknowledge that we must avoid requiring acclaim within a given criterion, it is not a circular approach to require some evidence of the community's reaction to the petitioner's published articles where publication is expected of those merely completing training for the occupation. *Kazarian*, 2009 WL 2836453 at *6.

The petitioner submitted six articles that cite various articles by the petitioner. The director did not specifically address this criterion, stating that modest citation may not necessarily be indicative of the petitioner's influence in the field and noting that publication alone is not automatic evidence of a contribution of major significance. On appeal, counsel asserts that the petitioner's work stands out in the field of mathematics education.

The record reflects that there are entire journals and conferences devoted to mathematics or engineering education. While the petitioner has demonstrated some international exposure through his articles and conference presentations, given the significant literature in this area, we are not persuaded that six citations are indicative of or consistent with national or international acclaim. Even if we were to conclude that publication alone can serve to meet this criterion, and we do not, for the reasons discussed above and below, the petitioner would still not have established that he meets at least three criteria.

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

The director did not address this criterion in his decision and counsel does not challenge this omission on appeal. We simply note that in response to the director's request for additional evidence, the petitioner submitted an October 27, 2008 letter appointing the petitioner as the Chairperson, Computer Science and Mathematics, at LAU for the 2008-2009 academic year. This letter postdates 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*, 4 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

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

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a researcher in mathematics education 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 mathematics education researcher, 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.