

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

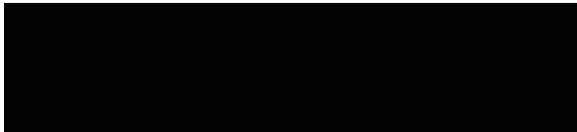
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



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

**PUBLIC COPY**

B2



FILE: [REDACTED]  
LIN 08 228 50236

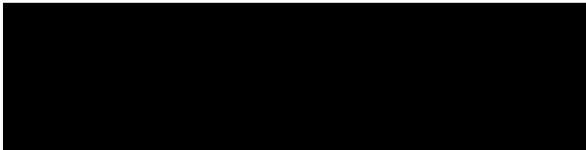
Office: NEBRASKA SERVICE CENTER

Date: OCT 06 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:



**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*  
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” 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 additional evidence. While we withdraw the director’s concerns regarding the petitioner’s contributions and scholarly articles, we uphold the director’s ultimate conclusion that the petitioner has not established her eligibility for the exclusive classification sought. We reach this conclusion based on a consideration of the evidence under the individual regulatory criteria and in the aggregate.

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

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

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below.

It should be reiterated, however, that the petitioner must show that she 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 postdoctoral researcher. 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, she claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

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

While the petitioner has never raised this criterion and the director did not address it, the record contains evidence that the petitioner received a Southeast University Excellent Graduate Award in 1992, a scholarship from the Chinese Vacuum Society in 1994, a Certificate of Excellent Master Degree Thesis Award from Southeast University in May 1995 and a Ph.D. scholarship from a German-Chinese joint venture in 1998.

Competition for scholarships and student awards is limited to other students. Experienced experts in the field are not seeking scholarships or student awards. Thus, they cannot be considered nationally or internationally recognized awards or prizes for excellence in the field such that they establish that the petitioner is one of the very few at the top of her field. In light of the above, the petitioner has not established that she meets this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner submitted evidence that she is a senior member of the Institute of Electrical and Electronics Engineers (IEEE). The letter indicates that only approximately eight percent of members are senior members and that this level of membership requires experience reflecting professional maturity and significant professional achievements. While the petitioner submitted information taken from the institute's website, [www.ieee.org](http://www.ieee.org), indicating that senior member is the highest grade for which a member may *apply*, according to the IEEE's website, which is part of the record of proceeding through reference by the petitioner, IEEE also *invites* fellow members in recognition of unusual distinction in the profession. Fellowships are limited to individuals of "outstanding and extraordinary qualifications and experience." See [www.ieee.org/web/membership/grade\\_elevation/grade\\_elevation.html](http://www.ieee.org/web/membership/grade_elevation/grade_elevation.html) (accessed October 1, 2009 and incorporated into the record of proceeding).

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

The petitioner also submitted evidence of her membership in Sigma Xi. The petitioner references the honor society's website, [www.sigmaxi.org](http://www.sigmaxi.org), for the proposition that Sigma Xi requires "noteworthy achievements in research." According to this website, which is part of the record of proceeding through reference by the petitioner, noteworthy achievements are evidenced by first authorship of two peer reviewed articles, patents, written reports, a thesis or dissertation. See <https://www.sigmaxi.org/member/join/qualification.html> (accessed October 1, 2009 and incorporated into the record of proceeding).

Finally, the petitioner submitted evidence of her membership in the American Physical Society (APS). [REDACTED], the society's membership representative, affirms the petitioner's membership and asserts that APS membership "consists of outstanding scientists who have the very top-level expertise and remarkable achievements in their field, as judged by recognized national and international experts." She does not explicitly state that APS requires such achievements for membership and relies on national and international experts to judge eligibility for membership. The petitioner references the society's website, [www.aps.org](http://www.aps.org), for the proposition that APS is the world's second largest organizations of physicists, which is not consistent with an exclusive association. According to the society's bylaws as posted on its website, which is part of the record through reference by the petitioner, membership in APS requires only the payment of the requisite dues, which is not an outstanding achievement. See [www.aps.org/about/governance/bylaws.cfm](http://www.aps.org/about/governance/bylaws.cfm) (accessed October 1, 2009 and incorporated into the record of proceeding).

The petitioner's response to the director's request for additional evidence did not address this criterion. The director concluded that the petitioner had not demonstrated that any of the above societies require outstanding achievements of their members. Counsel does not challenge this conclusion on appeal and we concur with the director. Experience, maturity, undefined significant professional achievements and publication of two first-authored articles, one of which could be a dissertation or thesis, are not outstanding achievements.

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

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

Initially, the petitioner asserted that she meets this criterion based on an Internet article covering the petitioner's published work, a journal cover featuring her work reported in that journal and citations of her work. The petitioner's response to the director's request for additional evidence does not address this criterion. The director noted that the Internet article, available at [nanotechweb.org](http://nanotechweb.org), did not mention the petitioner by name and concluded that the petitioner had not demonstrated that this article appeared in a professional or major trade publication or other major media. Counsel does not challenge this conclusion on appeal.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the petitioner relating to her work. Compare 8 C.F.R. § 204.5(i)(3)(i)(C) which only requires published material about the alien’s work. As the article at nanotechweb.org does not even mention the petitioner by name, it cannot be considered to be “about” the petitioner. Moreover, while Internet sites are technically accessible nationally and even internationally, it cannot be credibly asserted that every Internet site has the same degree of national or international influence. To ignore this reality would be to render the “major media” requirement meaningless. Anyone can create a website and post articles. The mere act of posting an article online does not transform what is otherwise an obscure publication into major media. The record lacks evidence that nanotechweb.org routinely attracts national or international attention.

We acknowledge that *Applied Optics* featured the petitioner’s work on its cover of an issue containing the petitioner’s article. We are not persuaded that the act of featuring her work on the cover transforms what is otherwise an article by the petitioner into published material about her.

Finally, the articles which cite the petitioner’s work are about the authors’ own work or, in the case of review articles, recent trends in the field. They are not articles about the petitioner relating to her work. Thus, while citations are relevant and will be considered below as they relate to the significance of the petitioner’s contributions and scholarly articles, they cannot serve to meet this criterion.

In light of the above, the petitioner has not established that she 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 a letter from [REDACTED] of *Nanotechnology*, confirming that the petitioner has reviewed seven manuscripts for the journal since 2007. The petitioner also submitted requests for reviews from this journal and the *Journal of Physics D: Applied Physics*, which ask that the petitioner recommend a colleague if she is unable to complete the review and permit the petitioner to delegate the assignment to someone else. In addition, the petitioner submitted some of her reviews.

In response to the director’s request for additional evidence, the petitioner submitted a letter from Dr. [REDACTED] of *Nanotechnology* affirming the journal’s international prestige, the importance of peer review by referees with an international reputation and that the petitioner was selected because of her unique technical expertise and research achievements. [REDACTED] does not indicate that the journal officially boasts a small group of elite reviewers who are credited by name in the journal or on the journal’s website. We note that the actual requests sent to the petitioner permit her to recommend an alternate reviewer or delegate the review but do not suggest that the alternate or delegated reviewer must enjoy an international reputation.

The director concluded that the petitioner's participation in the peer review process was consistent with her education and experience and could not serve to meet this criterion. On appeal, counsel reiterates **the comments of** [REDACTED]. Counsel also asserts that the AAO has consistently held that serving as a referee for a "good number of research papers" is sufficient to meet this criterion, although counsel acknowledges that these are not precedent decisions. Counsel submits a favorable decision issued by the AAO where the alien not only served as a peer reviewer but had also reviewed a research grant application for a federal government body. Regardless, as counsel acknowledges, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.<sup>2</sup> While we do not question [REDACTED] sincerity, we cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field and, by itself, is not indicative of or consistent with sustained national or international acclaim. Without evidence that sets the petitioner apart from others in her field, such as evidence that she has reviewed manuscripts for a journal that credits a small, elite group of referees, 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 director concluded that the petitioner had not provided objective evidence to meet this criterion, noting, among other things, the lack of published material in major trade journals or other major media discussing the petitioner's role in her research projects and her contributions. Published material about the petitioner, however, is covered under a separate criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii) and discussed above. While published material in major media discussing the petitioner's contributions would certainly also be considered under the contributions criterion, set forth at 8 C.F.R. § 204.5(h)(3)(v), the petitioner is not precluded from meeting the contributions criterion because she does not meet the published material criterion.

The petitioner's field, like most science, is research-driven, and we concur with the director that 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

---

<sup>2</sup> *Accord Yasar v. DHS*, 2006 WL 778623 \*9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 \*11 (S.D. Tex. Aug. 26, 2005). While we acknowledge that a district court's decision is not binding precedent, the decision underscores the fact that USCIS's interpretation is reasonable.

reproduced and confirmed by other experts and applied in their work. Otherwise, it is difficult to gauge the impact of the petitioner's work.

The regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). 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 v. USCIS*, 2009 WL 2836453, \*6 (9<sup>th</sup> Cir. 2009) (publications and presentations are insufficient absent evidence that they constitute contributions of *major* significance).

In this matter, the petitioner submitted persuasive letters from both her colleagues and independent experts in the field attesting to specific contributions and explaining their impact in the field. For example, several references discuss her work with developing tools to observe defects at the nano scale. Supporting these assertions is evidence that this work has been well cited. [REDACTED] a professor at Pennsylvania State University, asserts that her sensors "are already 'in the field' and are being adapted for wide use in military, health, aerospace and other areas." While this work is the petitioner's most cited work, her other work is consistently cited. Given the evidence in the aggregate, we are persuaded that she 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 over 20 articles and several conference presentations. The petitioner also submitted evidence of frequent citation in the aggregate, with some articles being individually well cited. The director stated that scientists "review and cite similar work and build upon the finding of others in the field" and concluded that the petitioner's citation record was insufficient to meet this criterion.

The director did not err in looking for evidence beyond mere publication in a field where publication is expected of those just completing training in the field. *Kazarian*, 2009 WL 2836453 at \*6. That said, we are satisfied that the petitioner's citation record is sufficient to set her articles apart from those authored by her peers. In light of the above, the petitioner has established that she meets this second criterion. The evidence, however, falls far short of meeting a third criterion.

Finally, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a postdoctoral research associate, relies on her volunteer services as a manuscript reviewer, her publication record, and the praise of her colleagues. While this may distinguish her from other postdoctoral researchers and research associates, we will not narrow her field to others with her level of training and experience. [REDACTED] one of the petitioner's

references, is the director of the National Science Foundation funded Network for Computational Nanotechnology, which has over 6,200 annual users. He has been cited 954 times and serves on four national and international research advisory boards. [REDACTED], a professor at the University of Siegen, Germany who also supports the petition, has served on the editorial boards of journals. The petitioner's supervisor, [REDACTED] indicates that his research has been widely reported by *Scientific American* and the *New York Times*. [REDACTED] is a *fellow* of the APS and chaired a recent panel study funded by the National Science Foundation. Thus, it appears that the highest level of the petitioner's field is far above the level she has attained.

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

Review of the record, however, does not establish that the petitioner has distinguished herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a postdoctoral research associate, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.