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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:

SRC 09 021 51328

Office: TEXAS SERVICE CENTER

Date:

OCT 08 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).

M. Deardorff

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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. For the reasons discussed below, we uphold the director’s ultimate conclusion that the petitioner has not established her eligibility for the exclusive classification sought. Moreover, for the reasons explained in the body of this decision, we further find that the petitioner has not demonstrated that she intends to continue working in her area of expertise, rheology¹ and civil engineering.

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).

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

¹ Rheology is the study of the deformation and flow of matter. *See* <http://www.merriam-webster.com/dictionary/rheology> (access September 10, 2009 and incorporated into the record of proceedings). The petitioner has an extensive career of research involving dynamic soil and piles. In 2005, she began working for a film restoration company where she claims to have applied her rheological algorithms to permit the automated restoration of films.

(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.

According to Parts 5 and 6, this petition seeks to classify the petitioner as an alien with extraordinary ability as a "Quality Assurance Manager" for a video and film restoration software firm. According to her Curriculum Vitae, the petitioner has been working as a Chief Research Engineer for AlgoSoft Tech in Israel and the United States since 2005 developing an automated system for the removal of imperfections in digital images and films and semi-automated system for colorization. Section 203(b)(1)(A)(ii), quoted above, requires evidence that the petitioner seeks to enter the United States to continue work in the area of extraordinary ability.

As evidence to satisfy the regulatory requirements, the petitioner relies on government recognition, memberships, patents, articles resulting from her work investigating reinforced structures and foundations and her analyses of soil dynamics and piles. In her personal statement, the petitioner states that at AlgoSoft, she "looked into" using her rheological model for film restoration. Specifically, she states that "if one were to formalize the link between the intensity variations and motion, it would be drawn on to predict the behavior of objects in video sequence, detecting flow discontinuities and extracting self-consistent motion." Subsequently, the petitioner states:

As it has been describe[d] above, my Rheological model gives a possibility to study common properties of elasto-visco-plastic materials, and it may be used for the different processes with the same properties. As such, I now apply my Rheological model in Digital Film Restoration at AlgoSoft Technology, the company that specializes in high-end restoration of old archives and damaged films.

Considering that subject and a scene in films are connected by elasto-visco-plastic ties, my modified Rheological model was successfully used to formalize the link between the intensity variations and motion, which is one of the most important element in Optical Flow estimation. The accurate motion estimation is a key point in automatic elimination of different image defects and automatic colorization of black-white

movies. The results of our work were presented on numerous international conferences and have been met with excitement from film-related industries.

It is not self-evident that the petitioner continues to work in her initial area of expertise. While we have considered the petitioner's explanation for why film restoration software is within her area of expertise, we are not persuaded that her use of her rheological model establishes that the development of film restoration software is the same area of expertise as civil engineering or soil and pile dynamics research. The record contains no evidence to support the petitioner's assertions regarding the relationship between the two seemingly very different fields, such as evidence that journals in rheology contain articles addressing film restoration or evidence of academic programs covering both specialties.

In light of the above, the petitioner must demonstrate that she enjoys national or international acclaim as a film restoration expert, the occupation in which she seeks to continue in the United States. Even if we accepted that the petitioner's current occupation is within her area of expertise in rheology, and we do not, we concur with the director that the petitioner has not demonstrated sustained national or international acclaim in rheology.

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).²

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

The record contains no awards or prizes in film restoration. We will also, however, consider whether the petitioner meets this criterion in rheology. Initially, the petitioner submitted a 1986 certificate affirming that the Presidium of the Union of Soviet Socialist Republics (USSR) awarded the petitioner the "Veteran of Job" medal in recognition of "a long honest work." In addition, the petitioner submitted a 1980 Certificate from the Main Committee of the Exhibition Achievements of the National Economy of the USSR approving the petitioner as a participant in an exhibition. Counsel asserted that the Veteran of Labor medal "was the highest national award for professional achievements that was issued by the USSR Executive branch" and that the "National Economy Achievement" award is "one of the rare and most significant national achievement award[s] in the form USSR." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner did not submit any evidence regarding the significance of

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

this award, such as the official rules for issuing this award or media coverage of the selection of awardees. Even the petitioner's initial references fail to address this award.

The director concluded that the certificates could not serve to meet this criterion. On appeal, the petitioner submits letters that address the exhibition certificate. We concur with the director that the petitioner has not demonstrated that the certificate recognizing length of service constitutes a nationally or internationally recognized award or prize for excellence. We will now consider the letters submitted on appeal addressing the exhibition certificate.

[REDACTED] of the Department of Innovative Technologies of the State Academy of Investment Professionals in Russia, asserts that "only the most outstanding researchers, who rendered the greatest influence on development of the basic branches of national economy of the USSR from Civil Engineering up to atomic engineering, were presented" at the Exhibition of Achievements of the National Economy. [REDACTED] further asserts that the petitioner won a national competition to attend this exhibition. [REDACTED] who lists a "Golden Medal of the Exhibition of Economic Achievements of USSR" as one of his own personal achievements. [REDACTED] provides similar information to that provided by [REDACTED]

The record still contains insufficient information about the 1980 exhibition, such as its format, the number of participants, the selection process for participants, whether it was covered in the media and how many participants received actual awards, such as the [REDACTED] mentions so as to establish the national or international recognition of an award presented at the exhibition. The petitioner's certificate only references her participation and does not suggest she won a medal. Thus, we are not satisfied that simply participating in this exhibition constitutes a nationally or internationally recognized award or prize for excellence.

Moreover, both certificates predate the petition by well over 20 years and, as such, cannot demonstrate *sustained* acclaim in 2008 when the petition was filed. Thus, the petitioner has not demonstrated 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 record contains no evidence of the petitioner's membership in any film restoration associations. Nevertheless, we will consider the petitioner's memberships in the area of soil mechanics.

Initially, the petitioner submitted evidence of her membership in the Union of Engineers of Israel and a 1989 directory of members of the International Society for Soil Mechanics and Foundation Engineering (ISSMFE) that includes the petitioner. The petitioner also submitted a letter from [REDACTED], Chair of the International Society for Soil Mechanics and Geotechnical Engineering's Technical Committee (TC) 38 asserting that the petitioner was active in the Russian Branch of ISSMGE's TC-19

in the capacity of Research Secretary. Counsel explains that ISSMFE changed its name to ISSMGE in 1997. Counsel further asserts that membership had grown to 16,500 in 1998. Counsel lists the presidents of the society over the years and their countries of origin. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We will not presume that every society that engages in prestigious events and boasts past presidents from around the world necessarily also has exclusive membership criteria. At issue for the criterion set forth at 8 C.F.R. § 204.5(h)(3)(ii) are the requirements for membership.

The director concluded that the record lacked evidence of the membership criteria for ISSMGE. On appeal, counsel asserts that ISSMGE “is a known public organization which can be easily found online should any question regarding it arrive beyond the submitted evidence.” The petitioner submits materials from ISSMGE’s website and the aforementioned letters from [REDACTED] also a member of the board of director’s for Russia’s branch of ISSMGE (RSSMGFE), and [REDACTED]

It is the petitioner’s burden to submit any evidence that would establish her eligibility. Section 291 of the Act, 8 U.S.C. § 1361. The director was not obligated to research the petitioner’s memberships on the Internet. As the petitioner has now submitted additional materials about ISSMGE, we will consider those materials below.

ISSMGE touts itself as “the pre-eminent professional body representing the interests and activities of Engineers, Academics and Contractors all over the world that actively participate in geotechnical engineering.” It has 80 member societies and 18,000 individual members. These generalizations about the society do not address the society’s membership criteria. The petitioner also submitted policy documents recommending a procedure for geotechnical ground investigations and professional ethics. These documents also do not address the society’s membership criteria. The petitioner also submitted guidelines for technical committees. Committee members must be members of ISSMGE and nominated by the member society to serve on a TC, but that does not answer the question of what is required for ISSMGE members.

The petitioner also submitted information about RSSMGFE from ISSMGE’s website. These materials state:

The most prominent soviet (Russian) scientists and geotechnical specialists were the members of ISSMGE (ISSMFE). These scientists and specialists were known by their works and valuable contributions to science of soil mechanics and foundation engineering: [List of nine names omitted.]

As this paragraph is followed by only nine names, none of whom are the petitioner, it appears that the paragraph refers to a subset of ISSMGE members who were the most prominent Soviet or Russian scientists. The fact that the membership includes prominent members does not suggest that such

prominence is required for membership. Significantly, [REDACTED] asserts that there are 320 members ISSMGE from Russia, far more than the nine singled out as prominent on ISSMGE's website.

More specific to the question of membership requirements, the petitioner submitted certified translations of what purports to be information downloaded from RSSMGFE's website. The first page indicates that the society provides two types of membership, full members and members of regional branches. A full member "must be an expert known for the scientific or industrial achievements." The "registration" of full members is "carried out by the Presidium and is affirmed by the National Russian Congress." Full members automatically receive membership in ISSMGE. This first page concludes: "The Membership in the Society is recognition among experts and the certificate of a top professional level." The second page indicates that prospective members must submit an application, two letters of recommendation, a brief creative biography and a certified list of publications to the president of RSSMGFE.

As stated above, [REDACTED] asserts that there are 320 members of RSSMGFE, which he asserts is "a small percentage" of the hundreds of thousands of scientists working in the country in the area of soil mechanics. While a large membership may be considered inconsistent with a claim that the membership is exclusive, it does not necessarily follow that a small membership is presumptive evidence that the membership is exclusive. [REDACTED] does not provide the actual criteria for membership.

The petitioner has still not demonstrated that RSSMGFE requires outstanding achievements. While a full member is broadly characterized as an "expert known for the scientific or industrial achievements," it is not clear how the society evaluates this expertise and recognition. For example, if the society merely requires two nominators and a publication record as suggested by page two of the materials submitted, we are not persuaded that such requirements are outstanding achievements. Regardless, the directory evidencing the petitioner's membership is from 1989, 19 years before the petition was filed. The record contains no evidence that the petitioner maintained this membership through the recent past and was even a member at the time of filing. A petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Evidence of his past membership does not establish eligibility at time of filing. Thus, this membership is not evidence of *sustained* national or international acclaim in 2008 when the petition was filed.

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.

The petitioner initially submitted her self-serving curriculum vitae with a list of citations for seven of her articles. The director concluded that the record lacked evidence of published material primarily

about the petitioner. On appeal, the petitioner submits copies of several articles citing her work and the results of an Internet search reflecting additional citations of her work.

We do not contest that citations are useful evidence. For example, citations can suggest the significance of an author's published articles pursuant to 8 C.F.R. § 204.5(h)(3)(vi). The director found that the petitioner meets that criterion and, for the reasons discussed below, we affirm that finding in the area of soil and pile mechanics.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires evidence of published material "about" the petitioner relating to her work. We concur with the director that the record lacks such evidence. Articles that cite the petitioner are about the authors' own work or recent trends in the field (in the case of review articles). They are not primarily about the petitioner relating to her work and, thus, cannot serve to meet this criterion.

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

As stated by the director, the petitioner'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 petitioner's work.

The petitioner submitted ten patents and several articles, all relating to soil and pile mechanics. 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.

Regarding the patents, as stated above, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of 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, (Comm'r. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.*

The petitioner also submitted several letters, most of which provide only general praise of the petitioner. 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 her reputation and who have applied her 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.

According to her curriculum vitae, the petitioner received her Ph.D. from the Moscow Research Institute of Bases and Underground Structures in 1970. She then worked as a Chief Engineer and Chief Constructor of projects for the State Research and Design Institute of Soil and Foundation Engineering in Dnepropetrovsk in the Ukraine. In 1991, the petitioner took a position as a researcher with Technion, the Israel Institute of Technology. While working there, the petitioner began a collaboration with [REDACTED], a professor at the University of Massachusetts, Lowell. In 2005, the petitioner switched from soil and pile dynamics to film restoration and began working for AlgoSoft Technology first in Israel and then in the United States.

[REDACTED] the State Research and Design Institute of Soil and Foundation Engineering, asserts that he collaborated with the petitioner on many scientific problems.

[REDACTED] asserts that the petitioner was one of the first scientists involved in researching open caissons sinking in thixotropic clay suspensions, the basis of her doctoral thesis. [REDACTED] does not, however, explain how this work has impacted the field. [REDACTED] further asserts that the petitioner worked to improve the technology of pile tests by static loading, creating the first Soviet card index of bearing capacity piles of different construction tested in various kinds of soils. [REDACTED] explains that this work "has provided a way to design the pile foundations in any condition with greatest accuracy, even before carrying out of test piles." [REDACTED] additionally asserts that the petitioner developed a new pile test method used in a Russian State Standard and applied for test piles on many building sites of the Ukraine and Russia. Finally, [REDACTED] asserts that, while in Israel, the petitioner solved the problem of slope stability under seismic conditions. [REDACTED] asserts that he utilized the petitioner's results in his own work. Such reliance is not indicative of any recognition outside of the petitioner's own circle of collaborators.

[REDACTED], in his initial letter, asserts:

[The petitioner] elaborated a new method of accelerated cycle tests to determine the supporting power of piles. She has introduced a new technique for termination of underpile base deformation module. She is the author of a new construction method for filtration-proof curtains using the method “wall in ground.”

[REDACTED] elaborates that the petitioner worked at this institute for 20 years during which time the institute realized projects under complex geological conditions as a great number of underground structures, filtration-proof curtains and foundations on natural basements, all constructed of piles of different structures. [REDACTED] another former employee of the State Research and Design Institute of Soil and Foundation Engineering, provides similar information, asserting that the institute conducted 700 tests of piles using the petitioner’s technique and developed 100 projects per year, most of which “passed [the petitioner’s] technical expert appraisal.”

[REDACTED] of the Standardization and Quality Department of the Moscow State Design and Development Institute of Bases and Foundation Engineering, asserts that he collaborated with the petitioner on clearing of soils from harmful chemical drains and protecting underground constructions from flooding using flexible film curtains and fabric anchors used on the building of a major gas pipeline. While [REDACTED] further asserts that he has used the petitioner’s work subsequently, such reliance does not demonstrate the influence of the petitioner beyond her collaborators.

[REDACTED] asserts that he was previously involved with building large mining and concentration combines (MCC), the most challenging aspect of which was building underground facilities using open caissons for crushing large pieces of ore and pumping stations. [REDACTED] explains:

The research work, carried out by [the petitioner] allowed [engineers] to radically change [the] method of construction of such underground facilities, and to use open caissons from thin-walled modular elements, singing in thyrotrophic clay lining. The method developed by [the petitioner] allowed [engineers] to improve waterproofing of concrete walls of caissons in consequence of coagulation of clay suspension in concrete under the influence of the calcium ions and to avoid expensive steel waterproofing of the walls. This technology also drastically reduced the cost of building of the underground facilities.

[REDACTED] further asserts that the petitioner’s research of dynamic loads for prefabricated foundations allowed the building of such foundations for the Severnyi MCC, the Inguletskii MCC, the Legedinskii MCC and other concentration combines in the Ukraine and Russia. [REDACTED] concludes that the petitioner’s patented innovations “were used during the building of many mining and concentration combines.”

In his second letter, _____ states that the petitioner's new unique method of pile tests allowed engineers to reduce the duration of tests of piles over 100 times, but also allowed engineers in both the USSR and the United States to define the bearing capacity of a pile as "a load appropriating occurrence of plastic deformations in a soil."

_____ the petitioner's collaborator at Technion, praises the petitioner's abilities and asserts that she played a leading role on her projects there but does not explain how this work has impacted the field. Another collaborator, _____ provides similar information, asserting that the petitioner was "a valuable member of the team." _____ another collaborator at Technion, asserts that the petitioner's method of determining pile bearing capacity "served as a basis for Standard Specifications for Highways and Bridges (Massachusetts)." _____ a former senior geophysicist at the Geophysical Institute of Israel, discusses the petitioner's investigation of the stability of slopes reinforced by roots of plants. The petitioner demonstrated that it was possible to model, with reasonable accuracy, the stress-displacement behavior of root-reinforced soil in direct shear, using the FLAC computer code, which is useful for analyzing the stabilizing effect of roots and solving the influence of complex root-soil interaction problems.

_____ explains his collaboration with the petitioner. Specifically, the petitioner led the development of a new model for load testing "which has proved to be extremely promising." According to _____, this work led to new methods for loading large capacity piles, such as Statnamic, in which piles are tested through the detonation of an explosive against a reaction. _____ explains that the Statnamic method provides limited accuracy, but that the petitioner's rheological approach "proved to perform extremely well and found adequate for various loading rates (including fast dynamic loading)." _____ further asserts that the petitioner's model was enthusiastically received in Japan, where Statnamic technology is used. _____ notes that this work has led to reports, but asserts that the long term nature of the work has meant that publications of this work are only forthcoming.

_____, an associate professor at the University of New Hampshire, asserts that he has "read and used in [his] research several of [the petitioner's] papers on determining the stress-strain state of soil around piles during their tests by quasi-statistically increasing loads." He further notes that he "discussed" the petitioner's rheological model at a conference he attended at Technion. _____ explains that, unlike regular rheological models, the petitioner's model "incorporates new one-way frictional slider elements which are active only for compressive loads and have zero resistance for tension forces." _____ concludes that this model "can be used in other areas of Mechanical Engineering that involve analysis of time-dependent behavior of elastic-plastic materials." _____ a former professor in both the Ukraine and Israel now living in Canada, provides a similar assessment. Finally, _____ asserts that the petitioner's work with the sinking behavior of caisson in thixotropic clay suspension "was used to design and construct unique underground buildings" of a specific size.

Regarding the petitioner's work in film restoration, she provides a letter from [REDACTED] of AlgoSoft Tech USA, LLC. [REDACTED] explains that AlgoSoft is a "start-up company whose image and video processing algorithms deliver breakthrough Digital Film Restoration results." [REDACTED] further asserts that the company uses the petitioner's ideas "to formalize one of the important points in Optical Flow, namely, the link between the intensity variations and the motion" and that her rheological models "turned out very important in sequence analysis." [REDACTED] concludes that the implementation of the petitioner's methods "in combination with image processing gave revolutionary advances in fully automatic elimination of artifacts and image imperfections in digital images, videos and films and semi-automatic colorization." [REDACTED] a consultant to AlgoSoft Tech, asserts that he believes that the petitioner's rheological models "can significantly improve motion compensation and can predict the behavior of objects in video sequence."

On appeal, the petitioner submits an unsigned letter purportedly from [REDACTED] of DeMott/Kreines Films addressing the usefulness of RestoreIt, software invented by [REDACTED] and the petitioner. As this letter is unsigned, however, it has no evidentiary value. The material about the Kinetta Archival Scanner makes no mention of RestoreIt, the petitioner or AlgoSoft Tech.

According to the Department of Labor's Occupational Outlook Handbook, available on the Internet at <http://www.bls.gov/oco/ocos027.htm#nature> (accessed September 10, 2009 and incorporated into the record of proceeding), engineers in general develop economic solutions to technical problems. They use computers to simulate and test how structures operate. Civil engineers in particular design and supervise the construction of roads, buildings, airports, tunnels, dams, bridges, and water supply and sewage systems. They must consider many factors in the design process, from the construction costs and expected lifetime of a project to government regulations and potential environmental hazards such as earthquakes and hurricanes. Not every civil engineer who performs the normal job duties of a civil engineer can be said to have made a contribution of major significance if this criterion is to have any meaning.

The above letters confirm that the petitioner had a lengthy career as an engineer in the former Soviet Union through which she was involved in multiple construction projects and engineering tests. She continued to produce useful results in soil dynamics in Israel, resulting in a collaboration with a Massachusetts researcher which produced reports apparently adopted by the Massachusetts Department of Highways. Experience alone, however, is not evidence of national or international acclaim. Significantly, 10 years of experience is only evidence relating to the lesser classification Aliens of Exceptional Ability pursuant to section 203(b)(2). 8 C.F.R. § 204.5(k)(3)(ii)(B).

We do not contest that the petitioner has produced original models and reviewed original projects, earning the respect of her immediate circle of collaborators. The fact that her models have application in the field and have been used by her colleagues is not necessarily evidence that her

original work is a contribution of *major significance*. The record lacks evidence that the petitioner's work is widely recognized as having impacted the field as a whole, such as media coverage of her models or projects or evidence of frequent and widespread citation of her articles. Rather, her work is only moderately cited, with only one article from 2000 having been cited more than nine times as of the date of the appeal.

While the petitioner has a respectable record of productivity commensurate with her length of experience in the field, the record does not demonstrate that she has made contributions of major significance to the field of soil dynamics. Even if we were to conclude that the petitioner has made contributions of major significance in the field of soil and pile dynamics, which we do not, the record contains even less evidence that the petitioner has made a contribution of major significance to film restoration.

In light of the above, the petitioner has not demonstrated that she meets this criterion. Regardless, a finding that the petitioner meets this criterion would not establish eligibility for the classification sought as the record falls far short of establishing that the petitioner meets a third criterion in either soil and pile dynamics or film restoration.

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

The petitioner has an extensive publication record in soil and pile mechanics and some of these articles have been moderately cited. Thus, we concur with the director that the petitioner meets this criterion in rheology. The petitioner has not authored any articles relating to film restoration.

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

On appeal, counsel does not challenge the director's conclusion that the petitioner's job with a "start-up" company cannot serve to meet this criterion. We concur with the director that the petitioner has not demonstrated that she has performed a leading or critical role for an establishment with a distinguished reputation in the film restoration industry.

The record confirms that the petitioner served as a Chief Constructor for the State Research and Design Institute of Soil and Foundation Engineering. The record, however, does not provide an organizational chart or other information that would allow us to determine where this position fits within the hierarchy of the institute. Thus, the petitioner has not established that she meets this criterion in the field of Rheology.

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 quality assurance manager in the film restoration industry 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 in soil and pile dynamics and rheology, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her field and that she seeks to enter the United States to continue work in the area of extraordinary ability. Therefore, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i) and (ii) 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.