

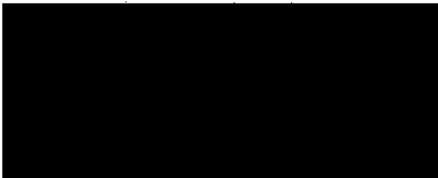


U.S. Department of Justice

Immigration and Naturalization Service

B2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: California Service Center Date: SEP 5 2000

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

SEP 05 2000 01:22:26

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations 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 the sciences. 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.

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 to the United States will substantially benefit prospectively the United States.

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 Service 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 as a research and development engineer at [REDACTED]

[REDACTED] 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 which, he claims, meets the following criteria.

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

Counsel cites the petitioner's "First Place Award" from [redacted] College of Engineering's Graduate Research Exhibition. A letter from [redacted] Dean of the Graduate School reads, in part:

Congratulations upon being a First Place award winner at our Seventh Annual Graduate Research Exhibition. Graduate students are at the heart of our research effort and are principal contributors in the intellectual climate of [redacted]

As a token of our appreciation, we have transferred \$800.00 for your use to the budget of the Associate Dean in your college.

The award in question is clearly not national or international in scope; rather, it is limited to graduate students at [redacted] College of Engineering. The petitioner has not shown that his receipt of what amounts to an \$800 scholarship made national news in his field.

Published materials 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 submits partial copies of four articles that contain footnoted citations of the petitioner's articles. The presence of bibliographic citations does not indicate that the articles are about the petitioner and his work in any meaningful sense; the subject of the articles is, rather, an area of common interest to the petitioner and the authors of the articles citing the petitioner's work. The petitioner's work is not the central theme of the articles; each article contains ten or more citations, with nothing singling out the petitioner's work as more important than the other cited works.

Even then, of the four articles citing the petitioner's work, three are by Dr. [redacted], who has collaborated on the majority of the petitioner's published work. Indeed, Dr. [redacted] had co-

authored the cited articles themselves. Thus, all but one of the citations of the petitioner's work amount to self-citations by Dr. [REDACTED]. Surely, citing one's own prior work is not a sign of national or international acclaim.

The one remaining article, by three researchers at the [REDACTED] does not demonstrate a consistent pattern of sustained media coverage of the petitioner or his work.

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 has received invitations to review several manuscripts submitted for publication in two journals. We cannot ignore, however, that the associate editors who referred the articles to the petitioner are Dr. [REDACTED] and Dr. [REDACTED] both members of [REDACTED] faculty who had personally collaborated with the petitioner. Thus, these referrals do not indicate that the petitioner's reputation has extended beyond those who have worked with him personally. Even then, the invitations from Dr. [REDACTED] request the return of the manuscript "[i]f you or a colleague cannot review the manuscript by the requested date." If the invited reviewer is free to pass the manuscript on to "a colleague," then clearly there is no requirement that one must be well-known to perform manuscript reviews of this kind. The reviews are anonymous, indicating that the petitioner could not achieve wide recognition by performing such reviews. Peer review of such manuscripts would appear to be quite common in the field, a conclusion supported by the "mass-produced" nature of the invitation itself, which is a "form" letter with the petitioner's name handwritten into a blank space.

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

Counsel asserts that the petitioner's "contribution has been recognized by his peers, and is being used by students of engineering in a top university in the US [REDACTED]." The petitioner does not show that his contributions have won him national acclaim by demonstrating that his work "is being used by students" at one university. While [REDACTED] is a highly-regarded school, it is also the school which the petitioner attended. The fact that the professor who collaborated on the petitioner's research continues to use the products of that research in his classes is unremarkable.

The petitioner's initial submission includes letters from six witnesses. Of these individuals, two are [REDACTED] faculty

members, and another individual studied at [REDACTED] while the petitioner was a student there. The remaining three witnesses represent the petitioner's past and present employers. Thus, the range of witnesses is not indicative of a wide reputation.

Dr. [REDACTED] who had studied alongside the petitioner at [REDACTED] explains that traditional product design involves building a series of prototypes for testing, which can become expensive. Dr. [REDACTED] asserts that computer-aided design allows much of the preliminary design work to take place on a computer rather than in more costly "real-world" models. Dr. [REDACTED] states that the petitioner's specialty "is a sophisticated technology called shape optimization," in which "the same computer model may be run many times without building the costly physical models. The whole process from design, test and modification is fully automated on the computer." Dr. [REDACTED] asserts that the petitioner "developed a novel shape optimization methodology with p-type finite element analysis," as well as "adaptive p-elements" which represent an improvement over the previously used "h-elements" which, in turn, allowed for incremental design changes but were impractical for major modifications. From other statements in the record, it is clear that the petitioner was not the originator of p-elements but rather has sought to modify and improve already-existing technology.

The petitioner's former professors and past and present employers describe the petitioner's work, and assert that some of this work has advanced the field significantly, but it remains that the record is almost devoid of evidence showing that the petitioner's work has had a demonstrable impact outside of the facilities where he conducted that work. Many witnesses assert that the publication of the petitioner's work establishes its importance, but this claim lacks weight given the sheer number of scholarly articles published each year. It is untenable to assert that every published article represents a major accomplishment in the field.

The record shows that two researchers have requested information about, or copies of, the petitioner's published work. Like the one independent citation mentioned above, this evidence is too sparse to establish that the petitioner is widely recognized as among the top researchers in his field. Section 203(b)(1)(A)(i) of the Act demands "extensive documentation"; single requests or citations are anecdotal and do not support broader conclusions.

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

The record establishes the petitioner's authorship of several published articles. We also note, however, that the record does not demonstrate that this work has been among the most influential

in the field; the record establishes one independent citation, one request for a page number, presumably in anticipation of another citation, and one request for a copy of an article. The record does not demonstrate that the petitioner's published work stands above that of others in the field, nor that only the very top researchers are published in the first place. The very publication of the petitioner's work cannot carry the same weight as evidence that the petitioner's published works are among the most influential in the field.

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

The petitioner submits documentation regarding the distinguished reputation of [redacted] and of the petitioner's previous employer [redacted]. The record does not, however, establish that the petitioner has played a leading or critical role for either company. At [redacted] the petitioner was a post-doctoral researcher, which is a temporary training position rather than a career position. The petitioner has not shown that he holds a leadership position at [redacted] or that his work is more critical than that of the other research and development engineers at that company. Statements from the petitioner's immediate supervisors to the effect that the petitioner plays a critical role do not establish that this opinion is shared at the top of the corporate hierarchy.

The director denied the petition, stating that it cannot suffice for the petitioner merely to submit evidence which "fits" the above criteria; the evidence as a whole must establish a pattern of sustained national or international acclaim. The director determined that the petitioner has not shown that his work stands far above that of almost all others in the field.

On appeal, counsel protests that the "Petitioner was not given a chance to submit additional evidence." The best remedy at this stage is for full consideration of any evidence which the petitioner chose to submit on appeal.

The petitioner submits documentation showing that [redacted] pays him \$71,500 per year, whereas the documented prevailing wage for the job is \$56,430.40 per year. The significance of the prevailing wage figure is not clear. The Department of Labor's Occupational Outlook Handbook, 1998-1999 edition, page 112, states:

According to the National Association of Colleges and Employers, starting salary offers for graduates with a bachelor's degree in computer engineering averaged about \$39,722 a year in 1997; those with a master's degree, \$44,734 a year; and those with a Ph.D., \$63,367.

The average salary of \$63,367 for Ph.D. holders is appropriate here because the petitioner holds that degree. The average, by definition, would be derived from a range of salaries, and not every salary above that amount would be indicative of extraordinary ability. The petitioner has not shown that only the top engineers in his specialty earn \$71,500 per year, an amount which is not so far removed from the above-quoted average salary as to immediately demonstrate extraordinary ability.

We note that the job offer letter from [REDACTED] which specifies the petitioner's starting salary, also indicates that [REDACTED] agrees to seek "permanent residency under the 'Outstanding Researcher' category" on behalf of the petitioner. Although this job offer letter is dated April 29, 1996, over two years before this petition was filed in June 1998, the petitioner indicates that no immigrant visa petition had previously been filed on his behalf. This information suggests that [REDACTED] has failed to fulfill at least one of the conditions of the job offer agreement, despite assertions that the petitioner is an especially valued employee.

The appeal includes letters and electronic mail messages indicating that researchers in [REDACTED] and [REDACTED] have expressed interest in the petitioner's work. As above, individual letters are anecdotal and do not establish that the petitioner has a national reputation either in [REDACTED] or in [REDACTED].

The researcher in [REDACTED] is [REDACTED] product manager for Optimization at [REDACTED]. He, and Professor [REDACTED] of the [REDACTED] assert that their review of the petitioner's work indicates that the petitioner is among the top researchers in his field. They do not indicate that their opinions are widely shared, which is necessary for national or international acclaim.

Earlier in this decision, we noted that the only independent citation of the petitioner's work was by three researchers at the [REDACTED]. A footnote in that article indicates that the article was "communicated by [REDACTED]". Thus, Professor [REDACTED] was familiar with the petitioner's work as early as 1997 when the article was written. While Professor [REDACTED] expertise in his field may demonstrate his competence to attest to the significance of the petitioner's original contributions, his testimony cannot establish that the petitioner has earned sustained acclaim for those contributions.

Counsel notes that the record contains published material about projects on which the petitioner has worked, although counsel concedes that the articles do not identify the petitioner himself. Counsel does not explain how the petitioner can earn recognition as an individual through published materials which do not identify him.

The overall picture presented by the record as a whole does not show that the petitioner is among the best-known figures in his field, which he must be in order to qualify for this classification. Rather, the record portrays a talented and innovative researcher whose work has attracted some degree of attention, but whose career is still at a relatively early stage (notwithstanding counsel's contention that the petitioner's graduate study should be counted as part of the petitioner's career, even though graduate study constitutes training rather than an occupation or career in its own right).

The construction of the regulations demands a variety of objective documentation which, individually and collectively, demonstrate sustained acclaim. The objective evidence in this record does not demonstrate such acclaim, and while subjective witness letters carry weight in terms of the significance of the petitioner's work, such letters cannot fully compensate for the absence of independent, documentary (non-testimonial) evidence.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research and development engineer 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 in his field, but is not persuasive that the petitioner's achievements are generally regarded as having 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.