U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

Public Copy

File: [redacted] Office: Vermont Service Center Date: APR 2 3 2001

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on August 24, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of fiber optic illuminating equipment and various other devices. It seeks to classify the beneficiary 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 that the beneficiary has earned 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as an engineer/scientist. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, 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's initial submission included evidence which, the petitioner claimed, meets the following criteria.

> *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's initial submission included a copy of the beneficiary's membership certificate from the China Machinery and Engineering Society, but no documentation to establish what requirements its members must meet.

Subsequently, counsel has stated that the beneficiary "has since been accepted to join ISA, the international society for measurement and control." The beneficiary's membership card indicates that the beneficiary became a member on November 1, 1997, after the petition's September 1997 filing date. Pursuant to Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. A membership which the beneficiary did not hold at the time of filing cannot retroactively establish his eligibility at the time of filing. Furthermore, the only documentation the petitioner has submitted about the ISA consists of a poor-quality copy of a document which is only partially legible. We cannot determine whether the ISA's membership requirements are even listed on this document, let alone determine exactly what those requirements are.

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

The petitioner has submitted documentation showing that the beneficiary holds two Chinese patents. These patents may establish the originality of the petitioner's innovations, but the petitioner has not shown that the Chinese Patent Bureau only awards patents to

inventions of major significance. In subsequent correspondence, counsel has repeatedly referred to these patents as "major patents," but offers no empirical distinction between a "major patent" and the logically implied minor patent.

An appraisal certificate from the National Natural Science Foundation of China describes a hydraulic system designed in part by the beneficiary. [redacted] head of Technical Appraisal for the Hydraulic Department of Shandong Province, asserts "these research achievements are at the leading level in China. Some of the results are even comparable with the most advanced researches in the world."

Several letters accompanied the initial filing. Professor [redacted] of Shandong Polytechnic University states that the beneficiary's work for Prof. [redacted] research group could "directly save billions of dollars in restoring cost" in the remediation of deteriorated channels, aqueducts and related structures.

[redacted] project engineer for Delco Electronics Corporation, states that "a new style of transmission device" which the beneficiary co-invented "significantly improves the accuracy and service life of brake, facilitates the change of direction, and prevents the damage [caused to] machinery during frequent starting, braking, and the change of rotating direction," and thereby overcomes "serious problems" inherent in older devices of its type. Mr. [redacted] concludes that the beneficiary and his collaborator "have made a significant contribution to the transmission technology. . . . It is expected that this device will tremendously increase the competitive ability of American manufacturing companies in the world market place."

Professor [redacted], who instructed the beneficiary when the beneficiary was a graduate student, states:

> [The beneficiary] is an accomplished engineering researcher who has been recognized by his peers nationwide as an outstanding researcher in the discipline of engineering measuring, testing and control technology. He participated in the national project "Damage Diagnosis and Safety Extent Research of Common Hydraulic Structure" . . . and took an important role in the project group. . . .
>
> His design "Device for Brake Inverting" . . . solved a serious problem that damage of motor and parts existed at traditional transmission [when] the machinery started, braked, and changed direction frequently. . . . [Another of the petitioner's inventions] is widely used in excavating engineering to ensure the safety of the working sites. . . .

> [The beneficiary] is one of the most outstanding technical educator[s] and researcher[s] I have ever seen.

[redacted] the petitioner's department supervisor for Design and Manufacturing, states that the beneficiary's "role at our department is extremely vital" and describes the various projects with which the beneficiary has been involved, but she does not explain why the beneficiary's work for the petitioner is significant nationally or internationally; sustained acclaim does not arise from simply being a valued employee of the petitioning corporation.

When the director requested additional evidence to establish the beneficiary's eligibility, counsel responded by stating that the record "includes two major patent certificates." Counsel does not explain how to distinguish a "major patent" from a lesser patent. Counsel notes that the petitioner's inventions were described "in the Official Gazette of Patent and the Official Gazette of Invention Patent," but the record does not indicate what percentage of new patents are featured in this manner. If these publications are simply lists of new patents then the beneficiary's work has not been singled out in any meaningful way.

The petitioner also submitted additional letters in response to the director's request. Engineer [redacted] states:

> [I]t is my belief that [the beneficiary] is of the very best in the field of his endeavor because of the originality, creativity and pioneering achievements exhibited through his published works, patents and record of academic excellence in dedicated research and experiment. In my learned opinion, [the beneficiary] is one of the very few engineering scientists in mechanical engineering who has risen to the very top of his endeavor. . . .
>
> [The beneficiary's] research achievements in mechanical engineering were adopted by various corporations with amazing effect. . . . [One of the beneficiary's articles] influenced the national standard in electric driven tools all over the nation.

Dr. Perry Wang, an assistant professor at the City University of New York's York College,[1] states that the beneficiary "has received national acclaim as one of the most accomplished and distinct engineering scientists in the discipline of engineering measuring, testing and control technology," and that one of the beneficiary's

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[1]We note that, although Dr. Wang states that his "specialty is in engineering," his letter is on letterhead stationery which reads "Department of Mathematics/Computer Science."

projects "had a profound impact upon the national standard in and modification of electric driven tools." Dr. Wang asserts that the beneficiary's "credentials place him among . . . the very best engineering scientists."

Several of these witnesses have attested to the beneficiary's influence, but they have only vaguely stated how the field has felt this influence. The record contains no independent documentation to establish that the beneficiary's inventions are in wider use, or better known, than most patented inventions in China. The majority of the witnesses are individuals who have directly supervised the beneficiary's work. Their familiarity with work which they themselves supervised does not represent acclaim, and their supervision of the beneficiary demonstrates that the beneficiary had not reached the top of the hierarchies in charge of the individual projects.

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 submitted 15 articles attributed to the beneficiary. Witnesses indicate that these articles have appeared in major publications and have influenced the field. Steven Chou, identified above, asserts that the beneficiary's published work has been "cited as the authority in the engineering field," but does not specify by whom. The record contains no evidence of citation of the beneficiary's work in other articles, whereas heavy citation would be expected if a given article is truly influential and important in the field.

The director approved the petition on December 24, 1997. Subsequently, information received by the Service, including information submitted with the beneficiary's application to adjust status, called this approval into question.

The petition was filed on September 15, 1997. The beneficiary had been in the United States since September 4, 1992, just over five years before the filing date. It is entirely appropriate to judge the beneficiary's accomplishments from 1992 to 1997 by U.S. standards because he was in the U.S. during that period. The record, however, does not indicate that the beneficiary had earned any acclaim as an engineer in the United States during that lengthy period. The evidence of record does not indicate that any U.S. engineers, except for engineers who had come from China themselves, regard the beneficiary's work as especially significant or have even heard of him. The Form G-325A Biographic Information sheet which accompanied the beneficiary's adjustment application indicates that, from September 1992 to February 1996, the beneficiary was a student. The beneficiary claimed no employment during that time.

A Form I-20-ID Certificate of Eligibility for Nonimmigrant Student Status in the record indicates that the beneficiary sought admission to study mining engineering at the Colorado School of Mines, Golden, Colorado, for five years beginning August 30, 1992. The form indicates that "English proficiency is required" but "[t]he student has the required English proficiency." Subsequent Forms I-20-ID indicate that the beneficiary, within three weeks of his admission, transferred from the Colorado School of Mines to the Lyceum Kennedy in New York City, beginning September 21, 1992, studying English as a Second Language despite the proficiency attested on the previous form. There is no evidence that the beneficiary ever studied at the Colorado School of Mines; the Form G-325A lists no study or residence in Colorado.

On May 14, 1999, the director informed the petitioner of the Service's intend to revoke the approval of the immigrant visa petition. The director stated "[t]he record contains no documentary evidence that the beneficiary enjoyed sustained international or national acclaim since his entry into the United States and until the filing date of the petition." The director stated that the petitioner has not documented the claimed widespread implementation of the beneficiary's patented inventions, and questioned whether the witness letters represented a consensus throughout the field of mechanical engineering. The director also noted that "a number of fraudulent H1B petitions" had been filed, listing this petitioner, thereby diminishing the credibility of statements by officials of the petitioning company.

The director again identified the ten criteria specified in 8 C.F.R. 204.5(h)(3), and allowed the petitioner an opportunity to respond to the notice of intent. In response to the notice, the petitioner asserts that the fraudulent visa petitions were prepared by a corrupt attorney, without the petitioner's knowledge or consent. Counsel notes that the fraudulent petitions listed false addresses for the petitioner. The director appears to have been satisfied with the explanation and accompanying documentation, because the fraud issue does not figure in the final notice of revocation.

Regarding the beneficiary's eligibility as an alien of extraordinary ability, counsel asserts that the director has already had ample opportunity to review the evidence of record, and had previously approved the petition based on the existing evidence. Counsel finds it "disconcerting" that the same evidence which previously led to the approval of the petition now leads to a reversal of that decision. Counsel asserts that, while fraudulent behavior by the petitioner would represent suitable grounds for review of the petition, in this instance the petitioner has committed no such fraud and therefore no legitimate credibility issue should arise. Counsel's statement does not address the

beneficiary's lack of acclaim within the United States despite five years of continuous presence.

[redacted], president of the petitioning corporation, maintains that the beneficiary "is one of the few who has risen to the top of his field," but he does not explain why, in 1992, the beneficiary evidently required further education in his field (or at least claimed to require such education), or why the beneficiary abandoned his planned studies at the Colorado School of Mines almost immediately after he entered the United States. If the beneficiary required this training in mining engineering, then clearly his training is incomplete because he has not yet actually undertaken these studies. If he did not require this training, then serious questions necessarily arise as to why the beneficiary would enter the U.S. on the pretext of receiving such training, only to move across the country and begin totally unrelated studies within weeks of his arrival.

Whatever acclaim the beneficiary may have earned in China as an engineer, his engineering career effectively ceased in September 1992 when he became (according to documents which he signed under penalty of perjury) a full-time English student, spending four years in what was represented as a 6-month program. Since re-entering the profession of engineering in 1996 to work for the petitioner, the beneficiary has not earned substantial acclaim or recognition as an engineer in the United States where he has been working.

Mr. [redacted] also notes that the beneficiary's "patented Device for Brake Inverting . . . is perfect for a new high-speed reciprocal transmission, which may revolutionarize [sic] the industry." The device in question was patented in January 1993, nearly six and a half years before his June 1999 response to the notice of intent. The assertion that this six-year-old invention "may" have such an impact necessarily implies that it has not yet had such an impact. There is no evidence that the beneficiary had sought a U.S. patent for the device, nor comparable evidence to suggest that the beneficiary's achievements in China were being implemented in the U.S. on any significant scale.

On August 24, 1999, the director denied the petition, repeating the prior observation that national acclaim seems to have evaded the beneficiary throughout his stay in the U.S. which began in 1992. The director cited various shortcomings in the record, such as the petitioner's failure to submit documentation from the associations to which the beneficiary belongs, establishing that the associations require outstanding achievements as a condition of membership.

On appeal, counsel deems the revocation "fundamentally unfair and . . . a gross denial of due process." Counsel complains that the

petition had already been approved. Revocation, however, is only possible after such an approval. Counsel seems to suggest that revocation is inherently unfair or violative of due process. Section 205 of the Act states, in pertinent part, "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." Prior to the revocation, the director notified the petitioner of the Service's intent to revoke, as required by 8 C.F.R. 205.2(b). It is evident that the director considered the petitioner's response to that notice, because the director essentially dropped the fraud issue raised in the notice of intent. Clearly the director acted within the law, which enables the Service to revoke the approval of a petition "at any time," and the director followed the regulations requiring advance notice. It is not at all clear how the director violated the petitioner's right to due process while remaining within the bounds of the statute and regulations.

While counsel may contest the grounds for revocation, the law allows revocation "for what [the Attorney General] deems to be good and sufficient cause"; there is obviously no corollary requirement that counsel for the petitioner must agree that the grounds are "good and sufficient cause." If the director determines that the beneficiary is not eligible for the classification sought, and that the petition was thereby approved in error, then this perceived error represents "good and sufficient cause" for revocation. In Sussex Engineering, Ltd. v. Montgomery, 825 F.2d 1084 (6th Cir. 1987), the Court of Appeals held that it is absurd to suggest that the Service must treat acknowledged errors as binding precedent; the revocation in this instance represents an acknowledgment of prior Service error in approving the petition.

Counsel's subsequent brief consists largely of variations on the argument that the beneficiary must have been eligible because the petition was originally approved. Counsel does not address specific issues which the director had raised. For instance, the director has stated repeatedly that the petitioner has not produced any evidence from the China Machinery and Engineering Society to demonstrate what requirements one must meet to become a member of that association. This evidence is critical because the plain language of the regulation demands evidence that the association requires outstanding achievements of its members; it cannot suffice simply to show that the beneficiary is a member of a professional association. Furthermore, third-party assertions that a given society is "prestigious" or words to that effect do not establish what one must accomplish to become a member of that society. The prestige of an establishment does not necessarily confer or imply such prestige regarding individual members.

On appeal, the petitioner continues to fail to provide any documentation to show that the China Machinery and Engineering

Society requires outstanding achievements of its members. Instead, the appeal includes documentation of memberships which the beneficiary did not hold until months or years after the filing of the petition. While the petitioner has submitted information about several such memberships, in only one instance does this information include membership criteria. The beneficiary became a Senior Member of the Society of Manufacturing Engineers in 1999, long after the petition's September 1997 filing. Senior Membership is available to:

> An applicant who is a Certified Manufacturing Engineer, a Registered Professional Engineer, or who possesses a bachelor's degree in science or engineering from an accredited school and who has at least six years of experience. . . . Without manufacturing engineering certification, professional registration or a bachelor's degree, the applicant must have ten years experience.

Education, length of experience and certification may be marks of professional competency but they are not outstanding achievements. The petitioner has not met this regulatory requirement, and counsel never directly addresses this key finding by the director.

Apart from the above-mentioned evidence pertaining to new memberships, the only new evidence submitted on appeal is a letter from Dr. [redacted] who like many prior witnesses is a Chinese professor who personally supervised the beneficiary's work on various projects. An engineer who has earned national acclaim must, by definition, have a reputation that extends beyond his or her former professors. Dr. [redacted] offers assertions regarding the prestige of the university where the project took place, and the agency which funded the research, and states that the beneficiary's contributions to the project outweighed those of others on the team. Dr. [redacted] remarks about a 1991 research project do not address the director's plainly-stated assertion that the beneficiary does not appear to have earned any significant recognition since entering the United States as a student in 1992.

The plain wording of the statute requires that a claim of extraordinary ability must be "demonstrated by sustained national or international acclaim." Even if we were to find that the beneficiary had earned such acclaim in China, that acclaim is not sustained if it ceased five years before the filing of the petition. The purpose of the classification is not to reward aliens for having once achieved such acclaim, but to secure the entry of individuals who have reached, and who remain, at the top of their respective fields. The petitioner's heavy emphasis on achievements prior to 1992 cannot compensate for the demonstrated absence of such achievements after that date.

Counsel, in the appellate brief, repeatedly revisits the allegations of fraud, even though the director had acknowledged that the fraud in question was not the responsibility or fault of the petitioner. Counsel implies that the director used unjust allegations of fraud as a "pretext" to revoke the approval of the petition, even though the director clearly stated that the evidence of record simply does not justify the prior approval of the petition.

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 beneficiary has distinguished himself as an engineer or scientist 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 beneficiary has earned respect in China for his accomplishments prior to September 1992, but is not persuasive that the beneficiary's achievements continue to 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.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in his decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the director acted correctly in revoking the approval of the petition.

ORDER: The appeal is dismissed.