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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

MAY 24 2001

File: EAC 99 058 52166 Office: Vermont Service Center Date:

IN RE: Petitioner:
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: Self-represented

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 denied by the Director, Vermont 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 associate at Princeton University. 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.

The petitioner received a Graduate Research Award from the American Vacuum Society ("AVS") in 1997. AVS documents in the record state that the award consists of "a $1000 cash prize, a certificate, and reimbursed travel expenses (up to $750) to attend the AVS National Symposium," and that the purpose of the award is "to recognize excellence in graduate studies." This award is for graduate students rather than for practicing, professional scientists. By its very nature as a student award, the award excludes from consideration the most accomplished and experienced scientists. Thus, the award may establish the petitioner's ranking among students, but not among scientists who have already completed their training. The petitioner asserts that the award recognizes excellence in the field of endeavor; but graduate study is not a field of endeavor. We also note that the petitioner was not nominated for the award by an independent jury or committee, which would establish independent notice of his work; rather, the petitioner submitted an application for the award.

The petitioner documents a $2000 award which appears to have been available only to graduate students at Pennsylvania State University. The very limited scope of this award prevents it from qualifying as national or international.

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 submits confirmation of his membership in the Materials Research Society, the American Physical Society, and the American Vacuum Society, but he submits nothing from any of these groups to establish their membership requirements.

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

The petitioner notes that he "has published 10 articles . . . in leading professional peer-reviewed journals in his field" and "has personally given oral and poster presentations at 5 national and international conferences." Publication of scholarly articles is covered under a separate criterion, below. This criterion is redundant if every published article is a major contribution.

The petitioner submits several witness letters attesting to the importance of his work. Professor Leonard J. Brillson of Ohio State University states:

> [The petitioner] is well known to me because of his outstanding scientific publications and research achievements. Since I teach a course on "Surfaces and Interfaces of Electronic Materials," I maintain an awareness of the most important developments in this field. Several of [the petitioner's] research papers have come to my attention in this regard. He has performed outstanding work in understanding the structural properties of semiconductors using state-of-the-art surface science equipment. . . . This work represents some of the most demanding expertise to perform scientific research and places [the petitioner] in the company of a select few young scientists in the United States.

Professor N. John DiNardo of Drexel University states that the petitioner "has made several direct contributions to the understanding of materials systems that impact the microelectronics and optoelectronics technologies. . . . It is clear that [the petitioner] is becoming a leader in key areas of materials physics."

Professor Antoine Kahn of Princeton University states:

> [The petitioner] is a very gifted and creative researcher and . . . his talent and abilities are far above the level of his peers in his age group. During his PhD work at the Pennsylvania State University, [the petitioner] made important contributions to the understanding of the surface atomic structures of III-V compound semiconductors, a key scientific area for the epitaxial growth of these materials. . . .
>
> He is a highly motivated individual and very productive researcher with a bright scientific future in this country.

Professor David L. Miller of Pennsylvania State University, where the petitioner obtained his doctorate in August 1998, states that the petitioner's research "contributes significantly to [the] understanding of surfaces" of semiconductors, and that the petitioner "is therefore positioned to make scientific advances in an area which will be very important to information technology over the next decades."

Dr. Andrei Sirenko, a researcher at Pennsylvania State University, has been familiar with the petitioner's work since the two were both students in St. Petersburg, Russia, and they encountered one another again in Pennsylvania. Dr. Sirenko characterizes the petitioner as "one of the best young experimentalists that I ever knew. . . . He is truly in the top 5% of the best young physicists in the world today." Dr. Sirenko states that the petitioner's

"knowledge in this field will be valuable in the development and operation of the novel optoelectronic devices in the near future."

We cannot ignore the expertise of these witnesses, who attest to the significance of the petitioner's original contributions. The petitioner thus satisfies this criterion. At the same time, however, we also cannot ignore other statements contained in these letters, with reference to the larger issue of sustained acclaim. These individuals qualify their comments by placing the petitioner not at the top of his field overall, but rather among "young scientists" and "peers in his age group." The petitioner, at the time of filing, was 28 years old and had received his Ph.D. only four months earlier. The petitioner's age group thus excludes the most accomplished and experienced scientists in his field. The witnesses, whose own accomplishments appear to dwarf the petitioner's, state not that the petitioner is a leader in his field, but that he "is becoming a leader," has "a bright scientific future," and that "[h]is knowledge in this field will be valuable . . . in the near future."

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

The petitioner claims to have published several articles, and made presentations at professional conferences. The initial submission contains no direct evidence of these articles (such as copies of the articles themselves, citation indices listing the articles, or copies of third-party articles which cite the petitioner's articles). Some witnesses mention articles by the petitioner, but these individuals are not affiliated with the publishers and thus it is not apparent that their mention of the articles amounts to evidence of publication.

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

Referring to himself in the third person, the petitioner states:

> As a Research Associate at the Department of Electrical Engineering at Princeton University, [the petitioner] was and continues to be personally responsible for conducting research on a key project related to growth and characterization of thin organic films by scanning probe techniques. . . . [The petitioner's] research is a key part of an extensive interdisciplinary program at Princeton University aimed at the development of novel electronic and optoelectronic devices (such as light-emitting diodes, lasers, flat-panel displays and thin-film transistors) based on organic thin films.

The petitioner asserts that, by participating in the above project, he "has performed in a critical role at Princeton University which is an establishment that has a distinguished reputation."

The reputation of Princeton University is not in dispute. At issue here is whether a postdoctoral researcher can be said to play a critical role for the university as a whole, rather than for one of countless projects underway at that university.

On April 21, 1999, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the petitioner as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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." The director specified several omissions in the initial submission, such as the absence of evidence that the associations to which the petitioner belongs require outstanding achievements as a condition of membership.

In response to this letter, the petitioner maintains that he has met five of the regulatory criteria, but he offers no rebuttal to the specific findings set forth in the director's notice.

In discussing witness letters, the director stated "[g]reater weight will be given to documentation submitted by experts who are clearly independent of the beneficiary." The petitioner has responded by submitting eight letters, four of which are from individuals who have collaborated with him.

We duly note the very favorable views expressed by these individuals, but at the same time the letters, regardless of their content, can only go so far in establishing the petitioner's eligibility. The statute requires "extensive documentation," and the structure of the regulations reflects this requirement by demanding evidence from a variety of independent, verifiable sources. As noted above, we have already determined that the petitioner has met the one criterion pertaining to significant original contributions. The petitioner cannot, by submitting a surfeit of evidence under one criterion, overcome the absence or insufficiency of evidence in other criteria. The newly-submitted witness letters may reinforce this conclusion, but these letters cannot serve as documentation of the petitioner's receipt of a significant national award; membership in an exclusive association; or otherwise satisfy the other criteria.

The letters contain vague assertions which, without corroboration and direct documentation, are of little value, such as one witness' assertion that the petitioner's "works are extensively cited by other scientists in the field." Evidence of such citations is readily available (in the form of citation indices, for example) but no such evidence is in the record. The regulations require a

broad variety of evidence, and the petitioner cannot rely primarily on letters from witnesses he himself has selected.

The director denied the petition, stating that the petitioner "appear[s] to be an up and coming individual" but has not yet reached the top of the field. The director noted that the petitioner's training was not yet complete as of the petition's filing date. The director also noted that several witnesses have asserted that it is in the national interest to admit the petitioner permanently; but the "national interest" is a factor underlying a different visa classification.

The petitioner, on appeal, asserts that the mention of the national interest in several letters "cannot be used . . . to deny the petition." The director did not state that the very appearance of the phrase "national interest" was a disqualifying factor. Rather, the director observed that the national interest is a factor best considered in regard to a separate classification.

The petitioner maintains that he has amply documented his acclaim and influence in the field. The record, however, does not contain documentary evidence to support these claims. For instance, as "evidence" of the petitioner's "talks at various universities," the petitioner cites his own resume. This resume represents a claim by the petitioner, rather than evidence to support that claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

As another example of an undocumented claim, the petitioner asserts that his "work was the subject of an extensive chapter discussion in a review article." The petitioner has not submitted the actual review article, and therefore we cannot determine the extent to which this article was, in fact, about the petitioner and his specific efforts. Assertions that the petitioner's work is "heavily cited" are of little value without direct evidence of those citations.

The petitioner contends that the petitioner's AVS Graduate Research Award "is a major national award." The award, according to AVS documentation, recognizes student-level work. At most, assuming a very considerable number of graduate students applied for the AVS award, the award might indicate that the petitioner was at the top of the group of graduate students in 1997. We must judge the petitioner's work in terms of his field of endeavor, without artificially restricting the definition of his field and thereby excluding the most experienced and accomplished scientists. The petitioner must not simply show that he was a top student, or that he is a top "young researcher." His work must stand on its own merits, without recourse to qualifiers based on the petitioner's age and relative inexperience.

Certainly the petitioner's youth is not an automatic disqualifier, but by the same token it cannot exempt the petitioner *a priori* from comparison with the most established and best-known figures in his field, including Nobel laureates. Whether the petitioner is 28 or 78 years of age, his work and reputation must rank above those of almost everyone else actively employed in his field, including tenured university professors and department heads. Evidence of success as a student does not by any means compel the inference that the petitioner will retain that level of success once he begins working full-time as a professional researcher.

We duly note when an expert in the field comments approvingly on the petitioner's dozen or so articles, but when the expert witness himself has published nearly two hundred articles, it becomes very difficult to conclude that the petitioner's publication record places him among an undisputed elite at the top of the field.

Experts in the field indicate that the petitioner has made significant discoveries and has a very bright future ahead of him in his scientific field. He may yet reach the top of this field as his reputation expands and he continues to produce valuable results. But the documentation in the record is simply not sufficient to establish that, as December 1998 when he filed the petition, the petitioner was already among the best-known and most highly acclaimed researchers in his field, at a national or international level.

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 physicist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a physicist, and has made some important contributions, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field nationally or internationally. 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.