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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

JUL 08 2003

File: [redacted] (SRC-01-195-52247) Office: Texas 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)

ON BEHALF OF PETITIONER:

PUBLIC COPY

[redacted]

INSTRUCTIONS:
This is the decision 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 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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.

On appeal, counsel asserts that the director erred by imposing a standard of being "famous" instead of acclaim, stating that acclaim only requires recognition within one's field. Counsel concludes that the witness letters reflect "international recognition" which, according to counsel, is sufficient to establish "international acclaim." Finally, counsel discusses how the petitioner allegedly meets four of the criteria discussed below.

While we understand counsel's concern regarding the director's use of the term "famous," not found in the regulations, we do not find the use of this term to be reversible error. The director stated that the classification sought by the petitioner is for the winner of major awards "or those that can establish that they are nationally or internationally famous *in their field of endeavor* and that they have sustained such acclaim." (Emphasis added.) Thus, it is clear that the director was not requiring that the petitioner demonstrate "fame" outside his field. Moreover, by then stating that a petitioner must sustain "such acclaim," it is clear that the director is equating being famous with acclaim. Further, the phrase "international recognition" relates to a different classification, outstanding professors or researchers pursuant to section 1153(b)(1)(B) of the Act, and is not necessarily the same as the "sustained national or international acclaim" required to establish extraordinary ability. Counsel's remaining arguments will be addressed below.

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 Bureau regulation at 8 C.F.R. § 204.5(h)(3).

The director included a statement that could be interpreted to imply that a petitioner can meet three of the regulatory criteria discussed below and still not be eligible for the classification sought. While we may not agree with the wording of this statement, we do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. A more rational interpretation of the director's decision is that the petitioner submitted documentation that related to or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim. For the reasons discussed below, we concur with the director's ultimate conclusion.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a researcher in meteorology. 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, 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 director stated that awards and prizes are commonplace within the research industry. Counsel merely responds that the petitioner has received "professional awards." We cannot concur with the director's general statement that appears to dismiss all awards and prizes in the field of research. Nevertheless, the award submitted in support of this petition that relates to this petitioner is not remarkable in the field.

The petitioner submitted evidence of several provincial Chinese awards from Liaoning Province. By definition, provincial awards from the same province for which the petitioner competed only with experts in that province cannot establish that he is one of the few at the top of his field nationally. The summary of evidence lists a fellowship and a "1997: Discover Magazine Award for Advanced Regional Prediction System."

The fellowship is not documented in the file other than by the assertions of the petitioner's references. Regardless, academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in a field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with national or international experienced experts in the field, the awards cannot be considered evidence of the petitioner's national or international acclaim.

The record does not contain a Discover Magazine award issued to the petitioner. Rather the record contains a June 10, 1997 award issued by the National Museum of American History, The Smithsonian Institute. It is titled the "Computerworld Smithsonian Awards." The award was issued for "heroic achievement in information technology" to the Center for Analysis and Prediction of Storms (CAPS) and the Pittsburgh Supercomputing Center. In response to the director's request for additional documentation, counsel indicates that the Computerworld award and the Discover magazine award are one and the same and that the award recognized the Advanced Regional Prediction System (ARPS) developed at CAPS. The petitioner submitted an article on the University of Oklahoma's website suggesting that CAPS received both a Discover Magazine award and a Computerworld Smithsonian award in 1997 for ARPS as well as an article about the awards on the Pittsburgh Supercomputing Center's website. Counsel further states:

> [The petitioner's] main contribution to the ARPS was a new approach for the objective analysis of inhomogeneous data distributions, which are highlighted in the recommendations of Drs. [redacted] and [redacted]. The new approach was represented in the 12th conference on numerical weather prediction and CAPS Annual Report.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not support counsel's implication that the petitioner's contributions to ARPS are responsible for the award.

The petitioner's references at CAPS assert only that he was an important contributor to CAPS but do not specify his role on the project that resulted in the 1997 award. Dr. [redacted] states: "In 1997, the CAPS won a prestigious honor of the Discover Award for Technological Innovation in the category of Computer Software. [The petitioner] is an important contributor to the success of CAPS." Dr [redacted] does not state that the petitioner was an important contributor to ARPS or that his work is responsible for the 1997 award.

Dr. [redacted] does not mention the petitioner in the same paragraph as his discussion of the 1997 award. In the first sentence of the following paragraph, Dr [redacted] states only that the petitioner "is an important contributor to the success of CAPS." While Dr [redacted] then goes on to discuss the petitioner's contribution to the objective analysis of inhomogeneous data distributors, he does not indicate this analysis is related to ARPS or that the petitioner's work in this area predated the June 1997 award. We note that the record does not reflect that the petitioner was involved with CAPS until he began studying for his Master's degree during the 1997 spring semester. The award was issued to

CAPS in June 1997. The article posted on the Pittsburgh Supercomputing Center's website indicates that the award ceremony, which took place in May 1997, was the culmination of a nine-month process. It is not clear how much the petitioner had already contributed to CAPS as of May 1997 or, more importantly, August 1996 (nine months prior to May 1997). The University of Oklahoma's website suggests that ARPS Version 4.0 was officially released in 1995 and that version 5.0 is still under testing. The Pittsburgh Supercomputing Center's article reports that ARPS produced results in 1996. Thus, the petitioner has not established that the 1997 award can be credited to his work at CAPS.

Further, without evidence from the Smithsonian regarding how the projects were nominated and selected, we cannot determine the significance of the award and, thus, whether it is nationally or internationally recognized.

Finally, in response to the director's request for additional documentation, counsel asserts that the project on which the petitioner is currently working was subsequently nominated for an award. First, a nomination is not an award. Second, an award issued after the date of filing is not evidence of the petitioner's eligibility at that time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In light of the above, the petitioner has not demonstrated that he 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 director concluded that professional memberships are commonplace among those in the field of scientific research. Counsel does not challenge this assertion on appeal. We concur with the director and note that what is at issue under this criterion is the membership requirements for the association. Initially, the petitioner submitted evidence of membership in the following associations: the American Meteorological Society and the Chinese Meteorological Society. The petitioner failed to submit official evidence from the associations reflecting the precise membership requirements for these associations. Dr. [redacted] and Dr. [redacted] assert that membership in both associations is merit based. Without the precise membership requirements as reflected in official association materials such as bylaws, we cannot conclude that either association requires outstanding achievements of their members.

> *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.*

Counsel asserts for the first time that the petitioner meets this criterion in response to the director's request for additional documentation. The director did not address this criterion in her decision and counsel does not continue to claim that the petitioner meets this criterion on appeal. Nevertheless, we will review the evidence.

In support of this criterion, the petitioner submitted the articles posted on the websites of the University of Oklahoma and the Pittsburgh Supercomputing Center discussed above and 2002 press releases regarding the Warning Event Simulator (WES) posted on government and weather related websites. As discussed above, it is not clear that the petitioner was responsible for the 1997 awards presented to CAPS reported in the University of Oklahoma and Pittsburgh Supercomputing Center articles. According to Dr. [redacted] Director of the Cooperative Institute for Mesoscale Meteorological Studies at the University of Oklahoma, the petitioner "made enormous contributions" to this simulator. None of the articles, however, mention the petitioner by name. It remains, the 2002 articles were posted after the petition was filed, and cannot establish the petitioner's eligibility as of the date of filing. Moreover, articles that do not mention the petitioner by name are not indicative of his personal national acclaim. Finally, the petitioner has not established that these websites represent major media.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted a letter from *ACTA Meteorological SINICA* confirming that the publication has sought the petitioner as a peer reviewer "based on his exceptional professional background and outstanding leading research in objective analysis, weather forecasting and artificial intelligent application." The letter describes the publication as "a first-class scientific publication, a major forum in which to describe the excellent scientific research being done in China." The director did not address this criterion. On appeal, counsel references the letter as evidence to meet this criterion.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

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

The director acknowledged that the petitioner had made "respectable accomplishments" but concluded that the reference letters showed only "professional respect." On appeal, counsel quotes from several of the letters and asserts that the director erred in failing to consider the letters. It is not clear from the director's decision whether she concluded that the petitioner met this criterion. We find that the petitioner does, in fact, meet this single criterion.

Dr. [redacted], Leader of the Instructional Resources Team, the Warning Decision and Training Branch (WDTB) of the National Weather Service in Norman, Oklahoma, discusses the petitioner's career and his current work at the WDTB. While Dr. [redacted] asserts that the petitioner played a leading or critical role for nearly all his previous employers, we will evaluate those claims below in view of the information provided by the petitioner's colleagues at those locations. Dr. [redacted] discusses the petitioner's work with the WDTB as follows:

> [The petitioner is] developing and delivering training materials for the data integration environment brought about by AWIPS [Advanced Weather Interactive Processing System] with emphasis on the use of radar data in conjunction with other remote sensor data. The main focus of the training is on the warning process within a forecast office and includes warning decision making, situation awareness, warning methodology, and office strategies. Training is also developed and delivered for baseline software changes and NEXRAD Product Improvement radar system changes.

Dr. [redacted] a professor emeritus at the School of Meteorology at the University of Oklahoma, discusses the petitioner's career at length. After being in charge of many state funded projects in China, the petitioner worked at the National Aviation Weather Center (AWC) where he "developed automatic analysis and depiction techniques for two-dimensional and three-dimensional jet streams and fronts." Dr. [redacted] states that the petitioner's "source codes have been adopted by several weather services in [the] meteorological community in the world." Subsequently, the petitioner obtained his Master's degree in 1999 at the University of Oklahoma. At the University of Oklahoma, the petitioner worked on several research projects being conducted by the Center for Analysis and Prediction of Storms (CAPS). Dr. [redacted] discusses the petitioner's significant improvement to the Barnes scheme "a well known and popular objective analysis method," introduced in 1964. According to Dr. [redacted] "this new approach shows a significant improvement in objective analysis, especially, in [the] analyses of radar data and precipitation data."

Dr. [redacted] also discusses the petitioner's work on quantitative precipitation forecasting (QPF), an important prediction that is also a "formidable" challenge. According to Dr. Sasaki, the petitioner's "experiments reveal much useful information in understanding and evaluating [a] mesoscale model producing a good QPF." Dr. [redacted] concludes that the petitioner is currently responsible for building a training module to improve the National Weather Service's warning abilities as a research scientist at the Warning Decision Training Branch of the National Weather Service in Norman, Oklahoma.

Dr. [redacted] Director of CAPS and a professor at the University of Oklahoma, and Dr. [redacted] a research meteorologist at the National Severe Storm Laboratory and former Chief Scientist at CAPS, provide similar information.

Dr. [redacted] the Scientific Operations Officer at AWC, provides additional detail regarding the petitioner's work at that center. According to Dr. [redacted] the petitioner advanced techniques for automatically determining the locations of jets and fronts for a chart that covers three-quarters of the globe. The resulting cross sectional analysis to detect multiple jet streams in close proximity developed by the petitioner "forms the basis for the AWC operational forecast technique of determining multiple jet streams." In addition, the AWC uses the petitioner's techniques for determining the location of a front. Finally, Dr. [redacted] asserts that the petitioner's work was "critical to the operational implementation of the AWC Significant Weather Chart which is used daily by most of the world's commercial pilots on international flights." [redacted], Aviation Weather Center Team Leader for Products and Services at AWC, provides similar information, asserting that the petitioner solved previously unsolved problems.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim. We acknowledge that the record does include some letters from individuals who have not collaborated with the petitioner. [redacted] an advanced application manager at the United Kingdom Meteorological Office, asserts that he knows the petitioner through interactions with the AWC. He provides similar information to that discussed above.

[redacted] Operations Manager of Aviation Services at MetService of New Zealand, Ltd., asserts that the petitioner developed and implemented an operational system to generate Significant Weather Charts at the AWC and that the AWC produces the Significant Weather Charts used by major airline operations around the globe. Mr. [redacted] does not explain how he became aware of the petitioner's work on the charts.

[redacted] National Manager at Aviation Weather Services at the Australian Bureau of Meteorology, states that he understands that the petitioner played an important role in developing the Significant Weather Charts and that the AWC weather charts "are superior in terms of the identification of clear air turbulence over the Australian region, than similar charts produced by the World Area Forecast Centre in London."

Dr. [redacted] Director of the Research Center for Disastrous Weather, Chinese Academy of Meteorological Sciences, asserts that he is aware of the petitioner through his publications and presentations. Dr [redacted] discusses the projects discussed above as well as the petitioner's work in China. Specifically, the petitioner developed a short-term heavy rain forecast method, a method for forecasting severe storms caused by northward hurricanes, and a classification test of Liaoning's Spring Cold Wave revealing major differences between spring and winter.

In response to the director's request for additional documentation, the petitioner submits evidence regarding the petitioner's projects after the date of filing. Such evidence cannot establish the petitioner's eligibility as of that date.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. 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.

Nevertheless, the record does contain more objective evidence supporting the claims made by the petitioner's references discussed above. For example, [redacted] asserts that the Canadian Meteorological Centre in Montreal invited the petitioner to present his "unique research results used in the development of the automatic generation of the Significant Weather Charts" at the AWC. Mr. [redacted] notes that "the results of [the petitioner's] work are now routinely seen in the quality of the high altitude Significant Weather charts produced at the Aviation Weather

Center for the World Area Forecast System." While counsel argued in response to the request for additional documentation that the applicability of the petitioner's work is "comparable evidence" under 8 C.F.R. § 204.5(h)(4), we find that it merely helps establish the petitioner's claim to have made contributions of major significance to the field. In light of the above, we find that the petitioner meets this criterion.

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

The petitioner submitted evidence that, as of the date of filing, he had authored five book chapters in a 1993 book published by the China Meteorology Press, eleven published articles and three presentations published in conference proceedings. The director concluded that published articles are routine in the research field. On appeal, counsel restates the petitioner's publication history. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

Regarding the book chapters authored by the petitioner, the record contains little information on the circulation of the book or other objective evidence of its influence. Regarding the articles, the record contains no evidence that independent experts have cited the petitioner's work. Thus, the petitioner has not demonstrated that his publication history sets him apart from others in the field and, thus, the record does not establish that the petitioner meets this criterion.

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

As stated above, Dr. [redacted] asserts that the petitioner has played a leading or critical role for nearly every one of his employers. It is not clear that Dr. [redacted] has first hand knowledge of the petitioner's role in his previous jobs. Similarly, Dr [redacted] claims that the petitioner played a "critical and leading role" at the "prestigious Shenyang Regional Meteorological Center." The record, however, does not include any letters from the petitioner's colleagues at that center to support Dr. [redacted] conclusion. We must look at the statements of the petitioner's colleagues at the remaining locations in order to determine whether Dr. [redacted] statements are supported by the record. In examining the evidence, we note that, as opposed to the contributions criterion discussed above, we look at the nature of the role itself, and not evidence that, in hindsight, reflects that the petitioner made important contributions while serving in that role.

Regarding the petitioner's role at AWC, Dr.[redacted] asserts that the petitioner's work there "was critical to the operational implementation of the AC Significant Weather Chart which is used daily by most of the world's commercial pilots on international flights." We have already acknowledged the petitioner's work on these charts above in finding that the petitioner has made contributions of major significance. It is not clear, however, that playing a critical role on the development of these charts constitutes a critical or leading role for AWC as a whole.

Regarding the petitioner's role at CAPS, Dr.[redacted] states:

> As a scientist, [the petitioner] is functioning in a critical role for several research projects funded by [the] National Science Foundation (NSF) and [the] Federal Aviation Administration (FAA) being conducted by the Center for Analysis and Prediction of Storms (CAPS) and the school of Meteorology (SOM) at the University of Oklahoma (OU).

Dr.[redacted] Director of CAPS, states that the petitioner was an important contributor to the success of CAPS. Dr.[redacted] asserts that the petitioner was in charge of a project at CAPS and that his novel technique was a significant improvement over previous techniques.

While the petitioner has not established that the award issued to CAPS can be credited to him, it is evidence suggesting that CAPS enjoys a distinguished reputation. The petitioner, however, has not demonstrated that by serving in a critical capacity for specific CAPS projects he served a critical role for CAPS as a whole. We note that the petitioner was studying for a Master's degree at the time. While we do not hold that a student can never play a leading or critical role for the laboratory in which he works, he bears a heavy burden. Specifically, the petitioner must demonstrate that, as a student, he was hired into a position surpassing in significance those of the other student positions and the average permanent staff positions at the laboratory. The petitioner has not demonstrated that he was hired to fill such a position at CAPS.

Finally, regarding the petitioner's work for the WDTB, Dr[redacted] asserts that the petitioner has been a "critical research scientist." The record does not support this assertion. The press releases regarding WES do not even mention the petitioner by name as an individual who was hired to play a major role in the development of WES. Regardless, even assuming the petitioner is playing a critical or leading role for WDTB, it is not clear that WDTB has a distinguished reputation nationally. It is a component of the National Weather Service Training Division. The petitioner has not established that this single division of the National Weather Service Training Division enjoys a distinguished reputation nationally beyond the general reputation of the National Weather Service Training Division. The record does not demonstrate that the petitioner played a leading or critical role for the National Weather Service Training Division as a whole.

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 himself as a research meteorologist 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 meteorologist, but is not persuasive that the petitioner's achievements 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.