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U.S. Citizenship and Immigration Services

identifying deleted to prevent clearly unwarranted invasion of personal privacy

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2004

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)

ON BEHALF OF PETITIONER:

[redacted]

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INSTRUCTIONS:

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

for Marin Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petition is now before the Administrative Appeals Office (AAO) 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 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 scientist, specifically in the fields of x-ray spectroscopy, atomic force microscopy, physical chemistry and semiconductor technology. 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.

On appeal, counsel notes several clerical errors in the director's decision. We acknowledge those errors but determine they did not affect the outcome of the director's decision.

The petitioner has submitted evidence that, he claims, meets the following criteria.

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.

In order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. The petitioner submitted evidence of frequent citations of his work by other researchers. As the AAO has consistently observed, it is the nature of research to build upon prior research. Prior work is sometimes expanded upon or supported. At other times, it is superseded by the findings of current research. In either case, the current researcher normally cites the work of prior researchers. Clearly this is not the same thing as published material written *about* an individual's work in the field. While in a general sense, the articles discuss the merits of the petitioner's work, the merits are addressed only as relative to that author's own research. Citations do not discuss the individual's standing in the field or any significant impact that his work has had on work in the field. The plain language of the regulation requires that the published material be about the alien, relating to his or her work. Citations of the petitioner's work are addressed under a separate criterion.

The petitioner presented three articles that counsel asserts is about his work. The first is an article in the December 1999 edition of *Perspectives*, whose masthead describes it as a publication by the Institute of Materials Research and Engineering (IMRE). IMRE is itself explained as being supported by the Singapore National Science and Technology Board (NSTB) and affiliated with the National University of Singapore. The article generally discusses the need for ultra clean silicon surfaces but does not attribute the work described in the article to any specific individual. The caption of the photograph accompanying the article describes the function of the machine pictured but does not identify the individual operating the machine, who counsel states is the petitioner.

The second article appears in a 1996 edition of "A Quarterly Commentary," which, according to counsel, is a publication of the ICI Group, "one of the world's largest producers of specialty products and paints." The record contains no further evidence regarding this publication or the ICI Group, and it cannot be concluded that the publication qualifies as a professional or major trade publications as required by the regulation. 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). Furthermore, the article contains only a very brief reference to the petitioner's work in what the writer describes as one of a "number of papers which seek to prepare and characterize Pt-Nafion particles."

The third article, submitted in response to the director's request for evidence (RFE) dated January 29, 2003, is an article in the April 1999 edition of *Semiconductor International*. The magazine's website states it is the leading technical publication of the global semiconductor industry. No other evidence of the magazine or its import appears in the record. The article addresses the development by Chartered Semiconductor Manufacturing Ltd., of a laser technique that removes etch-induced polymers at fluences controlled to avoid damage to the underlying layers. The petitioner is not mentioned, as the article does not identify any particular individual responsible for the development of the technique.

Assuming arguendo that the three articles were published in major trade publications, none of the articles is about the petitioner and his work, and do not establish that he has been the subject of published material that meets this criterion.

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 did not originally claim to meet this criterion and submitted no supporting evidence with the petition. In response to the RFE, however, the petitioner claims to meet this criterion based on his review of manuscripts for the *Electrochemical and Solid-State Letters*, a top rated journal of the Electrochemical Society. We withdraw the director's determination that the petitioner meets this criterion.

As evidence that he meets this criterion, the petitioner submitted a letter from the director of publications for the *Electrochemical and Solid-State Letters* that stated the petitioner has reviewed manuscripts for the journal. The publications director did not indicate the frequency of the petitioner's participation in the review process, the number of articles he had reviewed, when those reviews occurred, or the basis for his selection. The record does contain one letter from July 2000 requesting the petitioner's review of an article. In his cover letter, counsel outlines the criteria used to select judges, but as noted above, the assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Peer review is an integral part of the scientific publication process; it does not follow that every person who is selected to review papers for publication is extraordinary in his or her field. Evidence submitted in support of this criterion must reflect that the alien was selected to perform reviews because of his expertise in the field. Further, because the statute requires extensive documentation, the AAO will look at the frequency and the regularity of invitations to perform peer review. Occasional participation in the peer review process does not substantiate that the petitioner has earned such sustained national or international acclaim that his opinions and insight are regularly sought as a valued element of that process.

The petitioner also submitted evidence that he served as faculty supervisor for graduate students at the National University of Singapore during their master's or doctoral degree matriculation. Appointment as faculty advisor for graduate students is a common university practice, and the record contains no evidence that the petitioner was chosen as a result of his standing in the field. The evidence does not establish 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 petitioner states that his receipt of five U.S. patents (with a sixth one currently pending approval), over 50 references to his patents, and his peer-reviewed papers are evidence of his contributions to the field. The record reflects that the petitioner has been the co-inventor of technologies that have received five U.S. patents. Evidence of receipt of a patent, without more, does not establish that the patent constitutes a major contribution to the field of endeavor. The U.S. patent office issues over 100,000 patents yearly. The record does not contain evidence of the use of the petitioner's patented technologies by others in his field. The article that appears in *Semiconductor International* describes one of the technologies for which the petitioner has a patent as bringing "technology closer to meeting the demands of wafer cleaning." Nothing more on the use of this technology appears in the record.

The petitioner submitted letters of support and recommendation from colleagues attesting to his talent as a scientist and his impact in his various fields. None mention the impact that the petitioner's patents have had on the field or on their own research, although Dr. Lap Chan, Director of the University/Research Institute of Chartered Semiconductor Manufacturing, Ltd., states that the petitioner's pending patent application "should have

great impact on the front-end-process in CMOS device fabrication." This speculative comment on the future prospects for a patent that has not been issued does not establish eligibility under this criterion.

The petitioner submits evidence that his various patents have been referenced as prior art approximately 50 times by others applying for patents. These references to the petitioner's patents are akin to citations of published work, and do not necessarily, of and by themselves, indicate that the petitioner made a significant contribution to the field of endeavor.

The petitioner's colleagues describe him as an outstanding researcher and scientist. Dr. Chan, who describes himself as an authority on the subject of Silicon IC device technologies, writes that the petitioner has made "distinguished contributions to the field of semiconductor processes and technologies." Dr. Chan worked with the petitioner for two years on a project funded by the NSTB of Singapore. He found that the petitioner had a "very good understanding of wet chemical cleaning of silicon surfaces for the semiconductor industry," and that:

> [the petitioner's] research project in wet chemical cleaning of silicon led to a practical process for the front-end-line process, which greatly reduced footprint of wet bench, consumption of de-ionized water, chemical waste and processing time for the process. This leads to significant improvement of cost of ownership in this particularly important process in CMOS device fabrication.

Dr. Laszlo Fabry, manager of the Central Analytical Laboratories of Wacker Siltronic AG, Burhausen, Germany, states that the petitioner "has a very deep understanding of wet chemical cleaning of silicon for CMOS devices." He states:

> [T]he wet cleaning process he invented has greatly reduced usage of chemicals, DI wafer, and production waste. This practically useful wet chemical cleaning process was derived from his long time scientific research started in 1993 . . . [H]e was the first person to precisely elucidate the atomic scale etching process of Si(110) surface in NH4F solution using Scanning Tunneling Microscopy. The ball- and -stick models he proposed significantly improve our understanding of the etching process on hydrogen-terminated Si(110) surfaces . . . Because he carried out this remarkable work, his findings open the way to novel strategies for future processes and, in particular, will allow us to reformulate our understanding of the wet chemical cleaning in general.

Dr. Taro Yamada of the Surface Chemistry Laboratory, RIKEN, in Japan writes that the petitioner's research work "represents a breakthrough in the understanding of silicon surfaces etched with various fluoride solutions." Dr. Yamada states that he worked with the petitioner for more than a year on the Itaya Electrochemiscopy Project. He also states that the petitioner's "proposed models remarkably deepen our understanding of etching processes of silicon surfaces, which will eventually help the scientific community get insight into the etching mechanism of Si(001) that is extensively used as starting materials to build transistors in an IC chip used in a computer." Dr. Kingo Itaya, a professor at the Tohoku University, Department of Applied Chemistry and head of the project, writes identical comments regarding the petitioner.

Dr. Karl Doblhofer, research director of the Fritz-Haber-Institute der Max-Planck-Gesellschaft, states the petitioner worked in his research group for several years as a PhD student and postdoctoral fellow. He states that the petitioner's work "greatly increased our understanding of kinetics and thermodynamics of redoc ions within the Nafion file. He was the first to present a practical method to determine rate constant and diffusion coefficient

of redox ions in the Nafion film by using real and imaginary Laplace transformation he programmed himself with Fortran Language."

Dr. Jianyi, Associate Professor of Physics, National University of Singapore, who co-supervised a graduate student with the petitioner on the study of scanning tunneling microscopy (STM) imaging of carbon nanotube, writes of the petitioner:

> [His] pivotal research, particularly his invention of so-called IMRE clean (patent filed in 2001), solved the problem of cost of ownership of the current used RCA cleaning method that consumes a large amount of water and chemicals. A result of his expertise of STM visualization of SI etching process leads to a practical application of the theoretical prediction to semiconductor industry, a good example of close linking between the fundamental research and practical applications.

Dr. Peter S. Fedkiw, Professor of Chemical Engineering at North Carolina State University, states he hired the petitioner in a postdoctoral position for a project funded by the National Science Foundation (NSF). He states that the petitioner "helped to develop a completely new electrochemical processing technology: the use of a permselective membrane coated onto an electrode to prevent fouling." He states that the petitioner's research has "dramatically shaped our current understanding" of physical chemistry and semiconductor technology processes.

Counsel asserts that the peer-reviewed articles the petitioner has published evidence his contributions to the field. Publication of a peer-reviewed article is not, by itself, indicative of a contribution of major significance to the field. In order to be accepted for publication in a scientific journal, an article must offer new and useful information to the pool of knowledge. It does not follow that every scientist whose scholarly research is accepted for publication has made a major contribution to his or her field.

While not without weight, the opinions of experts in the field cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition would carry 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. Despite the many accolades and the strong statements about the use of the petitioner's technology in the semiconductor arena, the authors of the letters of recommendation do not indicate that they apply the petitioner's research results to their own work and the petitioner submitted no independent evidence of the use of his work by others in the field. The evidence does not establish 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.

Counsel asserts that the petitioner has published more than 70 research papers, and submitted evidence of approximately half of these. Many of these articles were published in highly rated journals with international circulation such as the *Journal of Physical Chemistry* and the *Journal of the Electrochemical Society*. However, publication alone is insufficient to establish the importance or influence of the published research. The frequency of citation to the articles by independent researchers would tend to demonstrate the interest in and reliance on the published research. The petitioner submitted evidence that others have favorably and frequently cited his work in the field. He also submitted evidence that his work has been presented as papers or abstracts at conferences internationally. We also note that other applicants seeking patents have frequently referenced his patents. We

find that this frequent citation and reference to the petitioner's work satisfy this criterion, and withdraw the director's determination that the petitioner did not meet this criterion.

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

The petitioner claims to meet this criterion based on his work at the IMRE and the Fritz-Haber-Institute der Max-Planck-Gesellschaft. To establish the reputation of the IMRE as an organization, counsel submits a copy of an introduction page from the IMRE website, but provides no evidence to establish IMRE's reputation in the scientific or academic field. Counsel asserts that an indicator of the petitioner' s "critical" role at IMRE is the fact that one of his projects was supported and funded by the IMRE and the NSTB. A research project is not an organization or establishment, and the petitioner has not shown the significance of this single project to the IMRE. Counsel further asserts that the petitioner played a "critical" role at IMRE based on his coordination of a symposium sponsored by the IMRE at a conference, which featured several Nobel laureates. The evidence reflects that the petitioner was a coordinator of one of several symposia featured as part of the conference. The record does not indicate the responsibilities of the symposia coordinators or the petitioner in particular, or the significance of the petitioner's role in the success of the conference. A conference, like a project, is not an organization or establishment and the petitioner does not show the import of this conference to IMRE. Counsel also asserts that the petitioner's development of a novel semiconductor cleaning technique was critical and essential to the IMRE's mission. However, no evidence that the petitioner's work had a critical impact on IMRE's mission exists in the record.

Counsel provides a letter from Professor Sam F. Y. Li of the Department of Chemistry at the National University of Singapore in which he states that the petitioner played a critical role as Senior Research Fellow in the establishment of the IMRE. According to Dr. Li, the petitioner joined his program in 1998, and became critically involved in the establishment of the IMRE and the growth of the organization through the petitioner's involvement in many aspects of the program, including choosing equipment, recruiting and interviewing potential candidates and writing a proposal to get funding from the National Science and Technology Board. The information provided is conflicting. Counsel states the IMRE was founded in 1996; however, the petitioner did not begin work at the institute until 1998. Dr. Li also implies that the petitioner was already working at the IMRE before he joined Dr. Li's program and before he became involved in the "establishment" of the IMRE. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Regardless, the evidence does not establish that the IMRE is an organization that has a distinguished reputation. Further, the petitioner's position as senior research fellow has not been shown to be a critical role in the organization.

The petitioner was a PhD student and postdoctoral fellow at the Fritz-Haber-Institute. Dr. Doblhofer states he always considered the petitioner's performance as "very good," and that the petitioner contributed to the understanding of kinetics and the thermodynamics of redox ions within the Nafion film. Dr. Doblhofer's letter, however, does not suggest that the petitioner played a critical or leading role at the Fritz-Haber-Institute or even within Dr. Doblhofer's research group. The petitioner has not established that he meets this criterion.

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 his field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research 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 petitioner is a talented research scientist, 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.