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U.S. Citizenship and Immigration Services

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[redacted]

FEB 24 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

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]

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 Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

Counsel represents both the petitioner and the beneficiary. We note that, on appeal, counsel refers to the beneficiary as the petitioner, and states that the appeal has been filed on the beneficiary's behalf. The appeal submission contains nothing from the petitioner itself, nor any direct evidence that the petitioner is even aware of this appeal. We accept this appeal only because the record contains no definitive evidence to show that counsel has ceased to represent the actual petitioner, and therefore counsel retains authority to file an appeal on the petitioner's behalf.

The petitioner 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 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 pertinent regulations 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.

The petitioner is in the business of "development & manufacture of adhesives in [the] tile and building industry." It seeks to employ the beneficiary as a materials 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 has submitted evidence which, counsel claims, 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 did not initially make any claim under this criterion. Subsequently, the petitioner has documented the beneficiary's membership in the American Ceramic Society, the American Chemical Society, the Materials Research Society, and ASTM International. The petitioner has not, however, submitted any evidence to show that any of these associations require 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 states "[i]n the scientific field, publicity about the individual scientist . . . is not the measure of achievement. Rather, the mark of distinction is how much the scientist's work has been cited by other scientists." Notwithstanding counsel's arguments, the plain wording of the regulation calls for "published materials *about the alien*." Citations provide a valuable gauge of the impact of a scientist's own published work, which is covered under a separate criterion further below.

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 submits letters showing that the beneficiary has twice been invited to review manuscripts submitted for publication in *Cement and Concrete Research*, once in July 2001 and again in February 2002. The petitioner has not shown that even this minimal level of peer review is highly unusual in the field, or that *Cement and Concrete Research* selects its reviewers on the basis of acclaim in the field. Furthermore, the record shows that the editor-in-chief of *Cement and Concrete Research* is Professor [redacted] who supervised the beneficiary's doctoral work at the Pennsylvania State University. The fact that one of the beneficiary's own professors solicited peer reviews from him is not strong evidence of widespread acclaim throughout the field.

The petitioner has since shown that he participated on "ASTM C09.43 subcommittee task group #5." The documentation in the record does not indicate the extent to which this task force membership involves judging the work of others. The record shows that ASTM International has 135 technical committees, each of which is presumably divided into subcommittees. Committee C09, for instance, is the committee for "Concrete and Concrete Aggregates." The petitioner's subcommittee, C09.43, has 47 members; its parent committee, C09, has "approximately 700 members." If these numbers are typical, then it seems likely that tens of thousands of ASTM International's members serve on one subcommittee or another. ASTM's total membership size is roughly 30,000. It therefore seems likely that every ASTM member serves on at least one committee or subcommittee, unless we assume without any evidence that committee CO9 and subcommittee C09.43 are substantially larger than most other comparable bodies within the organization.

Also, a letter inviting the beneficiary to join committee C09 is dated January 6, 2003, some eight months after the petition's filing date, and nearly two months after the director requested additional evidence. The fact that the beneficiary joined this committee in January 2003 cannot under any circumstances establish the beneficiary's eligibility as of May 2002. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that

beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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

The petitioner's initial submission includes five witness letters. While complimentary, these letters do not establish that the beneficiary has earned sustained national or international acclaim for his work. Three of the five witnesses are the beneficiary's former professors, and a fourth witness has collaborated with the beneficiary both in India and in the United States. Such witnesses are obviously in a position to describe the beneficiary's work, but their assertions cannot establish first-hand that the beneficiary's work is nationally or internationally recognized as having major significance.

The only initial witness who does not claim a particular connection to the beneficiary is chairman of the Supramics Company. Mr states that the beneficiary's "academic background has uniquely prepared him for his current contributions to the utilization of coal combustion by-product waste streams in the private sector. There are almost no other scientists with a similar background who are currently employed by private companies anywhere in the world." Mr does not claim that such expertise is equally scarce within "academia or governmental entities," which Mr. carefully distinguishes from "private industry." General assertions about the importance of the beneficiary's field, and the scarcity of trained workers privately employed in that field, do not establish that this particular beneficiary has earned sustained acclaim in the field. Mr does not credit the beneficiary with any specific contributions; he merely states that the beneficiary is a "national asset" owing to his field of expertise.

Subsequently, the petitioner has submitted letters from other collaborators and mentors, who in several instances stress the importance of projects that they themselves had undertaken with the beneficiary. One such witness, Dr. used to work with the beneficiary at the petitioning company. Dr. states that the petitioner's work "has already brought several products for everyday usage. These products are currently sold in innumerable HOME DEPOT stores all over USA." None of the "several products" are identified.

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

The petitioner submits copies of numerous articles and conference presentations by the beneficiary. Counsel contends that these articles are "valuable and highly respected," and that the beneficiary's "work has often been cited as authoritative by other scientists in the field." The petitioner documents the citation histories of two of these articles (one published in 1994, the other in 1999). The beneficiary's 1994 article has been cited three times, one of which is a self-citation by the beneficiary. The petitioner's 1999 article shows one citation. Thus, the petitioner's initial filing has documented only three independent citations of the beneficiary's work since 1994. The petitioner has not shown that this minimal citation rate indicates sustained acclaim or extraordinary ability.

Subsequently, counsel has argued that the beneficiary's articles "have been consistently cited" but offers only a few more confirmed examples, some of which were not published until after the petition's filing date. Counsel contends that the beneficiary's work is cited frequently, but counsel offers no empirical evidence to show that the beneficiary's citation record is extraordinarily high within the field.

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

The petitioner initially offered no claim under this criterion. Subsequently, counsel has asserted that the beneficiary "conducted leading and critical research for the Transportation Research Board (TRB)." The beneficiary had worked as a lead researcher at a TRB-funded project at Pennsylvania State University (Penn State). The petitioner has not shown that serving as a lead researcher on one of countless projects amounts to a leading or critical role for the TRB as a whole.

Counsel states that the beneficiary similarly played leading or critical roles for Penn State and the Central Glass and Ceramic Research Institute (CGCRI) in India. During his work at both of these institutions, the beneficiary was a doctoral student. At most, the beneficiary led individual project teams (which, by themselves, are not distinguished establishments). There is no indication that the beneficiary ever exercised a leadership role at Penn State or at CGCRI.

Counsel states that the beneficiary is critical to the petitioning company because "no other individual on their staff of over fifteen scientists . . . have the background, training, and potential of" the beneficiary. In a letter dated January 6, 2003 the petitioner's senior vice president of technology, states that the beneficiary "has been promoted to leader of the [material science] group." This could qualify as a leading or critical role, although we note that Mr. does not specify when this promotion took place and the record does not establish the petitioner's distinguished reputation. Statements from the petitioner's own officials to that effect cannot suffice.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Originally, the petitioner offered no claim in this regard. Counsel has since asserted that the beneficiary's "compensation package in the company totals approximately $90,000 a year. The prevailing wage for the position of Materials Scientist at Level II . . . is $67,850 a year." On the Form I-140 petition, the petitioner had indicated that the beneficiary earns $80,000 per year. Documents in the record indicate that, as of January 2003, the beneficiary's "current base salary" was $77,893.92. The petitioner also received a $4,813.15 company contribution to his 401(k) account, and a "gainsharing bonus" of $7,148.00. The beneficiary's Form W-2 Wage and Tax Statement from 2002 reflects $74,454.71 in wages, only a few percent higher than the cited prevailing wage.

The "prevailing wage" information cited by counsel appears to apply to a limited geographical area. The beneficiary's base salary exceeds the level 2 prevailing wage, but by a considerably smaller margin than counsel has implied. The evidence submitted is not sufficient to show that the beneficiary is among the nation's highest-paid materials scientists.

The director denied the petition, observing that the record lacks critical information such as the membership requirements of the associations to which the beneficiary belongs, and evidence that experts other than the beneficiary's own collaborators and superiors consider the beneficiary's work to represent major contributions.

On appeal, counsel contests the director's findings. Regarding the petitioner's claim that the beneficiary has judged the work of others, for instance, counsel urges that "[a] simple common sense reading of the letter by the Editor-in-Chief" of *Cement and Concrete Research*. As noted above, the editor-in-chief of that journal

was one of the beneficiary's professors at Penn State, and thus her familiarity with the beneficiary's work and scope of knowledge is not indicative of acclaim. It is entirely consistent, however, with the director's finding that the beneficiary's reputation is largely confined to those who have worked closely with the beneficiary.

Counsel states that the director failed to give sufficient consideration to letters "from world renowned experts in the field of Materials Science." The record is devoid of objective evidence to establish that these individuals are, in fact, "world renowned." Once again, the witnesses' level of praise for the beneficiary tends to be directly proportional to their degree of connection with the beneficiary. The most independent witness asserts, in effect, that few scientists with the beneficiary's specialized training work in private industry, and therefore the beneficiary ought to be allowed to remain in the United States. This argument is not a showing of sustained acclaim.

Counsel asserts that the director "failed to consider . . . evidence of [the beneficiary's] leading role in the research project for the Transportation Research Board. The beneficiary was not the leader of this project; rather, the principal investigator was Prof. Della Ray (editor-in-chief of *Cement and Concrete Research*), and there is no evidence that top officials of the TRB were even aware of the beneficiary's involvement in the project. One does not perform a leading or critical role for an organization simply by virtue of participating in research funded by that organization.

Counsel's remaining arguments are comparable to those discussed above. Counsel has not overcome the director's finding that the beneficiary is primarily known among his employers and former professors. Claims of greater impact or recognition have no empirical support in the record.

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 beneficiary has distinguished himself as a materials 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 is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. 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.