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U.S. Citizenship and Immigration Services

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**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 04 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]

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.

Marin Johnson

for 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 (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. The petitioner's motion to reopen and reconsider was forwarded to the AAO as an appeal pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 she 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 scientist/engineer in the field of video image processing. 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 director's decision states incorrectly that "[e]ven if an alien does fulfill at least 3 (or more) of the ten regulatory criteria, it does not necessarily establish that the alien has achieved sustained national or international acclaim and recognition." This statement of the director is erroneous. Clearly, if the petitioner

satisfies three of the regulatory criteria, she will qualify for the visa classification. The director did not find, however, that the petitioner met at least three of the criteria, and we uphold that decision.

The petitioner has submitted evidence that, she 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 does not claim to meet this criterion. However, in response to the director's request for evidence (RFE) dated January 29, 2003, counsel stated in his cover letter that the petitioner had been the recipient of a postdoctoral fellowship by the National Sciences and Engineering Research Council of Canada, a research grant by the Institute of Circuit Theory Telecommunications from the Technical University of Denmark and the Romanian Academy Award in Information Science and Technology. Counsel submitted no evidence in direct support of this criterion. We note, however, that research grants and fellowships are generally awarded to provide financial support for ongoing research and are not prizes or awards in recognition of past excellence in a particular field of endeavor.

Although submitted as evidence of another criterion, we note that the documentation relating to the Romanian Academy Award establishes that the petitioner meets this criterion. The Romanian Academy is a prestigious state institution within Romania, established and supported by the state with the aid of private donations. Awards of the nature received by the petitioner are limited to 70 per year and can be won only once by an individual. These awards are granted to those individuals who have "made eminent contributions to Romanian intellectual life and cultural progress." We find that this is a nationally recognized award for excellence and establishes that the petitioner 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.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

In his cover letter submitted with the petition, counsel asserted that the petitioner is a member of several "prestigious engineering organizations," including the Institute of Electrical and Electronics Engineers (IEEE) and the International Standardization Organization (ISO). As evidence, he included a page from the IEEE website and referenced a letter from Dr. A. Murat Tekalp, Distinguished Professor of Electrical and Computer Engineering, University of Rochester, which states that the petitioner is a member of IEEE and the Moving Pictures Experts Group (MPEG). Neither document specified the membership requirements for the organizations.

In response to the RFE, counsel submitted letters from Dr. Richard V. Cox, current president of the IEEE Signal Processing Society, which seeks to explain the membership structure of the IEEE. A review of Dr. Cox's letter and of the IEEE website reflects that membership in IEEE is open to both professionals and students, and that the IEEE has a six tiered membership structure. According to the evidence provided, the petitioner holds membership at the Senior Member grade, which is the "highest [grade] for which application may be made and requires experience reflecting professional maturity." Selection is based on at least ten years practice and one or more of six performance criteria, which include substantial engineering responsibility or achievement; publication of engineering or scientific papers, books or inventions; technical direction or management of important scientific or engineering work; recognized contributions to the welfare of the scientific or engineering profession; development or furtherance of important scientific or engineering courses; or equivalent contributions in the nature of technical editing, patent prosecutions or patent law provided they serve to substantially advance progress in IEEE-designated fields.

The evidence does not establish that the petitioner's membership in the IEEE meets the requirements of this criterion, as it fails to establish that selection as senior member is based on outstanding achievement. The IEEE criteria appear to require technical expertise, longevity in the profession and a substantial degree of competence but do not require the outstanding accomplishment required of this criterion. This is more evident as the IEEE recognizes those of "outstanding and extraordinary qualifications and experience" by inviting them to become a Fellow in the organization.[1]

Counsel also submits a copy of the MPEG home page from its website and a letter from Dr. David Singer, MPEG Systems File-format chair and editor.[2] Dr. Singer states that the ISO is responsible for the development of standards for coded representation of digital audio and video. The MPEG is a working group of the ISO whose responsibility is the "development of international standards for compression, decompression, processing, and coded representation of moving pictures, audio, and their combination, in order to satisfy a wide variety of applications." The evidence reflects that attendance at MPEG meetings requires accreditation by a national standards body (in the petitioner's case, the Standards Council of Canada). According to Dr. Singer, the accreditation process involves submission and documentation that shows the technical expertise of the candidate. The petitioner was chosen and appointed as a voting member and working expert of the Canadian delegation. While noteworthy, the evidence does not establish that membership in the ISO is based on outstanding achievement. The petitioner's participation in the MPEG working group, although requiring an evaluation and accreditation of her work, is based on technical expertise. Possessing technical expertise does not satisfy the requirements of this criterion.

On motion, the petitioner also submitted evidence that she received an award from the Romanian Academy. Counsel states in his brief that this evidence is "proof of the petitioner's membership in the Romanian Academy." However, the evidence clearly establishes that the petitioner only won an award from the academy, and that the award was limited to non-members. The petitioner's receipt of this award has been considered under a separate criterion.

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[1] *See* "Understanding Membership" at www.ieee.org.

[2] The web page is printed or copied in a manner that cuts off the right side of the page, thus causing some information to be omitted. However, Dr. Singer's letter appears to provide sufficient and similar information for the AAO to evaluate the organization's membership requirements.

*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.*

The petitioner does not claim to meet this criterion. However, in response to the RFE, counsel stated in his cover letter that the petitioner's research results have been cited and referenced by other researchers. This criterion is not satisfied by citations to a petitioner's work by others 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 the subject of a separate criterion. The petitioner has offered no evidence showing that she has been the subject of published material in satisfaction of 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 evidence reflects that based on her expertise in the field, the petitioner has been requested to review a number of manuscripts prior to publication in two separate IEEE publications, as well as for publications in France and The Netherlands. She has also reviewed articles in connection with international conferences sponsored by the IEEE. Additionally, as a member of the MPEG working group, the petitioner assists in evaluating standards that will become part of the MPEG protocol. The director determined that the petitioner has met this criterion, and we will not disturb that finding.

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

The petitioner contends that she meets this criterion based on her co-authorship of technology for which she has patents pending before the U.S. Patent and Trademark Office (USPTO). The petitioner submits no documentary evidence of patent applications filed or pending with the patent office. Edward W. Scott, Senior Patent Counsel at Apple Computer Inc., asserts that the petitioner has "submitted six invention disclosures for new video coding technologies which she has developed." He further states that he has overseen the filing of patent applications on most of these inventions "and will be filing on the remainder in the near future." Nevertheless, the mere filing of a patent application, or even the granting of a patent, is not evidence of a major contribution to the field. The USPTO issues over 100,000 patents yearly. The petitioner must demonstrate how the technology is a major contribution to the field.

In his letter of recommendation, Dr. Cox, who also serves as Vice President of Speech and Imaging Processing Research at AT&T, states that the petitioner worked in his lab for approximately one year. During that time:

> [The petitioner] focused on three advanced techniques for providing high video compression rates through background modeling: a texture replacement at the encoder-only technique, a texture replacement at the encoder and mapping at the decoder technique, and a sprite coding technique . . . . These techniques are actually independent of the video coder used, since they are related to processing the background prior to encoding. The resulting bitrates were as much as 95% lower than those obtained using H.26L, MPEG or Microsoft video coders. [The petitioner] co-authored two patent applications describing the novel approaches used by these techniques. In addition to this work, she also discovered an improved RGB to luminance-

> chrominance transformation technique while working on her demos. She co-authored a patent disclosure for this potentially important invention that is again, independent of any video coding technique and produces more realistic color quality.

In a second letter, Dr. Cox states that this new technology that the petitioner invented "is important for conveniently representing images and video on the web pages prior to moving large sized data sets over the Internet causing network congestion." He also states that during her doctoral studies:

> [The petitioner] proposed a highly efficient pre-processing method for images, new texture features and a new method for image authentication. Moreover, she designed a complete automated system for debris image analysis, which is currently a commercial system. Her contributions have been validated by the MPEG-7 standardization organization. She has also proposed new algorithms for artificial neural networks, which led to new and [efficient] structures. These structures have proved to have both high performance and efficiency in still image and video subsampling. Again, her work in this area is patented and it is also commercialized.

Dr. Barry G. Haskell, Technology Leader at AT&T Labs – Research, and a collaborator of the petitioner, states that the petitioner's work has generated valuable intellectual property for AT&T.

> [The petitioner's work] in content repurposing by subsampling . . . proposes a feedforward neural network based subsampling method that leads to good objective/subjective performance without pre- or post-processing. Consequently, [her] method is well suited to numerous applications, including subsampling in existing video coders, which is a crucial step in coding video for lower bit rate transmission networks such as the Internet.

Dr. Paul E. Haskell, Director of Algorithm Research at Harmonic, Inc., "a firm specializing in state-of-the-art video equipment for the encoding and transmission of digital video," writes almost the identical observation. After reviewing the petitioner's credentials, he writes that in her paper, "Feedforward Neural Network Design with Symmetry Constraints," the petitioner:

> introduces a method for feedforward neural network design with symmetry constraints. Not only the mathematical formulation of the design with such constraints is elegant, but also it yields sparse and tridiagonally symmetrical neural structures, which have significantly reduced time/memory requirements. This is significant because such neural networks can now be designed to perform at a much higher level for a given cost, or at a much reduced cost for a given level of performance.

Dr. Tekalp writes that the petitioner's work at the University of Toronto "focused on content-based image and video processing, with particular emphasis on image and video subsampling, analysis, and representation. She has contributed important research results in these areas, a pending patent, and a commercial image analysis system."

Timothy S. Schaaff, Vice President of Apple Computer's Interactive Media Group, states that some of the petitioner's pending patent technologies have been incorporated into some of Apple's upcoming products and are extremely valuable to Apple. He also notes, as does Dr. Jim Normile, Director of Apple's Video

Conferencing and Video Codecs group, that a technical proposal co-authored by the petitioner has been accepted for inclusion in the upcoming MPEG H.264 standard.

While the petitioner appears to have made significant contributions to the field, the record contains no independent evidence to support the statements contained in the letters of support and recommendation, generally written by those who have or have had a working relationship with her. 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.

The petitioner submits no independent evidence of the patent or commercial usage of her "image analysis system." The letters from AT&T and Apple refer to patents that the petitioner has co-authored and filed with the USPTO, but no supporting documentary evidence exists in the record. Both companies also indicate the patents are valuable intellectual property, but neither specifies that the technology is currently in use in any of its products or have been licensed to others for use. The letters from Apple indicate that the technology will be or has been incorporated into "upcoming products," but do not specify the development stage of the products or the significance of that technology to the product. Dr. Paul Haskell, while providing an independent review of the petitioner's contributions, does not indicate that he uses her research in his own work. Additionally, although the petitioner may participate on the MPEG committee and contribute to the development of the standards for the use of MPEG, no evidence of record establishes that her contributions to the standards, by themselves, have had a significant impact on the video image processing field.

Counsel submits that the petitioner's presentation of her work at various international conferences is also indicative of her major contribution to the field. However, merely reporting research results does not establish its importance unless there is some indication that others utilize the results. Presentation of research results is also more akin to authorship of scholarly articles, and will be discussed further below.

*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 authored three books, a book chapter and more than 30 "significant" publications. The petitioner submitted evidence of four of these articles, a copy of the title page and the first chapter of one book, the title pages of the two other books, and a copy of the book chapter she wrote. Several authors of the letters of recommendation also indicate she has presented the results of her work at various IEEE conferences. Publication is an expected result of reputable scientific researchers. However, publication alone is insufficient to establish the importance or influence of the published research. The frequency of citation to the published work by independent researchers would tend to demonstrate the interest in and reliance on the published research. The petitioner provides no evidence that her research has been cited by others, or has been used by others as a basis of their own research. The evidence of record does not establish that the petitioner has met this criterion.

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

To establish that she meets this criterion, the petitioner submits letters from senior members of Apple Computer, Inc., and AT&T, who attest to the critical nature of her work at these organizations. However, none of the authors describe her as "the" Senior Scientist or Senior Technical Staff Member of the organization, nor do they distinguish her role in the organization from any other Senior Scientist or Senior Technical Staff Member. The evidence does not establish that she was or is a principal player of any subunit of either AT&T or Apple, or that her role in product development is any more "critical" than any other member of the design and development teams. Mr. Schaaff of Apple Computer, Inc., states the petitioner played a "pivotal role in a critical video coding project," while failing to state the nature of the "pivotal" role and the impact it had on Apple Computer, Inc. Additionally, a project is not an organization or establishment within the meaning of the criterion. Furthermore, the evidence does not establish that the technologies, which the companies assert have been the subjects of patent applications, have played a vital role to either company.

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

The petitioner submits evidence that Apple Computer, Inc. compensates her at the rate of $125,000 per annum. This, according to counsel, was, in 2002, more than "139% times the prevailing wage for the petition." As evidence, the petitioner submitted a copy of the Department of Labor's (DOL) OES Wage Data for 2002, which indicates that the petitioner's salary is well above the average for software engineers. The petitioner also submits evidence of a National Compensation Survey issued by the Bureau of Labor Statistics that reflects that the petitioner's salary was higher than the average of all engineers, architects, and surveyors. It is noted, however, that the DOL wage data reflects geographic averages rather than national averages. The petitioner also submitted a copy of a Radford salary survey result with an effective date of April 2003, which indicates that the petitioner's salary is above the average and median for her position (indicated as a software engineer 4) but below the average of those in the positions of software engineers 5 and 6. The Radford survey is also a local survey, reporting on salaries in the San Francisco Bay area. The petitioner must establish that she receives significantly high remuneration for her services compared with all others in her field and not just those at the same occupational level or in the same geographical area. We find that the petitioner does not meet this criterion.

*Other Comparable evidence.*

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the beneficiary's eligibility" [emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the 10 criteria specified by the regulation. Documentation that the petitioner submitted as evidence to meet his criterion was considered as it applied to other specified criteria.

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 herself as a scientist/engineer to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the

petitioner is an accomplished video image processing engineer, 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.