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[redacted]

MAR 22 2004

FILE: WAC 03 007 53878 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.

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. 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 an industrial science researcher. 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.

Through counsel, the petitioner has submitted evidence that, he claims, meets the following criteria. As a preliminary matter, we note that not all of the translations of documents submitted in support of this petition comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires the translator to certify as to his or her competency to translate the documents.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

To show that he meets this criterion, the petitioner submits a copy of an apparent certificate from the Khajeh Nasireddin Tousi University of Technology, expressing appreciation for his efforts during 1996. The certificate identifies the petitioner as "The Best Researcher of the university." Counsel asserts that this expression of appreciation is evidence that the petitioner was a "recipient of a National Endowment for the Best Researcher of the University." On appeal, counsel also asserts that the petitioner meets this criterion because the certificate states it is for the "Best Researcher." The evidence does not support these statements. The certificate appears to be an institutional recognition granted by the Khajeh Nasireddin Tousi University of Technology, and limited to members of the University. No evidence in the record suggests that this certificate is an endowment, that it was awarded on the national level or that it is a nationally or internationally recognized prize or award.

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.

The petitioner submitted a letter from the Iranian Society of Civil Engineers (ISCE) certifying that he is a fellow in the organization. The letter states that the petitioner was awarded fellow status because of his "outstanding executive, educational, and research activities in the field of civil engineering." On appeal, counsel submits a copy of an e-mail from Akbar Khalifehloo, which states that the ISCE has four classes of membership. A fellow member is "for highly qualified civil engineers with outstanding record [sic] in the field of civil engineering and other related branches." Mr. Khalifehloo's position with the ISCE is not identified.

Notwithstanding the wording of the certificate or the e-mail, the evidence is not sufficient to establish that membership in the ISCE, even at the fellow level, is based on outstanding achievement. An "outstanding record" is not synonymous with outstanding achievement as required by this criterion. An outstanding record could be based on longevity in the field, education or management responsibility. The evidence of record does not specify that one must demonstrate outstanding achievements in the field in order to be a fellow of the ISCE, and does not establish that the petitioner 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.

As evidence that he meets this criterion, the petitioner submitted a letter from Mostafa Tavakkoli, Dean of the Faculty of Civil Engineering of Sharif University of Technology, who also served as Secretary of the Fourth

International Conference on Civil Engineering. Dean Tavakkoli stated that he was sending the petitioner six articles in his specialty and requested that he review them for printing or presentation, apparently for the conference. The record does not contain evidence that the petitioner actually reviewed the articles, although untranslated documents were attached to the petitioner's exhibit.

The director determined that the evidence was insufficient as it failed to indicate whether the petitioner was chosen because he was among the elite in his field or because of his reputation in the field. Citing *Buletini v INS*, 860 F. Supp. 1222 (E. D. Mich. 1994), counsel asserts that the director applied an inappropriate and higher standard to this criterion than that required by regulation and caselaw. In *Buletini*, the court stated that the director abused his discretion in requiring the alien to demonstrate that his participation as a judge of the work of others required or involved extraordinary ability. We acknowledge the court's comments on the requirements of this criterion; however, peer review of published work is common and expected in the scientific community. It does not follow that everyone who is selected to review a paper or article prior to publication is selected because he or she has achieved the level of acclaim required for visa preference classification under the statute. The AAO has held that evidence submitted in support of this criterion must reflect that the alien was selected to perform reviews because of his or her expertise in the field or that his or her participation as a judge of the work of peers otherwise distinguished the alien from other peer reviewers. We review the evidence to determine if it is indicative of national or international acclaim as required by the statute and regulation.

Further, because the statute requires extensive documentation, the AAO will look at the frequency and the regularity of invitations to perform peer review. The evidence indicates that the petitioner received one request to review six articles to determine whether they should be included in conference proceedings. The record does not reflect that the petitioner actually completed the review process. The record also does not establish that the petitioner was selected to perform the reviews because of his standing in civil engineering. 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 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.

Counsel asserts that the petitioner meets this criterion based on his receipt of a "National Endowment for Best Researcher," an academic fellowship from the University of Maryland, his design of large industrial buildings and bridges, and his authorship of a book and 13 scientific papers.

As noted above, the evidence does not establish that the petitioner was awarded a "national endowment" for best researcher. Assuming, however, that he did receive such recognition, mere receipt of such a research award would not satisfy this criterion. The petitioner has submitted no evidence regarding the basis for the award or the significance of the research that garnered him the award. Further, awards are the subject of a separate criterion; while an award may corroborate evidence submitted under this criterion, the criterion first requires evidence of an original contribution of major significance.

The record reflects that the petitioner was a visiting scholar at the University of Maryland for approximately ten months. During that time, he assisted Dr. Pedro Albrecht, a professor in the Department of Civil and Environmental Engineering, in his research on prestressed composite steel-concrete beams. Dr. Albrecht and

the petitioner co-authored two papers that, according to Dr. Albrecht, had not been submitted for publication as of July 2002. Dr. Albrecht does not state, nor does the evidence show, that the petitioner's work at the University of Maryland resulted in a significant contribution to the field of civil engineering. Further, a fellowship is granted generally to fund future research rather than to award an achievement in the field. While the fellowship committee will take the recipient's accomplishments into account, such consideration ensures that the fellowship funds will advance the project and is not an award for excellence in the field or an indication of an original contribution of major significance.

As evidence of the petitioner's industrial designs, counsel references the petitioner's résumé. No independent evidence of the petitioner's work was submitted. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, the petitioner does not provide evidence that his designs were of major significance to the field of civil engineering.

The petitioner submits a list of 13 papers he has authored that have been published. The copies of documents submitted as evidence of these publications do not provide adequate information to assess the petitioner's claims of authorship and publication. Several of the documents are not accompanied by translations as required by statute. Several others do not indicate when or where they were published. According to the petitioner's résumé, at least seven of these papers were presented at conferences and symposia. While the petitioner's authorship of published articles may demonstrate that his research efforts yielded some useful and valid results, it is apparent that any article, in order to be accepted in a scientific journal for publication, 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. 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 in the field.

The petitioner submits what appears to be a copy of the cover of his book; however, the pages following are not translated from the original Persian language. On appeal, the petitioner submits letters from three individuals who attest to his authorship of a book entitled *Wind Effects on Structures*. The authors of the letters indicate that the book is the only one of its kind published in Iran. Fayaz Rahimzadeh Rofooei, Associate Professor and Chair of the Civil Engineering Department, Sharif University of Technology, also states that the "originality and merits of his book have been acknowledged by different panels each comprising of distinguished professors from different universities in Iran." Mohammad T. Kademi, Assistant Professor of Civil Engineering at Sharif University, adds that the book is a "well known text as well as reference book in Iran." Notwithstanding that the book may be the only book on the subject published in Iran and apparently serves as a reference book, there is no evidence that the contents of the book constituted a contribution of major significance to the field of civil engineering.

The petitioner has not presented evidence that he 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.*

As noted above, the petitioner submitted a list of 13 papers that counsel states were published in various national and international scientific journals. However, the evidence submitted is insufficient to establish the

merits of the petitioner's claims that the articles were published. Additionally, the petitioner submits no evidence to establish that the publications identified by the evidence have national or international circulation. The petitioner also does not submit any evidence regarding the conferences in which his various papers were presented.[1] Also, as noted above, publication alone is insufficient to establish the petitioner has sustained acclaim as required by the statute and regulation. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's conclusions. 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 submits no evidence that others have cited his work in the field.

Professor Kademi states that the petitioner's book is used as a reference in Iran, and Professor Rofooei states that the "merits" and "originality" of the book have been "acknowledged" by different university panels in Iran. The statements of these professors, while not without merit, are insufficient to establish that the petitioner's book satisfies the requirement of this criterion. There is no corroborating evidence of the use of the book as a reference by universities in Iran. Neither Professor Kademi nor Professor Rofooei indicates that he uses the petitioner's book in his classes or that it is required supplemental reading for his students. The record does not indicate that the book is used as a reference tool by other professionals in the field.

The director determined that the petitioner had met this criterion; however, we withdraw that determination.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In support of this criterion, counsel submitted copies of brochures or flyers for several conferences and symposia and a letter from Dean Tavakkoli thanking the petitioner for his participation in one conference. The wording of this criterion strongly suggests it is for visual artists such as sculptors and painters. Counsel does not address this criterion on appeal, and the petitioner has not submitted any evidence that indicates that he meets this criterion.

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

Although the petitioner does not claim to meet this criterion, the director considered his statement on the Form I-140, Immigrant Petition for Alien Worker, that his salary would be an estimated $65,000 annually. The director also considered the petitioner's statement regarding his future employment plans in the United States. In his statement, the petitioner indicated that he would be "involved in leading and participating in different research teams of various industrial institutions and universities in the United States." The director concluded that the petitioner had no job offer from industry or academia. On appeal, counsel takes issue with the director's determination, as the regulations do not require an offer of employment or labor certification for visa preference eligibility as an alien of extraordinary ability.

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[1] As noted, several of the documents have not been translated as required by the regulation and thus fail to provide corroborative evidence of the petitioner's statements. The record must contain documentary evidence sufficient to meet the burden of proof in this proceeding. *See Matter of Treasure Craft of California, id.*

Counsel is correct and the wording of the director's decision is slightly misleading. The director's intent was to clarify that the petitioner had not provided evidence to establish that he meets this criterion. As the petitioner does not claim, nor does he submit evidence in support of, this criterion, we concur with the director's determination.

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 industrial 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 has made some accomplishments in his field, 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.