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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

MAR 29 2004

FILE: [redacted] Office: VERMONT 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:

SELF-REPRESENTED

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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.

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 analytic chemist. 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 petitioner claims to meet this criterion based on several awards from the China National Non-ferrous Metal Corporation (CNNC). He submitted copies of a 1991 certificate that recognized his "tremendous contributions in promoting scientific and technological progress, and as a way of encouragement" for his project "Studies on the On-line Analysis of Trace Amount of Germanium in Purified Zinc Electrolyte," a 1992 2nd Prize of Excellent certificate for a paper at the 10th Anniversary Symposium of the Journal of "Fenxi Shiyanshi (Analytical Laboratory)." The petitioner states that the CNNC was the equivalent of a ministry in China, and was in charge of the non-ferrous industry of China. He further states that awards presented by the CNNC are the highest awards in that area in China. The petitioner, however, submits no substantiating evidence of the nature and stature of the CNNC or of the awards it gives out. 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). The evidence does not establish that these awards are nationally recognized awards for excellence.

The petitioner also submitted copies of a 1994 certificate recognizing his selection as the recipient of the 3rd Young Chemist Award of Hunan Chemical and Chemical Engineering Association. The certificate does not indicate the achievements recognized by the award. The petitioner also received an "Excellent Essay Certificate" from the association in 1994 for a paper awarded a 2nd Prize of Excellent Essay in 1993. The petitioner submitted no evidence to show that these awards are nationally or internationally recognized awards for excellence in the field. He also presented evidence of having won "certificates of honor" from Central South University of Technology where he taught. These certificates recognized him as the recipient of the "Excellent Teaching Award" in 1995 and 1997, as "Excellent Supervisor" and in recognition of his "active contribution in promoting the academic standards of the university through writing scientific papers" in 1995, and for receiving a "1st Prize of technical Achievement" for the paper for which he won the award at the symposium. These "certificates of honor" are institutional awards, limited to employees of the university, and are not nationally or internationally recognized awards for excellence.

The petitioner was also the recipient of a 2001 travel grant from the 14th International Symposium on Microscale Separations and Analysis. The evidence indicates that the grant was to aid the petitioner's attendance at a symposium in which one of his papers had been selected for a poster presentation. A travel grant is not an award or prize for excellence in the field of endeavor. As indicated by the evidence, the grant was to help the petitioner defray the expense of attending the symposium.

The evidence presented does not establish 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.

The petitioner submits a certificate from the New York Academy of Sciences acknowledging his membership in the organization. The director determined that membership in this organization did not require outstanding achievement as a prerequisite for joining. On appeal, the petitioner acknowledges that the director's determination is accurate. However, the petitioner states that his membership on the China National Flow Injection Analysis Academic Committee; the Youth Committee of the China National Non-ferrous Metal Analytical Information Network; and the Southern China Youth Academic Committee, Analysis and Testing Association of China (SCYAC) require outstanding achievement of their members. As evidence of his membership in these organizations, the petitioner submitted a copy of an abstract from the Fifth National Conference on Flow Injection Analysis listing him as a member of the Academic Committee. The evidence does not include an explanation of the purpose of the committee or of the criteria used to select the members. The petitioner asserts that as this committee was chaired by a prominent academician, the importance of the committee is established. He also states that his positions as chairman and vice chairman of the two other committees evidence the importance of his membership. Regardless of the importance of the committees, the petitioner submits no evidence that his membership on these committees was based on outstanding achievement. Further, the criterion requires the petitioner to establish that membership in the association is based on outstanding achievement, not simply membership on a particular committee within the association. The record does not establish that the petitioner meets this criterion.

> *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. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submits an article dated January 1, 2002 published on the *Semiconductor International* website. The article discusses a new method for the fabrication of microfluidic devices based on the material polydimethylsiloxane (PDMS). The petitioner states he developed the method described in the article; however, he is not mentioned in the article and the author does not attribute the method to any one individual.

The petitioner also claims to meet this criterion based on his inclusion in the Marquis *Who's Who in the World 1998*. The standards for inclusion in this anthology are fluid as evidenced by the publisher's "Standards of Admission." They stated that the individual must have attained "conspicuous achievement" and that achievement is based on "qualitative criteria." There is no other indication of what those criteria are. Furthermore, the listing in the anthology is not published material about the petitioner. The petitioner's biography is only one of thousands listed, and his achievements are not singled out above those of others included in the anthology. Additionally, the biographies appearing in such publications are generally submitted or approved by the subject and are not objective and independent assessments of the individuals or their work. The evidence does not establish that the *Who's Who in the World 1998* is either major media or a major trade publication, or that the biography constitutes published materials about the alien or his work within the meaning of this criterion.

The petitioner's invitation to appear in *The Asia 500* is simply that and is not evidence of published material about him and his work.

> *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 copies of one request to review a manuscript prior to its publication in the journal *Advances in Environmental Research*, and three requests by the journal *Analytical Letters*. The petitioner also submits certifications from the *Fenxi Huasue* (*Chinese Journal of Analytical Chemistry*) and the journal of *Fenxi Shiyanshi* (*Analytical Laboratory*) editorial boards verifying that he had been invited to review "several manuscripts" for the publications. The editorial boards do not specify how many invitations the petitioner actually accepted or how many articles he actually reviewed for their publication. Although the petitioner presents the invitations to review manuscripts for the journals *Advances in Environmental Research* and *Analytical Letters*, he presents no evidence that he reviewed any manuscripts.

The petitioner also states that he was asked by the editors of *Fenxi Shiyanshi* to write two biennial reviews on the progress of flow injection analysis in China. He submits a copy of a report from "SciFinder Scholar" that provides a brief abstract of the two reviews. The evidence provided does not give a clear indication that the petitioner did a qualitative analysis or review of the work of others, or whether it was just a factual recitation of the study of flow injection analysis. The director made no specific determination of this criterion, and we do not find the evidence sufficient to 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.*

Although the petitioner does not specifically address this criterion, in his cover letter with the petition he stated that through his research group's work in flow injection analysis and the development of a multi-syringe based pump, a compact multi-wavelength LED based spectrometer, and a new micro-titration method, they "solved a world known problem existing in aluminum industry for decades." He asserts this research work was regarded as "major advancements in and significant contributions to the field of flow analysis and automated chemical analysis."

He also stated that he established the first "amperometric detection method for chiral separation of naproxen" and "successfully solved the on-chip amperometric detection problem for LC on-chip." He asserts that further accomplishments included development of a high voltage power system for capillary electrophoresis (CE) and writing the programs for instrument control, data acquisition and procession; and development of a unique high throughput solution isoelectric focusing device for which he has applied for a patent

As evidence of his achievements, the petitioner submitted several letters of support and recommendation from a diverse group of experts in his field. Regarding the petitioner's work in flow analysis, Dr. Marek Trojanowicz, professor of analytical chemistry at the University of Warsaw and head of the Laboratory for Flow Analysis and Chromatography, wrote:

> [The petitioner] has made great achievements in computer based analytical instrumentations and automated chemical analysis, particularly in employing flow analysis for industrial process monitoring. He made a systematic and comprehensive approach to

> solve many of the long existing problems that constrain flow analysis from wide applications in industries, such as the reliability of pump and valve system, lack of adequate methods for the accurate determination of major components, and miniaturized and reliable multi-wavelength detectors. Through over 10 years research, he developed a reliable multi-channel syringe pump and valve system, several unique sample injection based mircochemical [sic] methods for major components, and miniaturized LED based multi-wavelength photometer. His efforts have resulted in the successful applications of flow analysis in many different industries in China. These are major practical advancements in and significant contributions to the field of flow analysis and automated chemical analysis. Through the publication of his research results in top international journals, his research will definitely have great impact in the field.

Dr. Andreas Manz, Professor and SmithKline Beecham Chair of Analytical Chemistry at Imperial College of Science, Technology and Medicine, London, writes of the petitioner:

> As evidenced by publications, [the petitioner] has made extraordinary achievements in computer based analytical instrumentation and automated microchemical analysis. Particularly in industrial process monitoring by flow analysis, he developed a series of new methods and instruments, such as multi-channel syringe pump/valve system, micro-titration method, and miniaturized multi-wavelength detector, which make it possible the accurate and reliable monitoring of both minor and major components in industry process by flow analysis. In μTAS, he proposed an extremely novel method for rapid fabrication of microfluidic devices by photocopying. This is the simplest and least expensive technique developed ever, yet very effective. He and others also realized the first ion chromatography on chip.

S. J. Haswell, professor of analytical chemistry at the University of Hull in the United Kingdom, states:

> At present the application of flow analysis to industrial process monitoring has been widely recognized as a key area, however, the actual implementation has been hindered by many technical problems, such as the reliability of pumps, lack of accurate methods for delivering concentrated components, the adverse influence of sample viscosity on determinations and the lack of rugged multi-channel detectors. The work of [the petitioner] over the past 10 years has addressed most if not all of these problems. He proposed some unique microchemical methods for the accurate determination of highly concentrated and viscose samples from numerous industrial processes. He has constructed a reliable multi-syringe pump and valve system, together with a miniaturized multi-channel and multi-wavelength LED based spectrometry detectors. As a result of these achievements, flow analysis has now successfully been used for the on-line determination of many different elements of industrial importance. In particular, in addressing an internationally recognized problem existing in the metallurgical industry of aluminium namely, the on-line monitoring of caustic hydroxide, carbonate, total soda, and aluminium in aluminate solution has been successfully solved through the unique combination of instrumentation and microchemical methods developed by [the petitioner].

Ruilin Man, professor and Vice Chairman of the Department of Chemical Engineering, Central South University, Hunan, China, notes:

> Owing to his multi-disciplinary knowledge, industrial experience, hardworking, [sic] and the ability to design and do experiment[s] efficiently and creatively, he played a key role in instrument development in the Centre for Process Analytical Chemistry, the first of its kind in China . . . [H]e proposed several ingenious, simple, yet very effective microchemical methods to solve many practical problems while using flow injection analysis techniques for industrial process monitoring purposes. Particularly, a problem existing in aluminium industry for decades has been successfully solved by the combination of his new microchemical process analyser and micochemical [sic] titration methods.

While these distinguished professors write favorably of the petitioner's contributions to research and to industry, no corroborative evidence was submitted by the petitioner to show that his contributions have been of major significance. Such evidence might include evidence showing the practical use of his methods and innovative instrumentation, testimonials from the aluminum industry attesting to the success of the petitioner's methods in solving long standing industrial problems, or evidence of the use of his research by other researchers. It is noted that Elo Harald Hansen, professor of analytical chemistry at Technical University of Denmark, who states that he is one of the two inventors of the analytical concept/technique Flow Injection Analysis (FIA), does not acknowledge, in his letter, specific advancements made by the petitioner, and knows of the petitioner's work only through reading his curriculum vitae. He writes:

> From studying the CV of [the petitioner], it is quite obvious that he is an unusually gifted person. This is not only revealed in his very versatile knowledge and experience of different analytical chemical techniques . . . his extensive skills as accumulated at various research groups, but notably through his impressive list of scientific publications. Thus, he has so far accumulated 53 research articles (most of which are published in highly reputed international scientific journals) and he is (co)author of 4 book chapters. Considering that he graduated in 1987 and obtained his Ph.D. in 1991, this is – as measured by an international yardstick – an impressive volume of research activity.

The record does not indicate that Dr. Hansen came to know of the petitioner through his contributions in the field as might be expected if the petitioner's research was particularly noteworthy. Jeremy D. Glennon, professor of chemistry at the National University of Ireland, Cork, states that:

> During his stay in my group and at the National Microelectronics Research Centre (NMRC), [the petitioner] established an amperometric detection method for naproxen following chiral separation, and successfully solved the on-chip amperometric detection problem for LC on-chip. He has developed a high power system for CE and written the programs . . . for instrumental control, data acquisition and processing. He has also proposed some simple, yet very effective microfabrication methods, such as photocopying, dicing, and lamination, for rapidly making microfluidic devices . . . featured in the January 2002 issue of Semiconductor International.

While the petitioner's research methods seem to have been recognized indirectly by an influential publication, no other evidence regarding the use of his methods was made a part of the record. There is no evidence that these methods were a significant contribution to other researchers in the field.

At the time of his petition, the petitioner worked in the laboratory of Dr. Barry L. Karger, Director of the Barnett Institute of Chemical and Biological Analysis at Northeastern University in Boston, Massachusetts. Dr. Karger writes of the petitioner's work:

> When he began his research in my laboratory, [the petitioner] was assigned to develop some prefractionation devices to reduce the complexity of protein or peptide samples. During the past year, he has successfully developed a unique high throughput solution isoelectric focusing device. With this device, peptide mixtures have been successfully fractionated and sample complexity can be reduced greatly. This new device will be further used in many research aspects in bioanalytical or biological fields. Considering its great potential for many research applications, a patent application has been submitted for this innovative device.

No evidence of a patent application or the grant of a patent was presented by the petitioner. Further, even assuming a patent were granted for the device, the simple grant of a patent does not establish that the device is a contribution of major significance to the field. The petitioner must show that the patented product provides significant utility to independent researchers in the field. Dr. Karger states the device has "great potential" for other research applications, but does not state that its use would be of major significance. Dr. Anup K. Singh on the Technical Staff of the U.S. Department of Energy's Sandia National Laboratories, states that the petitioner's device is considered by "many as a breakthrough in the field." Dr. Singh does not give his professional opinion of the significance of the petitioner's device, and does not indicate that he uses or would use it in his own research activities.

Professor David M. Lubman, Department of Chemistry, University of Michigan, who also writes a letter of support for the petitioner, states simply that he has "read over" the petitioner's paper in *Electrophoresis*, and considers it "an outstanding contribution in the field." Without detailing the petitioner's specific achievements, he asserts that the petitioner has done "ground-breaking work here which should be widely recognized."

While not without weight, the opinions of experts in the field cannot form the cornerstone of a successful claim. The opinions of the experts must supported by objective and verifiable evidence. It is noted that all of the letters submitted by the petitioner were prepared especially in support of his petition for visa preference classification. 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 record does not contain independent evidence corroborating the opinions of the experts.

The petitioner noted that the director stated that CIS "does not argue that the beneficiary is an accomplished researcher who has made original contributions to his field." Not noted by the petitioner, however, is the following sentence of the director that "the record does not contain conclusive evidence that he is of that small percentage of researchers in this field who has received sustained national or international acclaim for his extraordinary ability." 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.

In his statement summarizing his qualifications, the petitioner states that he has authored 53 research papers, four book chapters, and made 19 presentations "or talks." As evidence, he submitted copes of 13 "selected" publications with his petition, and an additional one submitted in response to the director's request for evidence (RFE) dated March 10, 2003.[1] He also includes an abstract of two reviews he co-authored for *Fenxi Shiyanshi* on the progress of flow injection analysis in China. Other than a letter from the *Journal of Analytical Chemistry* inviting him to submit a paper he presented at a conference, the petitioner submitted no evidence of his presentations or "talks." The petitioner references his curriculum vitae as evidence of his other publications and presentations. 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, supra.* The petitioner submits copies of several requests for reprints of his various articles. Requests for reprints do not necessarily indicate that the person requesting the reprint has already read and evaluated the article.

It is an axiom of postdoctoral research that one must publish the results of his or her research. The petitioner's co-authorship of published articles may demonstrate that his research efforts yielded some useful and valid results; however, 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. 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 submits no evidence that his work has been cited and relied upon favorably by others in the field. The petitioner has not established 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.

The director indirectly refers to this criterion in his decision, and determined that the petitioner does not meet the requirements. The petitioner neither claims nor submits evidence 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.

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[1] In his response to the RFE, the petitioner submitted a copy of an article that was published in the journal *Electrophoresis 2002*. The article indicates that it was received by the journal in August 2002. As publication of this article occurred after the filing date of the visa preference classification petition, it cannot be considered in determining visa preference eligibility. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Review of the record, however, does not establish that the petitioner has distinguished himself as a chemical analyst 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 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.