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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 31 2004
LIN 00 170 52183

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.

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on May 15, 2000, seeks to classify the petitioner as an alien with extraordinary ability as a scientific researcher in the field of physics. At the time of filing, the petitioner was pursuing her doctorate and working as a research assistant in the Department of Physics at Notre Dame University.

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, counsel claims, meets the following criteria.

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

The petitioner provided several witness letters in support of the petition.

Dr. Cheng Li, Associate Professor of High Energy Physics, Department of Modern Physics, University of Science and Technology of China (where the petitioner received her bachelor's degree), states:

> I have known [the petitioner] since she became a senior undergraduate research assistant in our group in March 1995. Her work provided the first proof that it was possible to use a W-S cathode in the localization of MWPC (Multi-wire Proportional Chamber), and two-dimensional imaging of X-ray. This study is important because it may provide a simpler and cheaper readout of the MWPC with good position resolution compared to the traditional way.... This research has been published in one of the most important journals in China in this area, *High Energy Physics and Nuclear Physics*.

It is apparent that any article, in order to be accepted by one's university or for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose work is accepted for publication has made a major contribution in their particular field. Far more important under this criterion is the significance to the greater scientific community of the petitioner's research finding. Here, there is no evidence to support the conclusion that the petitioner's work is nationally or internationally recognized as a major contribution. For example, the petitioner has provided no evidence showing that her research article was heavily cited or that the practical application of her work attracted national acclaim in China, the U.S., or any other country.

In a memorandum accompanying the petition, counsel states:

> Since January 1997, [the petitioner] has been working with Fermilab, a national U.S. laboratory. Fermilab is funded by the U.S. Department of Energy and seeks to learn the how and why of nature's structure by studying fundamental particles and their interactions. [The petitioner] has been involved in several original research projects which are essential to the Lab's upcoming experiment, the "D-Zero (D0) Upgrade." This experiment has been in preparation for almost a decade and will commence in Spring 2001.

Dr. Mitchell Wayne, Associate Professor of Physics, Notre Dame University, states:

> Since coming to Notre Dame I have served as a research advisor to three graduate students and have worked closely with several more, including [the petitioner]. My current efforts are focused on a state-of-the-art particle tracking detector which will use scintillating optical fibers to reconstruct the paths of elementary charged particles created in proton-antiproton collisions in the D0 experiment. This experiment will be performed at the Fermi National Accelerator Laboratory and will commence operation in early 2001. In this experiment we will study the production and properties of the most fundamental constituents of matter, and also study the forces which govern their interactions. D0 and the new Fermilab Tevatron accelerator are centerpieces of the U.S. High Energy Physics program, and our efforts are supported by the Department of Energy and the National Science Foundation.
>
> During her graduate studies [the petitioner] stood out among others as having a great ability in her chosen area of work. She received her Master degree in January 1999 and has become a key participant on our current research. One of our goals for the D0 experiment is the fabrication and testing of long bundles of clear optical fibers for the tracking detector mentioned above. [The petitioner] has used her

considerable programming skills to write software essential for the mapping of these fibers into their correct locations and for the subsequent testing of the fibers for adequate light transmission. The system used involves a large array of computer-controlled LEDs to inject light into the fibers, and a matching array of phototransistors to measure the light transmitted through each fiber. These fiber bundles are an essential part of the overall detector, which in turn is an integral part of the D0 experiment. [The petitioner] has also been working on detailed computer simulations of the fiber tracking detector in an effort to improve upon the eventual performance of this device. This work involves an understanding of all the aspects of the tracker: the response of the scintillating dyes to the passage of a charged particle, the light-propagating properties of the fiber, the response of the photodectors to the transmitted light, and the effects of the high multiplicity of particles we expect to see in the detector during operation.

Upon completion of the detector [the petitioner's] emphasis will turn to the operation of the detector at Fermilab, and subsequently the physics analysis will be the focus of her dissertation. The topic of her dissertation will be the study of events in which a top-antitop quark pair are produced and decay with a positron-electron pair in the final state. The measurement of this process will provide important input to our understanding of the Standard Model of Particle Physics.

Dr. Randal Ruchti, Professor of Physics, Notre Dame University, states that the petitioner "brings considerable expertise in the area of computing and analysis techniques to several important projects on the Dzero experiment."

Dr. Neal Cason, Professor of Physics, Notre Dame University, states that the petitioner's research "has involved her in several areas of importance to the U.S. industry and our national laboratories. She has excellent software capabilities which she is currently using to monitor the quality of devices under construction for the [D0] experiment." Dr. Cason concludes his letter by stating: "I strongly support the waiver of the labor certification in the national interests for [the petitioner]." Dr. William Shephard, Professor of Physics, Notre Dame University, states that the petitioner's research "involves several areas of great national interest to U.S. National Laboratories and U.S. industry" and that he is impressed by her "technical abilities and talents." Dr. Shephard expresses his opinion that the petitioner's "skills will undoubtedly make great contributions to U.S. National Laboratories or industry." In the same manner as Professors Cason and Shephard, Dr. Jadwiga Warchol, Professor of Physics, Notre Dame University, states that he "support[s] the waiver of the labor certification requirement and the granting of lawful permanent residency to [the petitioner]." A national interest waiver, however, applies to a separate visa classification and is irrelevant to the matter at hand. Although no such determination will be made here, even if the petitioner were found to be eligible for a national interest waiver, the threshold for such a waiver is below that for extraordinary ability.

The letters from the petitioner's professors at Notre Dame University fail to identify a major contribution in the field of physics attributable to the petitioner as of the filing date of the petition. Rather, the witnesses discuss what may, might, or could one day result from the petitioner's ongoing work, rather than how the her past efforts have already had a major impact beyond the original contributions that are normally expected of graduate students at a respected university. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

In this case, the petitioner's findings do not appear to have yet had a major influence in the larger field. While numerous witnesses discuss the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in her field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications would not elevate her to a level above almost all others in her field at the national or international level.

The director's decision stated: "Taken as a whole, the record does not establish that the petitioner has yet exerted a significant influence in the field of physics, or that she has been recognized as among the top scientists in that field. Indeed, the petitioner appears to be at an early stage of her career as a scientific researcher."

On appeal, counsel states: "In addition to [the] testimony previously submitted on behalf of the petitioner, we have included additional testimony from the two co-spokesmen of the D0 experiment." The petitioner's appellate submission, however, did not include these two letters. Rather, counsel has quoted from selected portions of their letters. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if we were to consider the passages quoted by counsel, the co-spokesmen's statements do not overcome the director's findings.

Dr. Hendrick Weerts, Professor of Physics, Michigan State University, and Co-spokesman for the D0 experiment, is quoted by counsel as stating that the D0 experiment is a "scientific collaboration of 66 research universities and national laboratories from the United States, Russia, Argentina, Brazil, France, the United Kingdom, Netherlands, Colombia, India, Mexico, the Czech Republic, Poland China, Korea and Germany." He adds that the collaboration "consists of about 450 scientists at different stages of their careers and is one of the largest scientific enterprises in the world." Dr. Weerts describes the petitioner's importance to the D0 experiment, but he does not state that the petitioner is nationally or internationally acclaimed for her work nor does he indicate that she is responsible for a contribution of major significance in the physics field (comparable to "the discovery of the sixth quark" as mentioned in the second paragraph of his letter as quoted by counsel).

Dr. John Womersley, the other Co-spokesman for the D0 experiment, is quoted by counsel as stating:

> [The petitioner] has been a core member of a relatively small group of [Notre Dame] scientists who have built a novel piece of instrumentation called a fiber tracker. This device is a large cylinder that encloses the point where protons and antiprotons are collided in the Fermilab accelerator. It uses plastic optical fibers to measure the trajectories of the subatomic particles that are produced in these collisions. [The petitioner's] personal contributions to the construction of this device are crucial to its completion and successful operation by March 1, 2001, when we shall start data-taking. She is also vital part of the team responsible for the software that we will use to process and interpret the data that is recorded.

The above witnesses have stated in general terms that the petitioner is a respected and highly skilled researcher who is doing important work in the "national interest." However, there is no consensus among the witnesses in identifying a specific contribution attributable to the petitioner that is widely acknowledged throughout the greater physics field as a contribution of major significance. After reviewing the evidence

presented in this case, it is apparent that the petitioner has not provided sufficient evidence showing that her individual research contributions have consistently attracted widespread acclaim from independent researchers throughout the greater scientific community.

Counsel argues that the witness' letters contained in the record demonstrate that the petitioner possesses expertise placing her "at the very top of her field." The petitioner's witnesses, however, consist entirely of professors from her educational institutions or those affiliated with the D0 project. These individuals became aware of the petitioner's work because of her involvement in their research projects; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with a major contribution in the field of physics. A scientific researcher with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim (such as heavy independent citation her published articles). Here, the evidence presented does not show that the petitioner's prior work has earned her sustained acclaim at the national or international level.

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

Documentation contained in the record indicates that the petitioner has co-authored several articles in journals such as *Physical Review Letters* and *Institute of Electrical and Electronics Engineers Transactions on Nuclear Science*.[1] However, the publication of scholarly articles is not automatic evidence of sustained national or international acclaim; we must also consider the greater research community's reaction to those articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces CIS' position that the publication of scholarly articles is not automatic evidence of sustained acclaim. 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 alone 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 findings. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater research community, then it is reasonable to question how widely that alien's work is viewed as being nationally or internationally acclaimed. In the present case, the petitioner provides no evidence showing that her work has been heavily cited. While the petitioner has clearly co-authored some published articles and abstracts during her educational training, the weight of this evidence is diminished by the lack of evidence showing that these articles have influenced her field.

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

[1] In regard to the petitioner's most recent articles, she is listed among scores of co-authors.

The record adequately establishes that the physics departments at Notre Dame University and the University of Science and Technology of China have distinguished reputations. We cannot ignore, however, that the petitioner's role at these institutions was that of an undergraduate or graduate student. Such roles represent temporary training for a future professional career in a field of endeavor. Aside from a few vague statements from various witnesses, there is no supporting evidence showing that the petitioner, during the time of her studies and educational training within these departments, fulfilled a leading or critical role. Without information detailing the exact nature of her duties and responsibilities in relation to other researchers involved in her same projects, it is not immediately apparent how working as a graduate or undergraduate research assistant constitutes a leading or critical role.

In this case, the record does not show the extent to which the petitioner has exercised substantial control over personnel or research decisions executed on behalf of the physics departments at Notre Dame University and the University of Science and Technology of China. Nor is there evidence indicating, for example, that the petitioner has served on the faculty at either university or that she has directly secured significant amounts of research funding as a principal investigator (in the same manner as some of her witnesses). We note here that the majority of witnesses in this case hold higher positions of authority as research supervisors and heads in their respective divisions or departments. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of her colleagues in the physics field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner's role to that of her colleagues. In this case, the importance of the role of individuals such as professors Weerts, Ruchti, and Cason far exceeds that of the petitioner.

For the above stated reasons, we find that the petitioner's evidence falls short in establishing that the petitioner has performed in a leading or critical role for a distinguished organization, or that her involvement earned her sustained national or international acclaim.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in her field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientific researcher who has published the results of her work or earned the respect of a handful of her colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that she meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished herself as a physics researcher 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 is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at the 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.