U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

B2

FILE: WAC 03 101 53745 Office: CALIFORNIA SERVICE CENTER Date: APR 27 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Director
Administrative Appeals Office

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

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 earned sustained national or international acclaim at the very top level.

This petition, filed on February 11, 2003, seeks to classify the petitioner as an alien with extraordinary ability as an electrical and computer engineer. The petitioner earned his Master of Engineering degree in Electrical Engineering and Computer Science from the Massachusetts Institute of Technology (MIT) in June 2000. At the time of filing, the petitioner was working as an engineer at the San Diego Research Center, Inc.

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.

On appeal, the petitioner states: "It is clear . . . that completing a Master's degree at MIT involved a best-of-the-best selection process equivalent to an internationally recognized award." University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. An advanced degree may indicate that the petitioner has fulfilled certain academic requirements at a given university, but it does not constitute an internationally recognized prize or award for excellence in the field of endeavor. Aside from being institutional in scope, rather than national or international in scope, the master's degree conferred upon the petitioner offers no meaningful comparison between him and the most experienced and practiced professionals in the field of electrical engineering who have long since completed their educational training (such as, for example, those who hold a Ph.D. or a professorship in electrical engineering).

The petitioner submitted evidence showing that MIT's Department of Electrical Engineering and Computer Science presented him with [redacted] Prize in 1999. A letter from [redacted] Head, Department of Electrical Engineering and Computer Science, MIT, states that this prize is "awarded each Spring to the best undergraduate laboratory project of the year."

The petitioner also submitted evidence showing that he received a Morris Joseph Levin Memorial prize from the Department of Electrical Engineering and Computer Science of MIT in 2000. A letter from Charles Sodini, Professor of Electrical Engineering and Computer Science, MIT, states: "In the year 2000, this award was presented to the 7 most outstanding technical presentations among a total of 34 pre-selected MIT graduate student contestants, as judged by members of our faculty . . ."

The petitioner states: "The fact of the matter is that not only was I granted a Master's Degree from the top engineering school in the world, but I also received top awards demonstrating excellence in Electrical Engineering as judged by the internationally distinguished faculty of MIT."

In respect to awards from universities and other learning institutions, Citizenship and Immigration Services (CIS) views academic awards as local or institutional honors rather than nationally or internationally recognized awards for the reason that they are limited to the individual school or institution presenting the awards. According to the information provided by the petitioner, competition for the above awards was limited to undergraduate and graduate students at MIT. Such awards are presented not to established individuals with active professional careers, but rather to students in pursuit of an educational degree. We cannot artificially restrict the petitioner's field to exclude all those professional electrical engineers who have long since completed their educational training and therefore do not compete for student awards. There is no indication that the petitioner has received any significant award for which he would have faced competition from throughout his field, rather than his approximate age group within that field. The visa classification sought by the petitioner is intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. We find no evidence to establish that the petitioner has received a nationally or internationally recognized prize or award for excellence in the field of electrical engineering.

> *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.*

On appeal, the petitioner states: "I am a member of three associations in my field: Tau Beta Pi, Eta Kappa Nu, and Sigma Xi." The petitioner submitted his membership certificates for these associations.

In order 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 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. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted the membership requirements for Tau Beta Pi as listed on its website. The website states:

> Membership in Tau Beta Pi is by invitation from our collegiate chapters . . . .
>
> Undergraduate students must be in the top 1/8th of the junior class or top 1/5th of the senior class to be scholastically eligible for membership. The second requirement of exemplary character is determined by the chapter. Each chapter has its own method which usually requires some activity such as participating in a project.

The petitioner also submitted copy of the Eta Kappa Nu Constitution. Article VII, Section 3 of the association's Constitution states:

> *Undergraduate students*. Undergraduate candidates shall be selected from those students in the Junior or Senior Class who are pursuing courses leading to a Baccalaureate or equivalent degree in electrical or computer engineering.
>
> A. Juniors who have a cumulative scholastic rank in the upper quarter of their electrical or computer engineering class may be elected.

The petitioner was admitted to MIT's chapters of Tau Beta Pi and Eta Kappa Nu as an undergraduate student in 1998. It is clear from the membership requirements provided by the petitioner that members are selected at the local chapter level rather than the national or international level (as required by the regulation). Furthermore, members are admitted based on scholastic achievement rather than outstanding achievement in the engineering field.

According to his membership certificate, the petitioner was elected an "Associate Member" of the Sigma Xi Society by the MIT Chapter in 1999. According to Sigma Xi's official membership requirements, there is no indication that outstanding achievement is required for admission as an Associate Member.[1] Rather, an individual need only demonstrate an "aptitude for research which is expected in due course to lead to the fulfillment of the requirements for full membership." Clearly, "Full Membership" is indicative of a higher level of achievement.

The membership requirements presented by the petitioner are not adequate to demonstrate that his membership in the above associations required outstanding achievement in his field or that he was evaluated by national or international experts in consideration of his membership. The record contains no evidence to establish that the above associations require outstanding achievement of their members in the same manner as highly exclusive associations such as (for example) the U.S. National Academy of Sciences.

> *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 submitted a May 24, 1999 article about his academic achievements printed on the front page of the science section of *El Nacional*, Venezuela's largest-circulation daily newspaper. The plain wording of this criterion, however, requires "published materials . . . relating to the alien's work in the field." The article appearing in *El Nacional*, however, cites only the petitioner's scholastic achievements.

On appeal, the petitioner states: "[A] few months after submitting my original Form I-140, my biographical entry was listed online on IEEE's [The Institute of Electrical and Electronics Engineers] Communications Society Digital Library as an expert in the area of wireless communications." This evidence came into existence subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Aside from the issue of the date that this evidence came into existence, we note that an online biographical entry does not constitute qualifying "published material."

---

[1] Information from Sigma Xi's website, http://www.sigmaxi.org (accessed April 14, 2005), states:

> Requirements for Election or Promotion to Membership.
>
> Member (Full Member): Any individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science is eligible for election or promotion to full membership in the Society by a chapter or the Committee on Qualifications and Membership.
>
> Associate Member: Any individual who has, through initial research achievement in a field of pure or applied science, shown aptitude for research which is expected in due course to lead to the fulfillment of the requirements for full membership, is eligible for election to associate membership by a chapter or the Committee on Qualifications and Membership.

It is further noted that the statute and regulations require the petitioner's acclaim to be *sustained*. The record contains no evidence showing that the petitioner or his work has been the primary subject of major media articles published subsequent to 1999.

> *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.*

On appeal, the petitioner states: "As a member of the IEEE Standards Association balloting committee, I have judged the technical work of different engineering task groups by voting on the approval or disapproval of three IEEE standards related to wireless communications." The petitioner submitted evidence showing that he was one of approximately 70 to 80 individuals who served on three balloting committees in March, April, and May of 2003. The preceding evidence came into existence subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak* at 45. New circumstances or events that did not come into existence until after the filing date cannot retroactively establish eligibility as of that date. Aside from the issue of the filing date, it is not apparent that simply voting "approval, disapproval, or abstention" in regard to a technical standard constitutes judging the work of other engineers. Furthermore, the petitioner has not submitted evidence showing that only a small percentage of top engineers are selected to vote on such matters or evidence of the criteria for serving on the balloting committee. Without evidence that sets the petitioner apart from others in his field, we cannot conclude that he meets this criterion.

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

On appeal, the petitioner states: "My professional record includes two original scholarly and scientific contributions of major significance in Electrical Engineering. The first contribution is my Master's research thesis on the system design of a Wireless Gigabit Local-Area Network (WiGLAN)."

A letter from Professor [redacted] of MIT states that the petitioner's "original contributions have been the basis for further research work performed by subsequent graduate students in our lab." The record, however, contains no evidence showing that the petitioner's work has attracted significant attention beyond MIT graduate students or the petitioner's former collaborators at Qualcomm. Nor is there evidence showing that the petitioner's specific design has been widely implemented throughout the U.S. Without extensive documentation showing that the petitioner's design of a Wireless Gigabit Local-Area Network has been unusually influential or acclaimed throughout the greater field, we cannot conclude that it fulfills this criterion.

The petitioner further states: "The second contribution is my research work, conference presentation, and patent application on a novel technique to adjust the amount of energy radiated by wireless devices . . . . I was the sole author of this research, which was conducted during my employment at Mobilian Corp."

A letter from Robert Gilmore, Vice-President of Engineering, Mobilian Corporation, states:

> [The petitioner] joined Mobilian in July 2000 as a Staff Engineer for Systems upon graduation from MIT. Within a year, he became the Physical Layer Lead for Systems Engineering, where he has played

a critical role in the design and testing of our first product, TrueRadio. His original engineering contributions include the design of a patent-pending algorithm for interference mitigation based on Bluetooth open-loop power control. The novelty of his algorithm has been recognized beyond our company as he was recently selected to present his underlying research at the 2003 Wireless Communications and Networking Conference in New Orleans, Louisiana, organized by the Institute of Electrical and Electronics Engineers (IEEE).

In regard to the petitioner's patent application, we note that anyone may file a patent application, regardless of whether the invention constitutes a significant contribution. According to statistics released by the U.S. Patent and Trademark Office (USPTO), which are available on its website at *www.uspto.gov*, the USPTO has approved over one hundred thousand patents per year since 1991. In 2001, for example, the USPTO received 345,732 applications and granted 183,975 patents. Therefore, given the amount of patent applications that the USPTO receives on an annual basis, we find it implausible that simply filing a patent automatically qualifies as a contribution of major significance in the field of electrical engineering. In this case, there is no evidence showing that the patent application for the petitioner's innovation was approved by the USPTO, that the innovation described in the invention disclosure is being widely utilized on a national or international scale, or that the innovation is hailed by engineers throughout the industry as a major contribution.

Information provided by the petitioner indicates that 370 papers were accepted out of the 730 papers submitted to the 2003 Wireless Communications and Networking Conference (WCNC). We further note that while the petitioner's paper was selected for presentation prior to the petition's filing date, the presentation itself did not take place until after the filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak* at 45. Aside from this issue, the record contains no documentation demonstrating that the presentation of one's work is unusual in the petitioner's field or that the invitation to present at the WCNC was a privilege extended to only a small number of top engineers. Many professional fields regularly hold conferences and symposiums to present new work, discuss new findings, and to network with other professionals. These conferences are promoted and sponsored by professional associations, businesses, educational institutions, and government agencies. Participation in such events, however, does not elevate the petitioner above almost all others in his field. The record contains no evidence showing that the petitioner's conference presentation commanded an unusual level of attention in comparison to the 370 other conference participants, or that the petitioner served as a keynote speaker. In the fields of science and engineering, acclaim is generally not established by the mere act of presenting one's work at a single conference.

The fact that the petitioner performed original research, or applied for a patent for his algorithm, carries little weight in this matter. Of far greater relevance is the importance to the greater field of the petitioner's work. The petitioner has not provided adequate evidence showing that his research, to date, has consistently attracted significant attention from throughout the greater field. The petitioner must show not only that his discovery is important to his university, collaborators, and employers, but throughout the industry as well.

In regard to the letters of support offered with this petition, we note that all of the testimonials in this case were written either by colleagues of the petitioner or his former educators. This fact indicates that while the petitioner's work is valued by those close to him, others outside his immediate circle are largely unaware of his research and do not attribute the same level of importance to his work. With regard to the personal

recommendation of individuals from institutions where the petitioner has studied and worked, the source of the recommendations is a highly relevant consideration. These letters are not first-hand evidence that the petitioner has earned sustained acclaim for his contributions outside of his affiliated institutions. If the petitioner's reputation is limited to those institutions, then he has not achieved national or international acclaim regardless of the expertise of his employers, collaborators, and former professors.

In conclusion, we find that the documentation presented in regard to this criterion is not adequate to support a finding that the petitioner's work in electrical and computer engineering is nationally or internationally recognized throughout this field as a major contribution.

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

The petitioner submitted evidence of his authorship of a single paper published in the conference proceedings of the IEEE WCNC in March 2003. This paper was published subsequent to the petition's filing date. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak* at 45. Even if we were to accept this evidence, we do not find that the publication of a scholarly article is presumptive evidence of sustained national or international acclaim; we must also consider the greater research community's reaction to that article. 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, however, would demonstrate 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 conclude that the alien's work is not nationally or internationally acclaimed. In the present case, there is no evidence showing that the petitioner's published paper is widely cited.

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

On appeal, the petitioner asserts that he played a leading or critical role as a Teaching Assistant at MIT, a Staff Engineer at Mobilian Corporation, and an Engineer at the San Diego Research Center.

In regard to his Teaching Assistant appointment at MIT, the petitioner submitted a letter from the Executive Officer of MIT's Department of Electrical Engineering and Computer Science indicating that his assignment for the Spring Term of 2000 would be "to assist Professor Troxel in the subject 6.111." We do not find, however, that a teaching assistant position is tantamount to a leading or critical role in the same manner as that of a professorship or a department head. The prestige, authority, and importance associated with the latter roles far exceed those of a teaching assistant or graduate student.

At Mobilian Corporation the petitioner served as Staff Engineer and Physical Layer Lead for Systems Engineering. We concur with the director's finding that the evidence of record does not establish Mobilian Corporation's distinguished reputation. An online article submitted on appeal notes that Mobilian was founded in

1999 and "shut down" after being acquired by Intel in 2003. The record contains no published material or other objective evidence showing that Mobilian had distinguished itself from other wireless systems companies or software developers during its brief four-year lifespan. Nor is there evidence establishing the relative importance of the petitioner's duties when compared to those of the other 120 individuals formerly employed by this now defunct company.

The petitioner's appellate submission includes a letter from [redacted] President, San Diego Research Center, Inc. (SDRC). She states:

> While at SDRC, [the petitioner] worked as an Engineer on a Phase II Small Business Innovation Research (SBIR) project for the U.S. Army Research Laboratory and the Defense Advanced Research Projects Agency (DARPA), both customers of distinguished technological reputation. The project involved the development of an advanced modem capable of supporting a wide range of data rates during adverse conditions in military scenarios.
>
> [The petitioner] played a critical role in the development of this project as he single-handedly completed the first-stage implementation of the modem from scratch.
>
> * * *
>
> In October 2003, he successfully completed a demonstration of the modem on-site at the U.S. Army Research Laboratory in Adelphi, Maryland. Both customers had high remarks for the technology, which may one day help the U.S. Armed Forces enhance their communication in combat scenarios.

The record contains no evidence from an official U.S. military source showing that these customers ultimately adopted the petitioner's modem innovation. We accept that the petitioner played a central role on this one project, but there is no evidence showing the extent to which the petitioner has exercised substantial control over personnel or research decisions executed on behalf of the SDRC as an organization. Finally, there is no evidence showing that the SDRC enjoys a distinguished reputation when compared to the hundreds of other defense contractors that serve the U.S. Armed Forces.

We note here that the majority of witnesses in this case, when compared to the petitioner, hold higher positions of authority as research supervisors, directors, department heads, and company executives. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of his colleagues in the electrical engineering field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner's role to that of his witnesses. In this case, it is immediately apparent that the importance of the role of individuals such as [redacted] and Professor [redacted] exceeds that of the petitioner. While we accept that the petitioner has contributed to various engineering projects at MIT, Mobilian Corporation, and the SDRC, it has not been shown that his role is any more important than that of the other professionals employed by those institutions. For the above reasons, we find that the petitioner's evidence falls short of establishing that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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 provided national salary statistics from the U.S. Department of Labor for electrical engineers. The petitioner also submitted his W-2s for 2001, 2002, and 2003. We find that this evidence is adequate to show that the petitioner has earned significantly high remuneration in relation to others in his field.

In this case, we find that the evidence presented satisfies only one of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every electrical engineer who has applied for a patent, participated in a scientific conference, or earned the respect of his immediate 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. However respected the petitioner may be and whatever future promise his career may hold, the petitioner has not yet reached the top of his field. Even if it were unanimously agreed that the petitioner would one day reach such a level, this visa classification is reserved for those already at the top of their field, not for those who are expected eventually to reach that level.

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 he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as an electrical and computer engineer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.