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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship
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Services

B2

[redacted]

FILE: WAC 03 082 52096 Office: CALIFORNIA SERVICE CENTER Date: FEB 14 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.

On appeal, counsel asserts that the director did not give sufficient weight to the expert opinions submitted and that Citizenship and Immigration Services "has absolutely NO RIGHT to substitute its opinion for that of a high ranking Agency official who is writing an ADVISORY OPINION." Counsel concludes that the director's decision is "abysmal."

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, according to Part 6 of the Form I-140, seeks to classify the petitioner as an alien with extraordinary ability as a "research assistant/graduate student." We note that an "assistant" or "student" bears a heavy burden of demonstrating that she is one of the very few at the top of her field including in comparison with the most experienced members of the field.

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, she claims, meets the following criteria.[1]

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

Counsel does not challenge the director's determination that graduate assistantships cannot serve to meet 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.

Counsel does not contest the director's determination that the petitioner has not established that she 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.

Counsel does not contest the director's conclusion that peer review is routine in the field; thus, not every peer reviewer enjoys sustained national or international acclaim.

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

Initially, the petitioner submitted three reference letters, although counsel's cover letter (relating to a different classification) references additional letters. In response to the director's request for additional information, the petitioner submitted a second letter from one of the first references and letters from two new references. On appeal, the petitioner submits all the letters referenced in counsel's initial cover letter. Thus, the record now contains all of the letters claimed to have been submitted.

The director concluded that most of the witnesses attesting to the petitioner's contributions had worked with her and concluded that "eligibility cannot rest wholly or primarily on subjective witness statements from close colleagues who maintain that the petitioner is nationally or internationally known in his or her field." On appeal, counsel notes that the petitioner also submitted her publication and presentation history and job offers at the Massachusetts Institute of Technology and the University of California (UC), Berkeley. Counsel further asserts that the petitioner submitted "several letters from [National Science Foundation (NSF)] Administrators and others stating that [the petitioner] is one of the top people in her field, and that she has contributed significantly more than her peers towards her field." Finally, counsel asserts that the petitioner is listed as a principle researcher on a $1.5 grant.

[redacted] a professor at UC Irvine, asserts that she knows the petitioner professionally and classifies her as an extraordinary researcher who has successfully worked on projects "founded by NSF" and "founded by US

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Air Force." First, [redacted] explains that monitoring technology is vital to securing the integrity of structural systems including buildings, bridges and utility facilities. She further asserts that conventional monitoring systems are not used in large numbers because they are large, expensive, require high power and require electrical cables for signal transmission and power supply, making them susceptible to lightening strikes. According to [redacted] the petitioner developed a cheaper, wireless PVDF sensor for structural monitoring that shows "great potential for overcoming the difficulties associated with conventional sensors." Later in the letter, [redacted] asserts that the PVDF sensor is the first in the world and can monitor a full-scale skyscraper. [redacted] does not identify a skyscraper that has been successfully monitored by PVDF or an agency that has adopted or licensed the sensor technology.

Second, [redacted] asserts that the petitioner is a "key developer" for the Adaptive Real-Time Geoscience and Environmental Data Analysis, Modeling and Visualization, a new technology to protect the environment and forecast natural disasters. [redacted] does not, however, identify a specific contribution made by the petitioner to this project or attest to any success this project has enjoyed. Rather [redacted] attests to the technology's complexity and predicts that this area of research "will help our country to set up a real-time, highly reliable, economic environmental monitoring and protection system."

[redacted] an associate professor at UC Berkeley, asserts that the petitioner is a "key researcher" on a $1.5 million research project to provide real time assessment of structures after catastrophic events funded by NSF. Specifically, the petitioner is working on "key parts of this project to develop robust, low cost, wireless, adaptive field sensor networks capable of real time distributed data evaluation and transmission, and visualization and adaptive modeling of the observed phenomenon." [redacted] asserts that the beneficiary's past projects for the U.S. Air Force "are well recognized and considered significant," but does not explain their impact on the field.

[redacted] professor at the University of Illinois at Chicago, discusses the petitioner's work in his research center. [redacted] explains that the petitioner's work with PVDF, "founded by NSF," resulted in sensors that can be used to sense infrared energy and, thus, measure stress and strain. [redacted] asserts that the beneficiary "precisely measured the hybrid frequency response of a charge-mode curvature sensor in the range 0.1-45 (Hz) using a random vibration method in conjunction with a precision displacement stage." [redacted] concludes that the petitioner was the first in the world to use PVDF successfully and accurately in low frequency applications and that her innovations are considered standard in the field. Once again, however, Dr. [redacted] provides no examples of government agencies, universities, or private institutions applying the petitioner's sensors beyond funding the initial research.

[redacted] an associate professor at Lehigh University, provides similar information. [redacted] explains that the goal of the Adaptive Real-Time Geoscience and Environmental Data Analysis, Modeling and Visualization project is to develop "Smart Dust" capable of sensing and responding to changes in temperature, humidity, sound, light, electromagnetic waves, displacement and acceleration. The applications for "Smart Dust" include monitoring for upstart forest fires and monitoring enemy activities in war.

[redacted] a professor at the University of Pavia in Italy, discusses the importance of sensor technology and asserts that the petitioner "has successfully developed a structural monitoring system based on PVDF material that allows, for example, the structural integrity of a high-rise building or bridge to be tested after a potentially weakening event."

[redacted] a senior research scientist at the Institute of Construction Materials, University of Stuttgart, Germany, provides general praise of the petitioner's credentials and responsibilities at UC Berkeley.

In his initial letter [redacted] Director of the Division of Civil and Mechanical Systems in the Directorate for Engineering at the National Science Foundation (NSF), asserts that he first met the petitioner while she was a student at Tongji University and currently interacts with her during his frequent visits to UC Berkeley [redacted] describes the petitioner's research on two projects "founded" by NSF and a U.S. Air Force project as "truly outstanding." Specifically, [redacted] asserts that the petitioner "successfully measured and modeled the low frequency response and the hybrid characteristic of the PVDF materials and then developed a very promising PVDF sensor, which could meet the needs for the civil structure monitoring in an unusually effective way – the first of this kind in the professional domain." Regarding the petitioner's work on Adaptive Real-Time Geosciences and Environmental Data Analysis, Modeling and Visualization [redacted] asserts that the petitioner worked with piezo-material sensors, ultrasonic sensors, and non-destructive testing of structures and materials. [redacted] concludes that this work "has been well known and highly raised and valued by her colleagues, professional and users." [redacted] does not provide any examples of "users."

[redacted] who recruited the petitioner to the University of Massachusetts, Lowell, asserted that she designed an optical sensing system using micromechanical machines (MEMs) for wavefront sensing under a grant from the U.S. Air Force. [redacted] asserts that this system could be used for monitoring and finding hidden targets. [redacted] does not assert that the University of Massachusetts or the U.S. Air Force patented this system or that the military has begun experimenting with this system. The record does not include letters from the U.S. Air Force explaining the significance of this project.

In response to the director's request for additional evidence, including advisory opinions, the petitioner submitted a second letter from [redacted] emphatically asserts that his initial letter constitutes such an opinion. [redacted] continues:

> The fact that I am taking time to write a SECOND Advisory Opinion when your examiner couldn't take the time to read the first letter is a strong indication that [the petitioner] is INCREDIBLY VALUABLE TO NSF PROJECTS THAT ARE IN THE NATIONAL INTEREST, and THAT WE FULLY EXPECT THAT THE PROSPECTIVE BENEFIT OF ISSUING THIS WAIVER TO HER WILL RESULT IN RESEARCH THAT WILL BENEFIT THE NATIONAL INTEREST.
>
> [The petitioner] is working on a project that is funded by NSF. As I stated in my previous letter, she is UNIQUELY QUALIFIED TO DO THIS WORK, and her results so far have been spectacular.

(Emphasis in original.) This letter does not add any examples of specific contributions or explain how they have influenced the field beyond being original.

[redacted] Director of the Mechanics and Materials Program, Engineering Directorate, NSF, asserts that the petitioner's unique combined education allows her to successfully complete her research [redacted] further asserts that the petitioner's PVDF sensor is "one of the best systems in the world for monitoring the full scale structure's health and safety." [redacted] concludes that the petitioner's current work on a project "founded" by

NSF involves developing real-time, integrated database management and field data acquisition tools during and following major catastrophic events."

[redacted] Project Manager, Resilient Systems and Operations at the National Aeronautics and Space Agency (NASA) Ames Research Center, provides similar information, concluding that the federally "founded" research projects on which the petitioner has worked "are self-evidently in the national interest of the United States." [redacted] does not assert that NASA as an agency has expressed any interest in utilizing the petitioner's sensors.

The petitioner also submitted an article in the University of Illinois at Chicago's College of Engineering Magazine discussing the work of Professo[redacted] the petitioner's PVDF collaborator. The article, published in the Fall of 2001, asserts that Professor Wang's magnetic sensor was to be installed in the Kiswaukee Bridge in Northwest Illinois. The article does not mention the petitioner by name. According to one of the articles authored by the petitioner, PVDF is the abbreviation for Polyvinylidene fluoride. The abstract for that article references PVDF film, but no mention is made of magnets or magnetism. It can be expected that if the petitioner's sensor were actually in use one of the petitioner's references would have identified the structure monitored. It remains, the petitioner has not established that her PVDF work relates to the magnetic sensors installed on the Kiswaukee Bridge.

Finally, the petitioner's references claim that she has developed a first-of-its-kind wireless sensor system that outperforms all other sensor systems, yet they provide no examples of its use. It can be expected that an individual who had developed a groundbreaking sensor system would be able to produce a patent application for the system, evidence that manufacturers are expressing interest in licensing and marketing the system, and evidence that customers are expressing interest in utilizing the system. The petitioner has not submitted such evidence. The petitioner's references claim that she is among the key personnel on various research projects, but the record lacks grant applications identifying her as such. Specifically, the petitioner submitted a grant proposal listing [redacted] as the authors of the proposal. Contrary to counsel's assertion, the petitioner is not identified as key personnel or at all and none of her articles are cited as references for the proposal.

In addition, the petitioner submitted an article about a California team, also funded by NSF, devising a wireless sensor using quartz crystals. This article merely serves to establish that other groups are also working towards developing wireless sensors.

While letters from high-ranking experts in the field are useful in evaluating a petitioner's claimed contributions to the field, the content of the letter must be evaluated. In evaluating the content of reference letters, Citizenship and Immigration Services (CIS) considers letters that identify specific contributions and explain how those contributions have already influenced the field more persuasive than letters that simply discuss the importance of the project, provide general praise of the petitioner's skills and rank the petitioner in relation to others in the field.

The above letters do not explain how the field has already been influenced by the petitioner. While we do not question the credibility of the references, the claims they make would obviously be more persuasive if supported by objective evidence. While counsel is correct that the petitioner submitted evidence of her publication record, publication alone is not evidence of the petitioner's influence in the field. More persuasive would be evidence that those articles have been widely cited. [redacted] does state that the petitioner is "highly cited." Evidence

of citation, however, is easy to produce either through a published citation index or electronic citation database. The petitioner has not provided evidence that any of her articles have been cited.

Finally, we do not find the job offers to be persuasive evidence to meet this criterion. Not every researcher who receives a job offer from a prestigious institution can be presumed to have made a contribution of major significance to the field. A job offer, regardless of the entity offering the job, is not indicative of national or international acclaim.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant has made a contribution of major significance. The record does not establish that the petitioner's work represented a groundbreaking advance in her field.

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 that, as of the date of filing, she had authored 22 published articles[2] and has presented her work at various conferences. 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 are 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's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

Counsel acknowledges that the mere publication of articles may not be sufficient to meet this criterion, but urges that the petitioner's witness letters and job offers be considered supporting evidence to meet this criterion. The most objective evidence of an article's significance, however, is whether it has been widely cited. The record contains no evidence that independent experts have cited the petitioner's work.

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

The director concluded that while UC Berkeley may have a distinguished reputation, not every researcher who plays an important role in a distinguished university's laboratory plays a leading or critical role for the University as a whole. On appeal, counsel contends that [redacted] assertions that the petitioner is uniquely qualified to do this work and that her results have been spectacular are sufficient to establish the petitioner's leading or critical role in her projects.

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[2] One of the articles submitted initially had not yet been published.

We have already considered the petitioner's alleged contributions above. The relevant considerations for this criterion are, according to the plain language of 8 C.F.R. § 204.5(h)(3)(ix), whether the employer enjoys a distinguished reputation nationally and whether the role the petitioner was hired to fill is a leading or critical one. We concur with the director that not every researcher working at a university with a distinguished reputation plays a leading or critical role for the university as a whole. Thus, the petitioner's employment as a researcher cannot serve to meet 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 the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished herself as a research assistant to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a research assistant, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.