

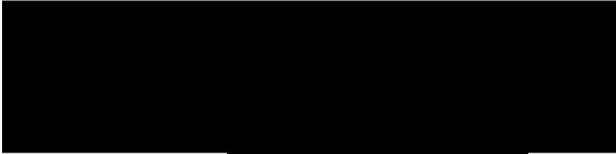
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

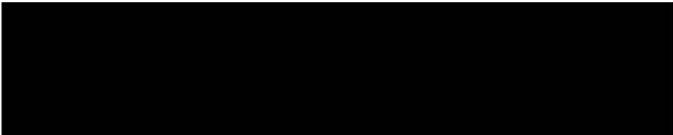


FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 19 2009
LIN 06 189 52260

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. – An alien is described in this subparagraph if –

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien’s entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who has 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 a fuel cell researcher. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

The petitioner did not claim, and submitted no evidence, that he was the recipient of a major, international award. 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.

In his May 5, 2006 letter accompanying the petition, counsel asserted that the petitioner was a "co-PI [primary investigator] on an NSF [National Science Foundation] grant for \$110,000 and actually BEGAN the Fuel Cell Studies Department at Florida International University." [Emphasis by counsel.] Counsel repeated his statement in a March 27, 2007 letter responding to the director's request for additional evidence (RFE) dated March 1, 2007. Counsel further stated, "Very clearly, \$110,000 is more than just a fellowship that would pay his own salary. This is a significant research award, and we believe it would qualify him for being granted this category." However, the evidence of record does not support counsel's assertions.

Under "Awards and Honors" in his May 5, 2006 letter, counsel indicated that the beneficiary was a recipient of an NSF, Small Grants for Exploratory Research, in the amount of \$110,853. The petitioner submitted a copy of a June 15, 2005 letter from the NSF to the president of the University of Connecticut, advising him that the Foundation had awarded a grant of \$110,853 to the university, and that the project was under the director of Amir Faghri and the petitioner.

In a March 14, 2007 response to the RFE, [REDACTED], a professor in the Department of Mechanical Engineering at the University of Connecticut, stated that the petitioner had been a research scientist in his lab for the past three years. [REDACTED] also stated:

The petitioner was the Co-PI of the NSF grant, "A New Innovative Passive Miniature Direct Methanol Fuel Cell." He assisted in the preparation of the proposal and was the major contributor of the NSF project. In general, we do not allow research scientists to be PIs on NSF grants and therefore he was appointed as Co-PI. Furthermore he was the first author on the papers that were produced for this proposal.

We cannot ignore the fact that research funding through competitive grants is inherent to many fields within the basic and applied sciences. Although prestigious grants may indicate the recognized value of the recipient's research, they are not prizes or awards for documented achievements. Rather, they may recognize that the recipient's prior findings support the viability of the proposed research.

Counsel's argument on appeal that "[a] substantial research grant awarded to a scientist is indeed an 'award of excellence'" is unsupported by any documentation that the grant was "substantial" or was indicative of an award denoting the petitioner's excellence in his field. The petitioner submitted no evidence of the criteria used for the award of the grant or how the petitioner's expertise was used as a basis for awarding the grant. Without documentary evidence to support

the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence 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 submitted a copy of certificate indicating that he was a member of the American Society of Mechanical Engineers (ASME) for 2005-2006. Counsel asserted in his letter that the petitioner was also a member of the Electrochemical Society (ECS); however, the petitioner submitted no evidence of the petitioner's membership in this society.

Additionally, the petitioner submitted no evidence that the membership requirements for either organization required outstanding achievement of their members. Counsel did not address this issue either in response to the RFE or on appeal. The evidence 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.

Counsel did not initially allege that the petitioner met this criterion. However, in response to the RFE, the petitioner submitted the headlines of a May 20, 2006 newspaper, the *Norwich Bulletin*,

which contains a front page article proclaiming that the “State leads fuel cell effort.” The article features a picture of the petitioner and quotes him near the end of the article. However, the article is not primarily about the petitioner and his work but rather about the fuel cell effort in general. Further, counsel acknowledged in his March 7, 2007 letter accompanying the petitioner’s response that the *Norwich Bulletin* is a local newspaper.

On appeal, counsel asserts that while the *Norwich Bulletin* is not the *New York Times*, “it is still the largest newspaper in Eastern Connecticut” and questions what USCIS “does believe a major media is.” First, counsel provides no documentary evidence that the *Norwich Bulletin* “is the largest newspaper in Eastern Connecticut.” Nor does he provide documentary evidence that the newspaper has a significant national distribution such that it could be considered as major media. Despite counsel’s suggestions to the contrary, this is not a difficult concept for the average lay person to understand and provides sufficient guidance to the petitioner in providing evidence to establish this criterion. Further, as also previously discussed, the article is not primarily about the petitioner and his work and therefore does not provided evidence that the petitioner meets this criterion.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted copies of five Internet e-mails that indicated he either agreed to, or was invited to, review manuscripts submitted to the *Journal of Power Sources* or for the 2006 ASME conference. The petitioner submitted no documentation that he actually participated in the manuscript reviews.

The regulatory criteria are established to assist the petitioner in demonstrating national or international acclaim, and must be interpreted as a whole with the statute. The AAO interprets this regulation to require that the selection and participation process for serving as the judge of the work of others in the field be indicative of national or international acclaim in the field. While the invitations to the petitioner to review manuscripts for the ASME conference state that the petitioner’s “expertise and interest in ASME and Power 2006 are greatly valued,” none of the invitations or confirmations of the petitioner’s agreement to review manuscripts indicate that the petitioner was chosen in a manner consistent with national or international acclaim. The petitioner submitted no evidence to show the basis of his selection.

In his March 27, 2007 letter accompanying the petitioner’s response to the RFE, counsel stated. “Very clearly if it is evident that the petitioner qualifies as a judge of the work of others, then that petitioner must be considered extremely knowledgeable in his field.” Nonetheless, being “extremely knowledgeable” in one’s field is not the equivalent of being among those who have achieved national or international acclaim or who are near the pinnacle of success in a given field. The evidence does not establish that the petitioner invitation to review these manuscripts was consistent with national or international acclaim. Moreover, the record contains no evidence that the petitioner actually reviewed the manuscripts.

The evidence does not establish that t meets this criterion.

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

Counsel asserts that the petitioner is the recipient of six patents for his work. However, the petitioner submitted evidence of one patent issued by the U.S. Patent and Trademark Office (USPTO) and a copy of what purports to be a Chinese patent issued in 1997. However, the petitioner failed to submit an English translation of the Chinese document. Because the petitioner failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The other documentation that purportedly indicate the petitioner's patents includes a March 2, 2006 United States Patent Application Publication, and two documents that counsel states are pending U.S. patents. Counsel also stated that the petitioner had a 2006 patent application; however, the petitioner submitted no evidence of this.

Additionally, the petitioner submitted no evidence that the patent or the pending patents were a major contribution to his field. The petitioner submitted no documentation that anyone has cited his patents in their own work. Simply applying for or receiving a patent is not by and of itself evidence that the patented item, technology or theory is of scientific value and has made a major contribution to the field.

The petitioner submitted several letters of recommendation in support of his visa petition. In a March 27, 2006 letter, [REDACTED], a professor in the Department of Mechanical and Materials Engineering at Florida International University, stated that the petitioner "is truly one of the top scientists in the world in this field" and "has significantly moved DMFC [direct methanol fuel cell] fuel cell system development forward." [REDACTED] further stated:

[The petitioner's] extraordinary work has established his international reputation, and his reputation is solid. He is without question one of the leading experts in this field, and his publication history is one of the top in this field. He is clearly head and shoulders above his peers in this field of research. He has received sustained national and international acclaim, and his work has reached the highest level of significance and recognition of anyone in this field.

Nonetheless, the evidence put forth by the petitioner in support of his petition does not support [REDACTED]'s conclusions regarding the petitioner's sustained national and international acclaim. [REDACTED] attests that the beneficiary's six publications and co-principal investigator status of a project with a \$110,000 grant is at the top of the field. This claim is at odds with [REDACTED]'s own record where he claims to have published 104 publications and 172 meeting and proceedings papers, and has "secured and managed more than \$85 million in work for the military, federal government, and commercial sectors."

In a March 27, 2006 letter, [REDACTED], who also works in the Department of Mechanical and Materials Engineering at Florida International University as an associate professor, attests that the petitioner's "background and experience make him uniquely qualified to make world class contributions to" the field of fuel cell research. [REDACTED] believes that the petitioner "stands alone as a remarkable and outstanding scientist, head and shoulders above his peers." A significant achievement such as "a milestone in portable fuel cell technology development," does not automatically elevate one to the top of the field. Nothing in [REDACTED] letter supports his conclusion that the petitioner ranks far above his peers.

[REDACTED], an associate professor in the Department of Mechanical Engineering at the University of South Florida, in an April 21, 2006 letter, outlines the petitioner's patents and states that his innovations have "dramatically advanced the technology of heat pipes." He stated that the petitioner "is the first person who developed" "a totally passive DMFC system, in which the capillary siphon concept was used as a fuel delivery means." [REDACTED] concludes:

[The petitioner's] abilities as a research scientist are extraordinary. He has four papers published in the most prestigious journals in the world with four more in submission. He also has three patents, two pending patents and one patent application. He has demonstrated that he is without question one of the top research scientist[s] in Mechanical Engineering in the world, and his reputation is both national and international. He is truly one of the very few scientists at the top of his profession.

As discussed previously, the record does not establish that the petitioner has been granted three patents and record does not support [REDACTED]'s assertions that the petitioner's patents have advanced the technology of heat pipes.

Others who provided testimonials on behalf of the petitioner include:

Scott K. Thomas, an associate professor of mechanical engineering at Wright State University, states in a March 17, 2006 letter:

[T]he technological innovations which I know about which are directly attributable to [the petitioner's] work or are derivative products of his work are milestones in Fuel Cell Research. His contribution has been monumental, and he has clearly shown that he is one of the top names in this field in the world. He is truly extraordinary, and I believe that he is uniquely qualified for his current research position.

[REDACTED], a professor in the Department of Mechanical Engineering at the University of California, Riverside, states in an April 6, 2006 letter:

[The petitioner] is among a small group of select scientists with a rare combination of multidisciplinary expertise in mechanical engineering, electrochemical engineering, and material science. Only individuals with a distinguished history of academic accomplishment and high credentials in related science are invited to join the CGFCC fuel cell research group. That fact that [the petitioner] has been invited to join the research group demonstrates his extraordinary standing in his field.

[REDACTED] an associate professor in the Department of Mechanical and Aerospace Engineering at the University of Missouri-Columbia, stated that he is “familiar [] with the importance of [the petitioner’s] research due to his publications, conference presentations, and patents.” [REDACTED] further stated:

In my professional opinion, I feel that [the petitioner] has already reached an outstanding level of expertise, skill, general knowledge, and specific insight in his field of specialization. Because of worldwide rapid growth of the fuel cell research, scientists with [the petitioner’s] training, exceptional scientific ability and integrity are very much in demand and are irreplaceable. [The petitioner’s] important contributions to this field far exceeded most others who have similar training.

[REDACTED] a professor of polymer science at Dalian University of Technology in Dalian, China, stated:

[The petitioner is] one of the top names in the fuel cell research area in the world. [He] has already made some remarkable milestones in portable fuel cell technology. These innovations have a number of potential applications in portable power sources. [The petitioner] has truly distinguished himself as a research scientist by his major contributions in this field. His work is extremely important for fuel cell research field, and definitely will benefit other researchers in the world. There are few scientists who can produce this kind of significant results at this highly competitive level, where the challenge is great and the work is highly competitive.

[H]e is a first rate investigator, and is truly one of the very few individuals at the top of his profession. And he has a sustained reputation, both nationally and internationally as an outstanding research scientist. [He] is a scientist who has succeeded where others have failed; who has made headway in a very complex and difficult field, and who, by virtue of his discoveries has made his name instantly recognizable anywhere in the world where this type of research is being done. His track record speaks for itself.

[REDACTED], a senior engineer with Fujikura America, Inc., stated:

The petitioner is certainly one of the finest investigative researchers in his field. He has a significant publication record, and has demonstrated time and again that he is one of the few people in the world in this field capable of getting results in a short period of time. His reputation is worldwide, and he is certainly one of the few people at the top of this profession in the United States and in the world. His research is having an enormous impact on the fuel cell technology and in fact has impacted my own research tremendously. I have used his fundamental discoveries as springboards for what I consider to also be important research.

Despite these accolades, however, the petitioner submitted no documentary evidence that would corroborate these statements. With the exception of [REDACTED], none of those who submitted letters indicated that the petitioner's work helped in their own. Additionally, we note that Professor [REDACTED], the director of Dorgan Solar Energy and Fuel Cell Laboratory at the University of Miami, describes the petitioner's work as "an impressive effort" and believes that the petitioner "is an outstanding young scientist and has the *potential* to make significant contributions in his field." [Emphasis added.]

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.

Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself. As frequent publication of research findings is inherent to success as an established research scientist, publications alone do not necessarily indicate the sustained acclaim requisite to classification as an alien with extraordinary ability. Evidence of publications must be accompanied by documentation of consistent citation by independent research teams or other proof that the alien's publications have had a significant impact in his field.

The petitioner submitted evidence that he had co-authored nine manuscripts, six of which were published. Counsel asserted that the petitioner's published work had been cited 32 times; however, the petitioner submitted evidence that his work had been cited only 16 times, and that of those 16 citations, six were citations to his own work. While citations are not conclusive proof of the significance of the researcher's work, it is a good indicator of the importance placed upon that work by others in the field. The petitioner submitted no documentary evidence that these articles had a significant impact in his field or otherwise demonstrated his substantial national or international acclaim.

Counsel also asserted in his letters of May 5, 2006 and March 27, 2007 that the petitioner was the author of nine journal articles and three proceeding papers. However, the petitioner submitted no documentary evidence that he had authored any proceeding papers. Assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

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

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

With the petition, counsel did not specifically allege that the petitioner met this criterion; however, he indicated that the petitioner had been a principle investigator at the Department of Mechanical Engineering at the University of Connecticut since 2005. As discussed earlier, the petitioner served as *co-principle investigator on an NSF-funded project, "A New Innovative Passive Miniature Direct Methanol Fuel Cell."*

In response to the RFE, counsel asserts that the March 24, 2006 letter from [REDACTED] who identified himself as "Dean and United Technologies Endowed Chair Professor in Thermal-Fluids Engineering," is evidence that the petitioner meets this criterion. Counsel points out this specific language in Professor Faghri's letter:

[The petitioner] is certainly among the finest research scientists I have met in this field. He is currently leading a research group working on the passive DMFC technology at the Connecticut Global Fuel Cell Center (CGFCC). His track record includes significant work developing a passive methanol delivery system that allows for fuel delivery at an adjustable, controlled rate from a reservoir to the fuel cell. He has also develop[ed] passive water management techniques and effective carbon dioxide removal techniques. His breakthrough accomplishments in these areas are extremely important for achieving the target density in miniaturized DMFCs. The technology based on these results produces longer run times (time until a recharge is needed) that are between two and 10 times over current battery technologies.

I regard [the petitioner] as an irreplaceable research member of the Connecticut Global Fuel Cell Center research group. The center prides itself on being one of the finest research establishments in the world in the fuel cell field. Because of this sterling reputation, we are able to attract some of the top fuel cell researchers in the world, including [the petitioner]. During his tenure at the CGFCC, he has established a reputation for being one of the top researchers in this field.

Finding another scientist with [the petitioner's] skill and background, although theoretically possible, is unlikely. While others may be well versed in the subject matter, they do not have the unique combination of knowledge, background, technical ability and interests that are necessary. [The petitioner] is the only

candidate suitably qualified for this research: he is among the strongest fuel cell researchers I have known, and brings exceptional laboratory skills to our program.

While it appears that the petitioner played a lead role in one particular project, the petitioner has provided no evidence that the petitioner had a leading or critical role in any other position at the CGFCC or that the CGFCC is an establishment with a distinguished reputation. We note that while [REDACTED] claimed that the CGFCC “prides itself on being one of the finest research establishments in the world in the fuel cell field,” the petitioner offered no evidence to support this self-assessment by [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evidence does not establish that the petitioner 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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a research scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner has distinguished himself professionally, particularly as a multidisciplinarian in highly regarded fields, 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.