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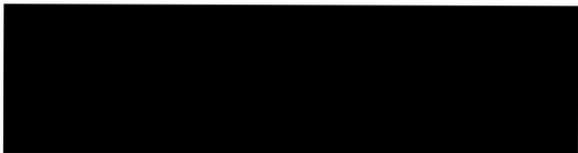
FILE: [Redacted]
SRC 09 800 04511

Office: TEXAS SERVICE CENTER Date: JAN 04 2010

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

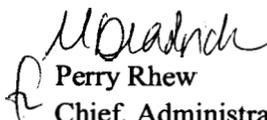
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.


Perry Rhew
Chief, Administrative Appeals Office

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

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 that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that he intends to continue working in his area of expertise in the United States.

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 into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on November 10, 2008, seeks to classify the petitioner as an alien with extraordinary ability in nanomaterials science and nanotechnology. At the time of filing, the petitioner was employed as a Device Engineer, Research & Development Group, Department of Technology, SanDisk Corporation. 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, internationally recognized award). Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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. We find that the petitioner's evidence meets at least three of the regulatory criteria.

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.

We concur with the director's finding that the petitioner meets this regulatory criterion.

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

The petitioner submitted letters of support discussing his original research contributions. We cite representative examples here.

[REDACTED] of Electrical Engineering, Stanford University, states:

Although I do not know [the petitioner] personally, I am aware of his work through his publications on nanomaterial fabrication, especially carbon nanotube electronics. . . . [The petitioner] invented a nano-sphere lithography (NSL) method combined with photolithography to grow dense aligned single walled carbon nanotubes for integrated circuits. . . . [The petitioner's] method broke new grounds to produce carbon nanotube arrays with simultaneous control over the nanotube orientation, position, density, diameter, and even chirality, making these structures viable building blocks for future nanoelectronics and ultrahigh-speed electronics.

[The petitioner] also made substantial contribution to the development of superconducting and ferromagnetic nanocables. . . . However, synthesizing such nanostructures is an extremely hard task to accomplish due to the complex chemical composition of the targeting materials. To solve these technical problems, [the petitioner] developed a new non-equilibrium synthetic approach that enables our research team to synthesize a wide variety of previously unavailable materials. He also successfully demonstrated a nanoscale magneto-resistive device based on Fe_3O_4 nanocables and for the first time observed the room temperature magnetoresistance in one-dimensional nanostructures. Since its publication in

Nano Letters and the *Journal of the American Chemical Society*, [the petitioner's] systematic study on Fe₃O₄ nanocables and nanotubes has been frequently cited by other researchers.

[REDACTED] Department of Physics and Astronomy, University of California, Los Angeles, states:

I have not met [the petitioner] personally and my comments in this letter regarding his contributions are based on his scientific papers published in the prestigious peer-reviewed journals, such as *Applied Physics Letters* and *Journal of the American Chemical Society*. [The petitioner] ha[s] published more than 25 co-authored research papers in peer-reviewed journals, which have been extensively cited (more than 580 times within the last five years). Based on the exceptional quality and heavy impact of [the petitioner's papers], I can certainly attest his significant contributions to the area of nanomaterials.

Of particular interest to me is his paper published in *Applied Physics Letters*, in which [the petitioner] discussed his groundbreaking technique for fabricating multi-level molecular memories. [The petitioner's] writing paradigm represents a significant departure from the channel hot electron – CHE injection method commonly used for silicon flash memory, where a high driving field – in the order of 10 V/mm is applied to the source – drain channel for hot electron charge injection. Such high source-drain biases lead to significant power consumption and the formation of interface traps, thus making the long-term operation error prone. In contrast, the novel devices developed by [the petitioner] can be programmed into multiple levels by applying gate biases of different amplitude with 0 V applied to the source and drain, and the readout is usually carried out with a small electric field applied to the nanowire channel. As a result, the required power for this operation is significantly lower than that for silicon flash memory.

The novel multilevel molecular memory devices developed by [the petitioner] also provide nonvolatile data storage up to three bits – eight levels per cell, in contrast to the standard one-bit-per-cell – two levels technology. Moreover, the charge storage stability was tested up to retention of 600 hours, as compared to the longest retention of a few hours previously reported for one-bit-per-cell molecular memories. By creating a seamless integration of nanowires and molecular wires, [the petitioner's] multilevel data storage represents a conceptual breakthrough in molecular memory.

As a further development, [the petitioner] reported his innovative complementary detection of prostate-specific antigen using nanowires and carbon nanotubes in the *Journal of the American Chemical Society*. . . . [The petitioner] developed novel sensing strategies, through which he was able to detect prostate-specific antigen (PSA). PSA is an oncological marker for the presence of prostate cancer. Despite its utmost importance, detection of PSA using nanowires and nanotubes had not been previously reported. . . . This is a substantial advancement in application of novel nano-materials to medically relevant biosensors.

[REDACTED] Eloret Corporation/National Aeronautics and Space Administration Ames Research Center, states:

[The petitioner] was the first to introduce the concept of “multilevel data storage” to the field of molecular electronics. . . . Using these distinct charging states to represent different memory levels, [the petitioner] created multilevel memories that can hold three bits of data, by virtue of having 8 separate, stable identifiable electronics states in each cell. This remarkable breakthrough tripled the data storage density of existing molecular memories. Such devices are able to achieve unprecedented compact data storage – about 40 Gigabits per square centimeter – a far greater density than any achieved with silicon.

In addition, [the petitioner] developed a revolutionary device architecture consisting of “molecule/nanowire” hybrid structures, in which specific redox-active molecules are seamlessly integrated onto the surface of indium oxide nanowires using a self-assembly technique. . . . This ingenious design significantly improves the stability of the molecular memories. The retention time of his multilevel memory cells reached up to 600 hours, in sharp contrast to the typical values reported by peer researchers, which range from seconds to a few hours. This groundbreaking innovation created a strong impact on a sub-field called “molecule/nanowire” hybrid structures. Since its publication in *Applied Physics Letters* in 2003, this work has been . . . frequently cited by experts in peer-reviewed publications.

In support of the preceding experts’ statements, the petitioner submitted documentation showing hundreds of independent cites to his published findings. In addressing this evidence, the director’s decision only considered cites to articles for which the petitioner was identified as “first author.” The director did not consider the citation history for the numerous other articles coauthored by the petitioner. For example, the petitioner submitted evidence showing that “Detection of NO₂ down to ppb levels using individual and multiple In₂O₃ nanowire devices,”¹ was cited to more than one hundred times. As modern scientific research endeavors routinely involve collaborative efforts, we find no statutory, regulatory, precedential, or evidentiary basis to conclude that USCIS should not assign weight to collaborative scientific research such as the petitioner’s. It could be argued that the director was simply seeking stronger evidence of the petitioner’s prominent role in his research studies. However, statements from the petitioner’s first-author collaborators submitted on appeal confirm that he played an integral role in their jointly published research.

The citation records submitted initially and on appeal showing hundreds of cites to articles coauthored by the petitioner are solid evidence that other researchers have been influenced by his work and are familiar with it. This evidence corroborates the experts’ statements that the petitioner has made original contributions of major significance in his field. The record reflects that the petitioner’s contributions are important not only to the institutions where he has worked, but throughout the greater field as well. Leading scientists have acknowledged the value of the petitioner’s work and its major significance in the fields of nanomaterials science and nanotechnology. Accordingly, the petitioner has established that he meets this criterion.

¹ The record reflects that the petitioner coauthored this article, but he was not identified as its first author.

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 numerous articles in publications such as *Journal of the American Chemical Society*, *Advanced Materials*, *Nano Letters*, and *Applied Physics Letters*. As previously discussed, the petitioner also submitted evidence of hundreds of articles that cite to his work. Accordingly, the petitioner has established that he meets this criterion.

In this case, the petitioner has satisfied three of the regulatory criteria required for classification as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

The director also found that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” On appeal, the petitioner submits an August 9, 2007 job offer letter and a May 21, 2009 employment verification letter from SanDisk Corporation. Accordingly, the petitioner’s evidence overcomes the director’s finding and satisfies the requirements of 8 C.F.R. § 204.5(h)(5).

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained national acclaim and extraordinary ability. The petitioner has also established that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has overcome the stated grounds for denial and thereby established eligibility for immigrant classification under section 203(b)(1)(A) of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.