

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D8

FILE: SRC 05 088 50358 Office: TEXAS SERVICE CENTER Date: MAR 01 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

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.

Mari Johnson

Σ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Texas Service Center Director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in engineering. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as a nonvolatile memory device engineer.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of his field of endeavor.

On appeal, counsel for the petitioner submits a brief and resubmits evidence it previously provided to Citizenship and Immigration Services (CIS).

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, and an appeal. It is noted that the petitioner twice resubmitted evidence that it initially submitted.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

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 arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). 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. § 214.12(o)(3)(iii). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The beneficiary in this matter is a 34-year old native and citizen of the Republic of Korea. The record reflects that he earned a Bachelor of Science degree in engineering in February 1995 and a Ph.D. in material sciences in August 2000 at the Seoul National University. From October 2000 through the date of the filing of the instant petition (February 4, 2005), the beneficiary has worked as an engineer at Samsung Electronics, Yongin-City, Gyeonggi-Do, Korea.

This petition seeks to classify the beneficiary as an alien with extraordinary ability as an engineer. The regulation at 8 C.F.R. § 214.2(o)(3)(iii) 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 such an award, the regulation outlines eight 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, it claims, meets the following criteria.¹

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

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date and author of such published material, and any necessary translations.

For criterion number three, the petitioner asserts that the beneficiary's work has been referenced at length by other scholars in the fields of materials science and electrical engineering. According to the evidence, the beneficiary has been cited by other scholars. The beneficiary's name is mentioned in some of the citations, but not all. The petitioner has not submitted published material in professional or major trade publications or other major media about the alien. While the beneficiary's articles have been cited numerous times, citations to someone's work do not constitute articles about the individual. The beneficiary does not satisfy this criterion.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.

For criterion number four, the petitioner asserts that the beneficiary has performed peer-review at the behest of *IEEE² Transactions on Electron Devices*. According to the evidence on the record, the beneficiary was selected to review one manuscript for this journal because of his "demonstrated expertise in his specialized knowledge."

We note that peer review of manuscripts is a routine element of the process by which articles are selected for publication in scholarly journals. Occasional participation in peer review of this kind does not automatically demonstrate that the beneficiary has earned sustained national or international acclaim at the very top of his field. Reviewing manuscripts is recognized as a professional obligation of scientists who themselves publish in scientific journals. For example, authors who repeatedly decline requests to review will be asked to submit their own manuscripts to other journals. Normally a journal's editorial staff will enlist the assistance of numerous professionals in the field who agree to review submitted papers. It is common for a publication to ask several reviewers to review a manuscript and to offer comments. The publication may accept or reject any reviewer's comments in determining whether to publish or reject submitted papers.

Without evidence that sets the petitioner apart from others in his field as of this petition's filing date, such as evidence that he has peer-reviewed an unusually large number of manuscripts for publication in various scientific journals, received multiple independent requests for his services from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the beneficiary meets this criterion.

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

For criterion number five, while the beneficiary has published results of his research, the record does not show that his research is considered of "major significance" in the field. By definition, all professional research must be original and significant in order to warrant publication in a professional journal. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed.

² Institute of Electrical and Electronics Engineers.

The petitioner asserts that the beneficiary satisfies this criterion by virtue of his patents and pending patent applications. The granting of a patent documents that an invention or innovation is original, but not every patented invention or innovation constitutes a significant contribution in one's field. The petitioner failed to demonstrate that the beneficiary's patents are a significant contribution in relation to others in the field.

The petitioner submitted more than a dozen letters in support of the petition. We cite representative examples here.

██████████ of ██████████ states: “[the beneficiary] is truly a key technical lead in the research area of SONOS and Flash development.”

██████████ of ██████████ Company (Singapore) states: “[The beneficiary] is highly passionate researcher, possessing extraordinary capabilities in his area. An [sic] remarkable mind, visionary leadership, amazing creativity are other factors which sustain his outstanding achievements and contributions in Material Science and Electrical Engineering, as his great potential powers. His exceptional contributions in research and development are indeed at the heart of our national interest and beyond.”

██████████ of Hong Ik University, Seoul, states: “I have worked with [the beneficiary] in a project of EEPROM/SONOS for a year and consider that work as ground breaking research in the area of embedded EEROM memory.”

Dr. ██████████ of Seoul National University writes: “[The beneficiary's] more recent research accomplishments at Samsung Electronics demonstrate a very high level of outstanding ability. His designed flash cell (Local ONO-Memory (LONOM)) is being developed as the targeting cell for the next generation of Samsung electronics. Also he recently announced the possibilities of scaling interpoly dielectrics down to even a 7-nm thickness by using the interface technology The potential of this novel research and its findings will immensely impact the flash memory development.”

Dr. ██████████ of Korea University states: “I have no doubt that [the beneficiary] will make big achievements and brilliant results as a scientist and engineer who has interests in various fields and have experiences in academic theories and actual practices.”

With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the beneficiary's work, rather than how his past efforts rise to the level of a contribution of major significance. In the present case, it has not been shown that the beneficiary's past contributions far exceed those of established scientists in his field. Assertions from witnesses that the beneficiary has a promising future do not establish eligibility, for the regulations clearly call for evidence that the beneficiary already enjoys major success and national acclaim.

In review, the evidence fails to show that beneficiary has sustained national or international acclaim and recognition for major achievements in the field of endeavor. The beneficiary does not satisfy this criterion.

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

The director determined that the beneficiary satisfies this criterion. This portion of the director's decision shall be withdrawn. We do not find that publication of scholarly articles is presumptive evidence of sustained national or international acclaim; we must also consider the greater research community's reaction to those articles. 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 beneficiary's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that the 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.

The petitioner provides evidence of an aggregate total of eight citations. While the citation history demonstrates a small degree of interest in the beneficiary's published work, the petitioner has not shown that an aggregate of eight independent citations of three articles elevates the beneficiary to a level above almost all other researchers in his field at the national or international level. We accept that the beneficiary has authored several published articles over the past few years, but the weight of this evidence is diminished by a lack of evidence showing that these articles had significantly influenced his field of endeavor. The evidence is insufficient to establish that the beneficiary satisfies this criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

For criterion number seven, the petitioner asserts that the beneficiary plays a critical role for his current employer, Samsung Electronics in Korea. The petitioner asserts that the beneficiary's "plethora of international patents" evidence the importance of the beneficiary's work to Samsung. The petitioner's assertion is without merit. The petitioner has not established that the beneficiary is the sole employee conducting research and filing patent applications. The petitioner has not established that the beneficiary has been employed in a critical or essential capacity for Samsung. The petitioner asserts that the beneficiary will play "an equally critical role" for the petitioner. The regulation requires that the petitioner establish that the beneficiary has been employed in a critical or essential capacity for distinguished entities as of the date of the filing of the petition. The beneficiary does not satisfy this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

For criterion number eight, the petitioner indicated that the beneficiary would earn an annual salary of \$93,500. The petitioner submitted a United States Department of Labor Employment and Training Administration wage survey for research and development engineers in the education industry in the petitioner's locality. The beneficiary is not employed in the education industry so this survey is not helpful in evaluating the proffered wage. The petitioner also submitted a survey prepared by Watson Wyatt Data Services of 2004/2005 wages for electrical engineers. According to the latter survey, the beneficiary's wage is less than that of the 75th percentile (\$96,300). The petitioner failed to establish that the beneficiary satisfies this criterion.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

SRC 05 088 50358

Page 6

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.