

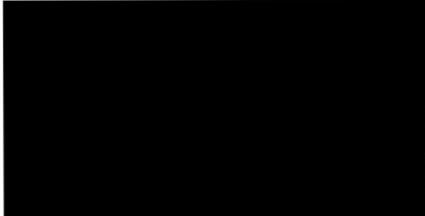


U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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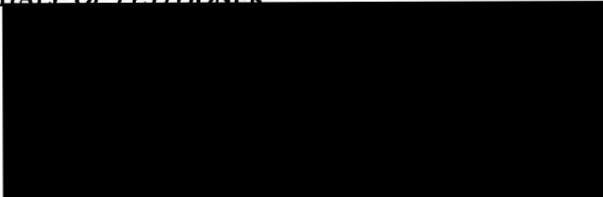
Public 300V

File: WAC 98 193 53228 Office: California Service Center Date: JUN 21 2000

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:-

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations 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 Service 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 in the sciences. Counsel describes the petitioner's work:

[The petitioner's] main research contributions have come in the fields of mosquito biology/control and biochemistry. Specifically, he has focused his research on the areas [of] control of mosquito borne diseases and the development of environmentally safe (to human, animal and plant life) pesticides. . . . [The petitioner] has made unique, groundbreaking discoveries in these areas.

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 which, 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.

Counsel claims that the documentation in "exhibit C5" satisfies this criterion. Exhibit C5 consists of three sets of documents. Professor [REDACTED] M.D., of Henan Medical University, states that the petitioner "was selected as a biographee in 'Directory of Contemporary Scientists and Inventors in China' in 1994, for his extraordinariness in the researches of mosquito biology and control." A certificate confirms the petitioner's selection as a biographee, but not the criteria for inclusion. There is no indication that Prof. Xue was involved in selecting the petitioner, or that inclusion in this directory constitutes a nationally recognized prize or award.

The second exhibit includes a letter from Prof. [REDACTED] Medical University, who asserts that the petitioner "was granted 'Successful Postdoctoral Research Award.'" The accompanying documentation indicates only that the petitioner "completed his research with success"; there is no indication that he received any prize or award as those terms are generally understood, or that the petitioner attracted national attention by completing his postdoctoral training.

The final submission in this category concerns a paper which the petitioner and his collaborators published in the Annals of Medical Entomology. [REDACTED] M.D., a member of the Evaluation Board of Extraordinary Scientific Publications, Henan Educational Commission, China, states that the petitioner's paper "was granted the first prize for Extraordinary Scientific Publications for its significant contribution to mosquito ecological implication." Dr. [REDACTED] [t]his is a major prize in [the] Henan education

system." The record shows that this prize is awarded by the "Henan Provincial Government" and thus is a regional rather than national or international prize. Regardless of the prize's reputation in Henan Province, it is plainly not a national prize and thus it cannot satisfy the plain wording of 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.

The petitioner documents his membership in the Royal Society of Tropical Medicine and Hygiene, the American Association for the Advancement of Science, the New York Academy of Sciences, the Entomological Society of America, and the American Society of Tropical Medicine and Hygiene. The petitioner has provided documentation of the membership requirements for only two of these associations. The Laws of the Royal Society of Tropical Medicine and Hygiene state that, contingent on recommendation and election, membership is open to "[r]egistered medical and veterinary practitioners, scientists, and others interested in the objectives of the Society." A letter from [REDACTED] of the New York Academy of Sciences, who indicates that the organization "invites membership from all who are interested in science and in the contributions of science and technology to the advancement of society." Clearly, these organizations do not require outstanding achievements of their members, if an "interest" in their goals is sufficient to qualify an applicant for membership.

The petitioner also documents that he has submitted a paid application to the Royal Entomological Society, but there is no indication that he was accepted into membership, or that such membership requires outstanding achievements.

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 asserts that citations of the petitioner's work satisfy this criterion. Many of the "citations" claimed are, in fact, entries in comprehensive electronic databases and printed indices. These databases and indices simply demonstrate that the petitioner's research is available to other researchers; they in no way distinguish the petitioner's work from that published work of others in the field. These sources are basically compilations of abstracts or bibliographic information, for which the petitioner's works seem to have been selected because of their subject matter rather than their demonstrated impact on the field. The petitioner

has not shown what restrictions are placed on materials selected for inclusion in these reference works.

The petitioner submits evidence that other researchers, in their published articles, have cited the petitioner's work. These bibliographic citations, however, are not published materials about the alien; a scholarly article is not "about" the alien simply because the alien is one of dozens of researchers whose work is cited in footnotes. These citations are more properly considered when evaluating the impact of the petitioner's own published work, pursuant to the following criterion.

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

The petitioner has published a number of scholarly articles in professional journals, and made presentations at professional conferences.

The petitioner has submitted three articles which include citations of his published work. Two of these three articles were co-written by the petitioner himself, and in one of these articles, the petitioner cites nothing but his own previous articles. The petitioner clearly gains no prestige, acclaim, or recognition by citing his own material in a new article. The sole remaining article is by a researcher at the University of California, within which system the petitioner worked at the time of publication.

The petitioner submits copies of requests from researchers in several countries for reprints of the petitioner's articles. These requests demonstrate a level of interest in the petitioner's work, but it remains that these reprint requests do not appear to have led to published citations.

Noted historian of science Dr. [REDACTED] has indicated in his book Why People Believe Weird Things (New York: W.H. Freeman and Company, 1997) that "[t]here are now . . . more than six million articles published in well over 100,000 scientific journals each year" (p. 24). It is plainly absurd to suggest that every one of those six million articles serves as *prima facie* evidence of national or international acclaim for each co-author (for many such articles are co-written) of each of those articles. The statutory intent, that the alien be shown to be at the top of his or her field, is better satisfied by evidence that demonstrates the alien has consistently published work in prestigious, major journals (the word "major" appears repeatedly in the wording of the criterion). To hold otherwise would hypothetically allow every alien with the wherewithal to publish their own journal to satisfy 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 documents his participation on the editorial board of the Annals of Medical Entomology. The petitioner has also acted as a peer reviewer for several other journals and book chapters, and served a co-editor-in-chief of a reference book published by Henan Medical University Press. While isolated instances of peer review carry minimal weight, the record suggests that the petitioner is routinely called upon to evaluate the work of others in the field.

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

The petitioner submits letters from seven witnesses:

- (1) Professor [REDACTED] Su, Ph.D., M.D., of [REDACTED] Medical University (where the petitioner earned his bachelor's and master's degrees);
- (2) Professor [REDACTED] Ye, Ph.D., of [REDACTED] Medical University (where the petitioner studied for his doctorate);
- (3) Professor [REDACTED] Ph.D., of the University of California, Irvine (where the petitioner has conducted his postdoctoral research);
- (4) [REDACTED] M.D., a research associate at the National Health and Environmental Effects Research Laboratory of the U.S. Environmental Protection Agency, Research Triangle Park, North Carolina (who was previously a lecturer at Henan Medical University while the petitioner was studying there);
- (5) [REDACTED] Ph.D., associate professor and chair of the Department of Biological Sciences at Suez Canal University, Egypt (who was a visiting associate professor at the University of California, Riverside, during the petitioner's postdoctoral fellowship there);
- (6) [REDACTED] M.B.B.S., D.T.M., Ph.D., chair of the Baqai Institute of Tropical Medicine at Baqai Medical University, Karachi, Pakistan (who earned his Ph.D. at Henan Medical University, with the petitioner as a member of his dissertation evaluation committee); and
- (7) [REDACTED] Ph.D., research entomologist at the U.S. Department of Agriculture's Agricultural Research Service. [REDACTED] the only witness without university ties to the petitioner, states that he

"first met [the petitioner] at the National Meeting of Malaria Vector Control, Kunming City, in March 1986," at which time the petitioner had not yet completed his master's degree. Thus, all of these witnesses had personal ties to the petitioner before he was an established researcher.

Most of the letters follow a similar format, with descriptions of the petitioner's projects followed by paragraphs headed "Significance" and "Implications and Application." The witnesses discuss the outcomes of the petitioner's research projects, stating that the petitioner has provided insight into the hibernation patterns of *Culex pipiens pallens*, which are two species of disease-spreading mosquito. The petitioner has also conducted research to develop microbial and botanical pesticides to destroy these mosquitoes without causing wider environmental repercussions.

In his letter, Prof. Su makes the following statement:

Viral hepatitis is a very common liver disorder distributing [sic] worldwide. The role of the blood sucking insects in transmission has been suspected, without direct evidence, for about 30 years. [The petitioner's] work has proven that mosquitoes and other blood suckers could be the mechanical transmitters of hepatitis virus. The laboratory evidence using novel molecular techniques was against the duplication of the virus in mosquitoes. Therefore the possibility of mosquitoes being biological vector has been excluded, which terminated the long-lasting argument regarding this issue.

This statement is confusing. It is unclear "the possibility of mosquitoes being [a] biological vector has been excluded," if the petitioner "has proven that mosquitoes and other blood suckers could be the mechanical transmitters of hepatitis virus."

The witnesses assert that the petitioner's contributions are of great significance and place him at the top of his field, but the record lacks direct evidence that the petitioner's work has had a significant, sustained impact among that vast majority of experts who have not worked directly with the petitioner or known him since before he began his professional career.

The director denied the petition, stating that while the petitioner has submitted evidence intended to satisfy several regulatory criteria, "the evidence in its totality does not support a finding of extraordinary ability."

On appeal, counsel argues that the director's decision contains "absolutely no discussion of the documentation submitted." There is certainly some merit to this assertion. The director did not specify what weaknesses in the record support the general conclusion that the petitioner is skilled and successful, but not

at the top of his field. The director did, however, observe that, in order to establish the petitioner's eligibility for this visa classification, any evidence submitted must place the petitioner at the top of his field, rather than simply fit technically into the regulatory criteria. While the notice of decision is lacking in detail, it does not appear to be fatally flawed.

Counsel argues that the director has ignored the expert testimony of "eminent scientist[s] in this field of research." The director's failure to specifically mention the witness letters does not necessarily establish that the director disregarded or overlooked them. The documentation which accompanied the petitioner's initial filing is roughly two inches thick, and the exigencies of time simply do not allow the director to catalogue every document in every record of proceeding.

With regard to these experts, it has not escaped the notice of this office that every one of the witnesses has a long-standing professional or personal connection to the petitioner; these individuals are instructors, employers, and so on. While their statements are not without weight, these statements have not been shown to represent a consensus throughout the field. Only one of the witnesses learned of the petitioner through his work rather than by working or studying in the same place as the petitioner; and this witness met the petitioner when the petitioner's highest degree was a baccalaureate, and the petitioner was still years away from actually embarking on a professional career (graduate study is not an occupation, and postdoctoral appointments are temporary training positions rather than career positions).

In addition to copies of the previously-submitted letters, the petitioner submits one new letter. Like the rest, its author has a direct connection with the petitioner. This connection does not demonstrate dishonesty or bias, but it also establishes that the author does not know the petitioner from his work alone. The general pattern established by these letters does not indicate that the petitioner's work is well-known among scientists who do not know him personally.

The newest witness is [REDACTED] Ph.D., an assistant professor at the University of California, Riverside. Dr. [REDACTED] describes the petitioner as "conscientious and hard working," asserts that the petitioner's "more recent work . . . will be extremely valuable" and "will make important contributions to human health and the environment." Dr. [REDACTED] repeated indications that the impact from the petitioner's work is yet to come does not support the assertion that the petitioner is already among the best-known researchers nationally or internationally, which he simply must be to qualify for this highly restrictive visa classification.

Counsel observes that some of the letters are "from researchers with the U.S. Environmental Protection Agency and the U.S. Department of Agriculture's Center for Medical, Agricultural and Veterinary Ent[omology]." This assertion, while technically correct, is somewhat misleading. The witnesses are not high officials with authority to speak on behalf of those government agencies. Rather, as noted above, the first of these witnesses was an instructor who taught graduate courses to the petitioner, and who now happens to be employed by the Environmental Protection agency; the second met the petitioner over a year before the petitioner had even earned his master's degree. Neither learned of the petitioner's work through their official capacities with the federal government, for the simple reason that neither was yet so employed at the time of meeting the petitioner. Their subsequent employment is of negligible consequence.

Counsel quotes from the witness letters, discussing the significance of the petitioner's work relating to pathogen-carrying mosquitoes. The record contains no evidence to establish what actual "real world" impact the petitioner's research has had. For instance, counsel offers no statistics from the Centers for Disease Control, the World Health Organization, or other competent body to show that the petitioner's findings have led to a greater reduction of mosquito-borne disease than the work of other researchers in the specialty.

The petitioner submits copies of his recent articles which counsel acknowledges were published "since the original petition." These publications did not exist as of the petition's filing date, and therefore cannot possibly show that the director erred in finding that the petitioner was not eligible as of the filing date. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Counsel argues that the petitioner "received a Postdoctoral Research Award from Henan Medical University." Counsel appears to refer to the undocumented claim of such an award, referenced above. An award of this kind from a single university is not national in scope, but rather appears to represent a scholarship of sorts.

Counsel repeats earlier claims about other evidentiary criteria, without addressing the immediately evident flaws in those claims. For instance, counsel asserts that the petitioner has documented his "exclusive membership in prestigious national organizations" for which "selection is based on international recognition and accomplishments," but the record contains nothing to support counsel's interpretation of the petitioner's memberships. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N

Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a medical entomologist 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 shows talent and productivity in his field, but is not persuasive that the petitioner's achievements set him significantly above nearly 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.