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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: EAC 99 091 50238 Office: Vermont Service Center Date: APR 13 2001

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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.

The petitioner seeks employment as an assistant professor of Neurology at Columbia University. 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 asserts that the petitioner has won five awards, but counsel does not identify the evidence which purportedly supports this claim. The record contains no documentation from the awarding entities, or any other first-hand documentation to corroborate the petitioner's receipt of these claimed awards. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). A letter referring to a prize or award is not documentation of the petitioner's receipt of that award unless the author of the letter is an official of the awarding entity. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Even if we were to accept counsel's contention that the petitioner received these awards, several of the awards are travel fellowships, stipends, and research grants, which constitute financial aid or salary support for ongoing work, rather than prizes for excellence in the field. The petitioner has not shown that any of the awards claimed are nationally or internationally significant.

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 is a member of the American Academy of Neurology, the Society for Neuroscience, the Hellenic Medical Society of New York and the Hellenic Society for Neuroscience. The petitioner has not submitted any evidence to establish the membership requirements for any of these associations.

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 has reviewed manuscripts submitted for publication in various journals. Peer review of this kind appears to be common in many areas of scientific research; the petitioner has not shown

that manuscript review requires, or is indicative of, a national or international reputation.

Similarly, the petitioner evaluated a proposal for a $5,000 grant from the City University of New York. University documents show that the university "conducts an annual Research Award Program that gives small grants" and each proposal is "reviewed by 3 extramural experts." Review of grant applications, like review of journal manuscripts, appears to be a more or less routine element of the research process

The petitioner has not shown that he has acted as a judge at a nationally significant level, for instance on a jury awarding well-known prizes. To argue that every researcher who has ever been in a position to evaluate the work of others satisfies this criterion renders the criterion so broad as to be meaningless; such a standard could apply to teaching assistants who grade papers. The petitioner has not shown that the entities which have invited him to act as a judge have done so on the basis of his national or international reputation.

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

Counsel states that the petitioner's published work satisfies this criterion. A separate criterion, below, addresses published work. The petitioner's published work does not satisfy this criterion unless the petitioner can establish that the research findings contained in his publications are nationally or internationally recognized as being of major significance.

Prof. Lloyd A. Greene of Columbia University describes the petitioner's postdoctoral work at that university:

> [The petitioner] is in charge of biochemical and molecular research studies designed to uncover the role of specific enzymes known as "caspases" in causing death of neurons under conditions that model those that occur in human neurological disorders. [The petitioner] has shown that caspases are required for neuronal death and that inhibition of these enzymes prevents nerve cells from dying. He has also studied the means by which caspases are abnormally activated in dying nerve cells and has been developing means to prevent this from occurring. [The petitioner's] findings have the potential to lead to the development of specific drugs that prevent neuronal death under a variety of conditions and thus to treat [stroke, neural system trauma and neurodegenerative diseases].

Professor [redacted], chairman of the Department of Neurology at Columbia University and director of Neurological Service at Columbia-Presbyterian Medical Center, states that the petitioner "has been absolutely vital to our research program in

neurodegenerative diseases, including Alzheimer's disease. . . . [W]e believe that he will continue to be central to our neurodegenerative research program."

Professor [redacted], also of Columbia University, contends that the petitioner's "studies are pioneering and internationally recognized for establishing many important principles of programmed cell death." International recognition is, of course, much more readily established when all of the individuals attesting to such recognition do not work at the same institution as the petitioner; that is to say, an internationally known scientist is, by definition, known outside of the university where he or she works. The bulk of the letters in the record, however, are from faculty members of Columbia University.

Several of the witnesses at Columbia attest that the petitioner is a vital member of the research team on an ongoing project. Be that as it may, the reliance of one university on a given alien does not establish that the alien enjoys national or international acclaim as one of the top figures in his or her field; the petitioner does not become widely known by virtue of being indispensable to one research team.

Only one of the initial witnesses is from outside of Columbia University. Professor [redacted] of the Bowman Gray School of Medicine states that the petitioner "is rapidly becoming one of the leading young investigators" in the study of programmed cell death. Prof. Oppenheim's curriculum vitae lists accomplishments and honors which appear to significantly outweigh the petitioner's own record of achievement.

Many of these letters were written long before the filing of this petition, in support of an earlier nonimmigrant petition filed by Columbia on the alien's behalf.

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 co-written, often as the first author, several conference presentations as well as articles which have appeared in the Proceedings of the National Academy of Sciences of the USA, The Journal of Neuroscience, and other professional journals. Of all the petitioner's initial evidence, his claim in this area has the strongest evidentiary support, and citation evidence to be discussed below reinforces this claim.

The director instructed the petitioner to submit further evidence to show that the petitioner has reached the top of his field of endeavor. In response, the petitioner submits further witness letters and published articles.

Much of the evidence submitted in response to the director's request concerns the petitioner's activities after the January 20, 1999, filing date of the petition. For example, a letter dated April 30, 1999 informs the petitioner that he has won a March of Dimes research grant. Any accomplishments which the petitioner achieved after the petition's filing date cannot retroactively establish that the petitioner was already 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.

The petitioner submits a printout from a citation index, showing that the petitioner's 15 published articles have, in the aggregate, been cited over 300 times. This evidence further fortifies the petitioner's publication record, by showing that other researchers have relied on those publications. It remains that publication is only one of ten criteria, regardless of how many researchers cite the petitioner's work.

Witnesses refer to the petitioner's receipt of a [redacted] award, although the record continues to lack any documentary evidence from [redacted] itself. Columbia University officials describe this award as a form of grant funding, to finance ongoing research, rather than a prize which recognizes excellence in the petitioner's past endeavors. While these grant applications may be carefully screened in order to ensure that the funds go to promising and important research, the grant itself is awarded before the research in question has actually taken place.

Several letters accompany the petitioner's response to the director's notice. As with the initial petition, almost all of these letters are from Columbia University faculty members. The two exceptions are letters from Professor [redacted], of Washington University, St. Louis, and Professor Richard Morrison of the University of Washington, Seattle.

Prof. [redacted] states that the petitioner's "papers have had a considerable influence" but does not elaborate. Prof. [redacted] observes that the petitioner has obtained highly competitive grant funding and a tenure-track position at a prestigious university, and concludes "[i]n summary, [the petitioner] has become recognized as one of the best investigators in the field of neuronal death."

Prof. [redacted] who has not worked directly with the petitioner but has had contact with the petitioner through various conferences, describes the petitioner's work and states that the petitioner "is both a rising star and a recognized leader in the Neurosciences." Overall, Prof. [redacted]s tone suggests that the petitioner is a gifted researcher studying an important field, but Prof [redacted] does not unequivocally indicate that the petitioner is already a top figure in the field who has already made major discoveries. Rather, Prof. [redacted] depicts the petitioner as a promising young

researcher who could, hypothetically, make such discoveries in the future; for instance, he states that the petitioner's "work and perseverance will lead to advances in the understanding and treatment of a variety of neurological diseases affecting humans."

The petitioner has indeed submitted letters from distinguished researchers, but many of these individuals have records of accomplishment which appear to overshadow decisively those of the petitioner.

Counsel contends that the petitioner satisfies an additional criterion, not claimed in the initial submission:

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

Counsel does not clearly identify, however, the organization or establishment involved. Counsel cites letters stating that the petitioner has played a critical role in the field of research, but the ill-defined "field" is not an organization or establishment. While Columbia University is certainly a distinguished establishment, the petitioner has not shown that he has played a leading or critical role for the university as a whole or for Columbia-Presbyterian Medical Center. As an associate professor, his role is intrinsically no more critical than that of any number of other junior faculty members at the same university.

The director denied the petition, stating:

> The [petitioner] is a highly respected researcher in the study of neurobiology. His work in the causes of neurodegenerative disorders is well known. He has received awards, is a member of associations in his field, has published, has been cited many times, has made presentations at meeting[s] and has judged others in his field. Further, he has been acknowledged by a number of experts in his field as being a very competent and knowledgeable researcher. Some of those experts have indicated that he is at the top of his area of expertise.
>
> The evidence submitted establishes that at least three of the criteria listed [in the regulations] have been met by the [petitioner]. It does not appear, however, that he is one of a small percentage who is at the very top of his field.

The director listed shortcomings in the petitioner's evidence. For example, the director stated:

> It has not been established . . . that [the petitioner] is a member of associations which accept only members who are at the top of their field. He has been the lead author in eight publications which would seem to be a very limited amount for someone at the top of his field.

The director concluded that while the petitioner is a respected researcher with significant potential, the evidence does not show that the petitioner has already reached the top of his field.

On appeal, the petitioner submits a brief from counsel and a letter from a witness at Columbia University.

Professor [redacted], identified above, states:

> Deciding who is "at the very top of his field" is very subjective and greatly related to age, seniority, and the amount of gray hair. In this era of molecular biology, neuroscience belongs to the young. Many of us who are considered eminent and international authorities are rapidly becoming obsolete. While [the petitioner] is not as senior or established as some, his is a rare talent indeed, and he is unarguably someone of "extraordinary ability."

The governing standard, as set forth in the statute which created the visa classification, is national or international acclaim. For this reason, the assertion that the petitioner is more talented than those "who are considered eminent and international authorities" is not persuasive.

Prof. [redacted] states that, with regard to the petitioner's published works, "it is their *quality*, not their *quantity*, that is important," and notes that famed genetics pioneer "James Watson had written only six papers when he won the Nobel Prize." That being said, Dr. Watson's Nobel Prize establishes the significance of his monumental discovery of the structure of DNA. Nothing in the record shows that the petitioner has won comparable recognition for his work.

Prof. [redacted] continues:

> [T]he criticism that [the petitioner] is not "a member of associations which accept only members who are at the top of their field" is simply unfair. There are relatively few organizations of this type for which neurobiologists and neuroscientists are eligible, and [the petitioner] is presently excluded by his age. Neither the American Neurological Association nor the American Society for Clinical Investigation generally accepts nominations of individuals below the age of 40. [The petitioner filed this petition at age 36.] The Institute of Medicine and the National Academy of Sciences elect as members only those who have a record of lifetime accomplishment.

Prof. [redacted] assertions here are not persuasive. That "[t]here are relatively few organizations of this type" in the petitioner's field merely underscores that very few individuals qualify for this extremely restrictive visa classification; the eligibility requirements are not meant to be easily fulfilled. With regard to

the purported age restrictions, Prof. Pedley offers no evidence to support his claims.[1]

Prof. [redacted] observes that the petitioner "received a research grant from the March of Dimes which funds *fewer than 20%* of the applications it receives." Leaving aside the fact, noted above, that the petitioner received this grant after the filing date, the record does not show how many researchers actually apply for these funds, nor does the record establish the criteria by which the March of Dimes selects grant recipients. As with other "awards" claimed by the petitioner, this research grant appears to have been given not to recognize the value of the petitioner's past contributions, but to fund research which has yet to be undertaken. Advance funding for a project not yet underway is not recognition of excellence in the field of endeavor. Furthermore, the March of Dimes' acceptance rate of one application in five does not demonstrate that only the very top researchers receive such grants.

Prof. [redacted] makes several strong observations, such as the heavy citation of the petitioner's published work. Other of his assertions, however, are considerably less persuasive. For instance, Prof. [redacted] notes that the petitioner "scored in the 100th percentile (perfect or near-perfect score) on the written examination of the American Board of Psychiatry and Neurology." High test scores on a professional competency examination do not

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[1]The official Internet sites maintained by the organizations named reveal the following pertinent information:

- While prospective members of the American Neurological Association must usually have at least nine years of post-doctorate training and experience, this requirement can be waived "in the case of a nominee . . . who has made a significant contribution to neurology." (www.aneuroa.org/member/classes.htm)

- The bylaws of the American Society for Clinical Investigation ("ASCI") do not require members to be at least 40 years old, nor any other specified minimum age. Rather, the bylaws state that "ASCI members must be less than 45 years of age at the time of their election, and therefore the Society reflects accomplishments at a relatively early time in the scientific careers of their members." All active members must be under the age of 50, after which time they become non-voting senior members. (Bylaws, Article III, Sections 2 and 7, at www.asci-jci.org/framedocs/bylaws.html)

- The youngest member ever elected to the National Academy of Sciences (to which the Institute of Medicine is linked via the National Research Council) was a 26-year-old astronomer, ten years younger than the petitioner's age at the time of filing. (www.nationalacademies.org/about/faq2.html)

reflect or confer national or international acclaim. Furthermore, documents in the record show that the petitioner did not score in the 100th percentile. Ranking tables show that the highest percentile ranking accorded is 99th rather than 100th. The petitioner's scores in the four areas range from 85 percent to 88 percent correct, which correspond to rankings in the 98th and 99th percentiles. While the petitioner may have achieved high scores relative to others taking the test, a score of 85 to 88 percent correct indicates that the petitioner's answers were wrong one time out of every seven or eight questions. This result is, by comparison, impressive but not "perfect or near-perfect."

In sum, we are not persuaded by Prof. [redacted] assertions that the petitioner stands at the top of the field, and that the petitioner's apparent lack of recognition stems from arbitrary factors which have no bearing on the petitioner's actual standing within the field.

In the appellate brief, counsel contends in the introductory "Statement of Facts" that the petitioner's initial submission included "evidence that [the petitioner] is a member of organization that require outstanding achievement of its members [sic]." Counsel, in effect, represents as "fact" the petitioner's submission of qualifying documentation, when in reality the qualifying nature of this evidence is very much in dispute. Counsel's assertion about the petitioner's memberships is entirely inconsistent with Prof. Pedley's assertion, submitted at the same time as this brief, that the petitioner is not eligible for such memberships. The only stipulated "fact" regarding this initial submission is that the petitioner claimed that his memberships fulfill the pertinent regulatory criterion.

Counsel states that the petitioner "is not a member of more organizations because he is excluded because he is 37 years old." This assertion, and related assertions about the "arbitrary cut-off age," has no support except for Prof. Pedley's letter, discussed above. Given the complete lack of direct documentation to support Prof. Pedley's claims, these arguments are without weight.

Counsel discusses other previous claims and previously submitted evidence, but offers no new supporting evidence. Counsel simply repeats and amplifies previous arguments.

The composition of the record indicates that the petitioner has produced some valuable published research, but that the petitioner's overall professional reputation and prestige is very heavily concentrated within Columbia University. We cannot conclude, based on the available evidence, that the petitioner is among the best-known figures in his field at a truly national or international level. The record does not document the petitioner's receipt of any significant national or international prize for excellence or his membership in any qualifying association. The petitioner has not shown that his work as a judge has been at the

rarefied level reserved for the top professionals in his field, rather than the routine duties of college faculty and published researchers. With regard to the petitioner's original contributions, while some witnesses (most of them at Columbia University) attest to the major significance of those contributions, other witnesses state only that the petitioner is a promising young researcher at the threshold of a productive career. Some state that the petitioner's accomplishments are remarkable for a researcher at that particular career stage. The petitioner, however, must be at the top of his field overall; "young researcher" is not a field of endeavor, and the petitioner cannot elevate his own standing in his field by excluding the most experienced and established researchers in that field.

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 researcher in neurology 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 published influential articles in his field, but is not persuasive that the petitioner's overall 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.