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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: [redacted] Office: Nebraska Service Center Date: APR 13 2001

IN RE: Petitioner:
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: Self-represented

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 as a research associate at Michigan State 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.

The petitioner received a Widaman Trust Distinguished Graduate Assistant Award and a Center for Biotechnology Graduate Associateship. There is no evidence that these are nationally or internationally recognized awards. Rather, they are limited to graduate students at the University of Nebraska. The associateship is not an award for excellence, but rather financial support for the petitioner's then-ongoing doctoral research. The Widaman award recognizes "high merit and outstanding basic research potential in agriculture." Graduate study is not a field of endeavor; it is, rather, advanced training for such a field. A student award may place the petitioner among the top students at his particular university, but it offers no meaningful comparison between the petitioner and the most eminent, established and experienced researchers in the field.

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 claims to satisfy this criterion through his memberships in the American Association for the Advancement of Science and the American Society of Plant Physiologists. The petitioner submits copies of a dues receipt and a membership card to establish his membership, but nothing in the record shows that either of these associations requires outstanding achievements as a condition of membership.

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.

The petitioner states that an article by Stephen P. Mayfield *et al.* is about his work. The article, "Regulation of Chloroplast Gene Expression," is not about the petitioner's work in that field. Rather, the article is in the same general field as the petitioner's own work, and among the 100 or so articles cited as

references is one of the petitioner's articles. A passing reference to the petitioner's work is not sufficient to establish that the article is "about the alien" as the regulation requires.

Bibliographic citations of this kind are more properly considered in the context of judging the impact and influence of the petitioner's own published articles, addressed in a separate criterion further below.

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

The petitioner asserts that he satisfies this criterion through his "presentations at international meetings and . . . doctoral thesis." Simply listing one's professional accomplishments does not establish that those accomplishments represent contributions of major significance in the field.

The petitioner submits recommendation letters from several witnesses, all of whom have close ties to the petitioner. Professor [redacted] supervised the petitioner's graduate work at the University of Nebraska-Lincoln, and Professo [redacted] taught the petitioner at the same institution. Professors [redacted] and [redacted] supervise the petitioner's post-doctoral work at Michigan State University. The petitioner also states that a letter from Professor [redacted] is forthcoming, but the record does not contain any such letter.

The witnesses named above state that the petitioner is an intelligent and attentive researcher, and they list some of his research accomplishments. They indicate that the petitioner is among the top researchers ever to work in their laboratories, but they do not extrapolate to the national or international level. There is no evidence that their high opinion of the petitioner is shared by that vast majority of researchers who have never worked directly with the petitioner. Prof. Preiss states that the petitioner "will become one of the best plant scientists in this country if he is allowed to remain in the U.S." The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals who "will become one of the best" at some unspecified future time.

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 several published articles with Professor [redacted] and other collaborators. As noted

above, the petitioner has shown that a citation of one of these articles appears in a later article by another research team.

On September 20, 1999, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the petitioner as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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."

In response to this letter, the petitioner claims to have satisfied another previously unclaimed criterion:

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The "display" claimed consists of conference presentations. Scientific conferences are not artistic exhibitions or showcases; presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience.

The petitioner repeats his claim of membership in organizations which require outstanding achievements of their members, but offers no evidence to show that the associations to which he belongs actually have such requirements. The petitioner also maintains that his doctoral thesis is a major contribution but offers no supporting evidence. The significance of the petitioner's thesis is not self-evident; there is no indication that the petitioner's doctoral thesis attracted any more national or international attention than any number of doctoral theses produced in the same field.

To his list of claimed awards, the petitioner adds the Mabel J. Reichenbach Fellowship. No new evidence supports this claim, and there is no evidence that the fellowship is anything other than routine financial support for the petitioner's 1994 graduate research.

The petitioner asserts that two more articles about him have been published. These articles, like the one noted above, are not about the petitioner, but merely cite his work and that of dozens of other researchers. One of these new articles is by his former professor, [redacted]

The petitioner has submitted two new letters in response to the director's request. Professor [redacted], director of the Michigan State University-Department of Energy Plant Research Laboratory, states that when he first met the petitioner in 1996,

he "was very impressed by [the petitioner's] scientific enthusiasm and potential." Prof. [redacted]ra concludes, "[c]onsidering that [the petitioner] is still a junior scientist, I would rate him among one of the top 5%." "Junior scientist," however, is not a field of endeavor, and "potential" is not national or international acclaim.

Dr. [redacted] plant physiologist for the U.S. Department of Agriculture, stresses the reputation of the laboratories where the petitioner has studied and the professors who have instructed the petitioner. Dr. [redacted] states that each of the petitioner's published articles "is a substantial contribution that has advanced our knowledge in the field." Dr. [redacted] does not establish that the petitioner's findings have had national or international influence, or that the petitioner is widely recognized as a top researcher outside of the University of Nebraska and Michigan State University.

The director denied the petition, citing many of the above shortcomings in the petitioner's evidence.

On appeal, the petitioner argues that many of his research articles have appeared in prestigious publications. The petitioner has not shown that his publication record places him at the top of his field. The petitioner submits documentation showing that, in 1997, 253 journals published tens of thousands of articles in the fields of biochemistry and molecular biology; in the same year, 139 journals published thousands of articles in the field of plant science. Given this substantial volume of published articles, it is unrealistic to state that the very existence of published material by the petitioner elevates the petitioner above almost all other researchers in his field.

With regard to memberships in associations requiring outstanding achievements, the petitioner states:

> The only association in my field, which requires outstanding achievements of its members, is the National Academy of Science [sic] of the United States of America. However, I can never be elected as a member of the association until I acquire the citizenship of the USA.

The petitioner's assertions are not persuasive, because the U.S. National Academy of Sciences elects non-voting "Foreign Associates" who are held to the same standards as regular academy members; as of 1999, there were 310 individuals in this category. Furthermore, the very small number of qualifying associations is not a mitigating factor; rather, it merely serves to underscore that very few aliens qualify for this extremely restrictive immigrant visa classification.

The petitioner observes that he has submitted "a supporting letter from a **former president**" of another association, the American Society of Plant Physiologists; but this individual, Prof. Keegstra, is one of the petitioner's employers and his testimony does not establish national or international acclaim. Furthermore, if the American Society of Plant Physiologists does not require outstanding achievements of its members (as the petitioner originally claimed it did), then membership in that association cannot fulfill the plainly-worded regulatory criterion, whether or not the petitioner is now employed by a former official of that association.

The petitioner claims on appeal to have satisfied an additional, previously-unclaimed criterion:

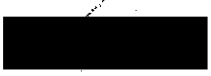
> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner submits a letter dated February 3, 2000, inviting him to review a manuscript submitted for publication in Plant Physiology. Peer review of this kind appears to be routine in the field; the letter is a "form" letter with the petitioner's name handwritten into a blank space, suggesting the issuance of so large a number of these invitations that a "form" letter is necessary.

We note that, according to the letter, the "Monitoring Editor" in charge of the manuscript is Professor Robert Spreitzer of the University of Nebraska. As shown above, Prof. Spreitzer had personally supervised the petitioner's doctoral research. Dr. Spreitzer's referral of the petitioner in this instance does not indicate that the petitioner is well-known outside of the University of Nebraska.

Even if peer review of a manuscript, at the invitation of a former professor, constituted evidence of national acclaim, the above evidence did not exist until February 2000, nearly a year after the April 1999 filing of the petition. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Judging the work of others a year after the petition's filing date cannot retroactively show that the petitioner was already eligible for the benefit sought as of the filing date.

When he filed his visa petition, the petitioner had only recently completed his doctoral degree and was still a post-doctoral researcher. Essentially, his career was still at an advanced training stage. While time may yet bear out witness assertions about the petitioner's promise, at this early date it is simply



premature to contend that the petitioner has already risen to the top of his field, a field populated by tenured professors and established researchers as well as postdoctoral researchers and "junior scientists."

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 in his field 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 that field. The evidence indicates that the petitioner shows talent and promise, and that he has won the respect of those who have supervised his training, 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.