

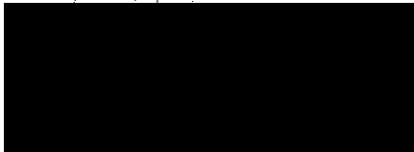


U.S. Department of Justice

Immigration and Naturalization Service

B2

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



Public Copy

File: [REDACTED] (LIN-99-243-53871) Office: Nebraska Service Center

Date: AUG 3 2001

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

AUG0301_07B2203

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 the beneficiary 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 scientist. 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. In support of the petition, counsel submitted a brief

mostly devoted to whether or not the petitioner's presence in the United States was in the national interest, applying language from Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), a case with no relevance to extraordinary ability determinations.¹ The petitioner has submitted evidence which, arguably, addresses 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 submits evidence that she received two certificates from the Chinese government, a Certificate of Commendation in 1991 and a Certificate of Merit in 1990. The director concluded that, while the awards were "noteworthy" the petitioner had not established that these awards demonstrated national or international acclaim. On appeal, counsel asserts that the director's conclusion is "self-contradictory" and notes that these awards are national awards, issued by the Chinese government. The fact that an award is issued by a national government is not evidence of the significance of the award or that the recipient has received sustained national or international acclaim. It remains, the record includes no evidence regarding the significance of these awards such as newspaper articles or other sources of facts about the awards. Thus, we concur with the director that the petitioner has not met 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 submits evidence that she is a member of the Beijing Association for Neuroscience, the American Association for Cancer Research, and the Canadian Physiological Society. In her initial brief, counsel asserted, "membership to the above societies are reserved to established members of their fields." The director concluded that the petitioner had not submitted any evidence "to suggest that such membership is limited to only those with extraordinary ability or a record of outstanding achievements." On appeal, counsel states:

Contrary to the [director's] assertion that [the petitioner] does not have membership to [sic] professional associations, [the petitioner] is a member of the American Association for the Advancement of Science. This mission of said Association is to[:]

Further the work of scientists and facilitate cooperation among them – foster scientific freedom and responsibility – improve the effectiveness of science in the promotion of human welfare – advance education in science, and

¹ On an attachment to the instant petition, the petitioner indicates she is also the beneficiary of a petition seeking to classify her as an alien of exceptional ability, a category which permits a waiver of the labor certification where the petitioner can demonstrate a waiver is in the national interest.

increase the public's understanding and appreciation of the promise of scientific methods of human progress. (See attached membership certificate.)

This demonstrates [the petitioner] is among one of those selected scientists qualified to help further the above goals set forth by the American Association for the Advancement of Science. The assertion of the [director] is therefore false and is contrary to the evidence submitted.

Counsel's statements mischaracterize the director's conclusion and the standard for this criterion. First, the director did not conclude that the petitioner did not belong to any professional associations. In fact, the director listed three such associations. Rather, the director stated that the petitioner had not submitted any evidence regarding the membership requirements of these organizations. On appeal, counsel refers to the goals of one association, but still provides no evidence regarding the general membership requirements. As quoted above, a petitioner must demonstrate she is a member of an association which requires outstanding achievements of its members, not merely any professional membership or even one which requires that members are simply "established" or "qualified" to further the association's goals. Thus, the record does not establish that the petitioner meets 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.

While counsel does not specifically argue the petitioner meets this criterion, the record includes some reference to the petitioner's teaching experience. While teachers necessarily review the work of students, such review is in the nature of the job. We cannot conclude that every teacher, by performing her teaching duties, ranks among the top few members of her field. Thus, the petitioner's teaching experience does not serve to meet this criterion.

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

The record contains several letters from the petitioner's collaborators and one letter from an independent researcher requested by the petitioner to review her published work. These letters assert that the petitioner's research has intrinsic merit, that the benefits of her research will be national in scope, and that the petitioner's presence is in the national interest. Such information is simply not relevant to a determination of whether the petitioner is nationally or internationally acclaimed. Regarding her contributions to her field, Dr. Bennett Winston Yu of the Henry Ford Hospital and Medical Center, the petitioner's employer, writes:

[The petitioner] is well-positioned for the study of the origin and treatment for cancer, using the most advanced genetic approaches. [The petitioner] obtained her doctoral degree in medicine from the famous Harbin University in China. [The petitioner] also has two master's degrees in physiology from Harbin

University and the University of Alberta, Canada. Her impressive academic achievement is an excellent preparation for her career in medical research.

At present, [the petitioner] is conducting major research projects in *both* breast cancer and colon cancer. [The petitioner] proved herself an exceptional scientist by successfully subcloning a single chain antibody that recognizes ~90% of colon cancers, within just two weeks after joining [the Henry Ford] Health System. Some scientists have spent years to do the same without success, but it only took [the petitioner] two weeks to subclone said antibody. This, in and of itself, is a strong statement that [the petitioner's] ability and expertise in medical research is significantly above the peers in her field of endeavor. In collaboration with scientists from the world famous Memorial Sloan Kettering Cancer Center, [the petitioner] will be doing further work to characterize this antibody's function. . . . Ultimately, such an antibody may be useful for the delivery of drugs and/or gene therapy specifically for inhibition and/or killing of colon cancer cells in human.

Right now [the petitioner] is at the brink of bringing forth an unprecedented discoveries [sic] to further understand the molecular causes [of] breast cancer. Since our laboratory is interested in finding out how an important oncogene (erbB-2) causes breast cancer, [the petitioner] has mastered the cutting edge technology, cDNA array screening, as a means to discover other cancer causing or related genes may be activated by the erbB-2 oncogene. To date, she has successfully identified several relevant genes which are turned on by erbB-2, including a gene which appears to promote cancer cell growth and to inhibit the normal process of cell differentiation. Since this gene has not been previously linked to breast cancer, this knowledge may provide the basis to developing novel diagnostic, prognostic and/or therapeutic tools for breast cancer patients. Moreover, she will go on to more advanced cDNA array screening methods to try to discover completely novel genes which may have altered expression in human breast cancer. Thus, her achievements are remarkable, and herald even greater successes, which will be due to her rare and outstanding combination of persistence, hard work and brilliant ingenuity.

. . . She is the only scientist in the team (and perhaps in our entire system) with the capacity to clone and subclone relevant genes with a great degree of success.

. . . She is a top notch world-class medical scientist. She has had an excellent track records [sic] in making ground-breaking discoveries in finding new treatments and theories for numerous diseases, including, but not limited to, open wounds, neurological and heart diseases and, cancer. Armed with such extraordinarily strong background and excellent track record in medical research and studies, she is well-positioned to make significant, important contributions to America's health care and pharmaceutical industries.

Dr. James D. Young of the University of Alberta, writes of the petitioner's research at that institution:

During that period, [the petitioner] was a key investigator in my laboratory and worked on research related to anti-cancer and anti-AIDS drugs. [The petitioner] isolated a cDNA oligonucleotide probe that allowed her together with other investigators in my laboratory to clone and functionally characterize the first identified human nucleoside transporter protein, which we named hCNT1 Previous to [the petitioner's] success, we had tried to isolate a probe for this new protein for some considerable time, but without success. The groundbreaking identification and characterization of hCNT1 was published and described in the highly-respected American Journal of Physiology in 1997. Since publication, this paper has received numerous scientific citations. HCNT1 is an important protein because it is responsible for concentrative cellular uptake of physiological nucleosides (such as adenosine) and, as well, nucleoside drugs used to treat cancer and viral infections such as AIDS. Moreover, [the petitioner] was also a key investigator in mutagenesis studies of the rat homolog of hCNT1 (designated rCNT1). She discovered that the protein was completely devoid of transport activity after mutating specific 3 amino acids, identifying these three residues as important for the functional activity of the protein. This work is in preparation for submission to a second respected journal, the Journal of Biological Chemistry.

Dr. Akira Kawaoui of Yamanashi Medical University writes:

[The petitioner] was a visiting researcher at the Department of Pathology, Yamanashi Medical University doing research on thyroid cancer using molecular biology and immunohistochemistry techniques. [The petitioner] did a pioneer research on a protein related to the metastasis of cancer and the marker proteins of cancer. [The petitioner], on her own effort, successfully set up an original experiment system for the qualification and quantification of proteins for said research. Said system made significant, important contribution [sic] for the ongoing studies on cancer in our Department. Because of [the] system set up by [the petitioner] we were able to make some groundbreaking discoveries in the origins of cancer, which will be crucial in the finding of an effective treatment for cancer at a molecular level.

[The petitioner] is an outstanding scientist who is capable of doing original research.

As conceded by the director, the record shows that the petitioner is respected by her colleagues and has made useful contributions in her field of endeavor.² The director concluded, however,

² While counsel argued in her initial brief that all the petitioner's references were unanimous in their conclusion that the petitioner has "extraordinary ability," not one reference uses that

that the record lacked evidence of a major contribution. On appeal, counsel once again argues that the director's reasoning is "self-contradictory" and "shows total ignorance in [the petitioner's] field of endeavor." It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant or publishing material in respected journals has made a contribution of major significance. While letters from collaborators are useful in detailing the petitioner's work, they cannot, without additional documentation, demonstrate that the petitioner has national or international acclaim. It can be expected that if the petitioner had truly made contributions of major significance as contemplated by this criterion, she would be able to demonstrate some national acclaim for such contributions through letters from independent researchers or interested government agencies.

The only independent reference, Dr. Yilan Chang of the University of Texas, writes that he has reviewed the petitioner's published articles and advises:

There is no doubt that [the petitioner] has proven herself as one of [sic] successful medical researchers in this field evidenced by her contributions in several publications. . . . For a short period of time, she has been making significant progress in her research by using advanced molecular techniques. These results will impact on finding efficient treatment and diagnosis of breast cancer. . . . Therefore, more highly qualified scientists, such as [the petitioner], are very much needed in this country.

Dr. Chang does not, however, indicate that her research has impacted his own research. Furthermore, the initial sentence quoted above is ambiguous, possibly implying the petitioner is merely a successful researcher. Dr. Chang merely concludes her results "will" impact treatment and diagnosis of breast cancer and that she is a "highly qualified scientist." Nowhere does Dr. Chang imply the petitioner is one of the very few at the top of her field who has attained national or international acclaim.

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

The petitioner initially submitted 14 published articles and her Master's Thesis. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication

phrase. At best, Dr. Yu asserts the petitioner has an extraordinarily strong background.

of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

In support of the petition, the petitioner submitted 12 articles which do contain cites to her articles, five of which are self-citations by her co-authors. While self-citation is a standard procedure, it cannot demonstrate national or international acclaim. Seven citations by independent researchers is not significant. On appeal, the petitioner submits evidence of another article published in *The Japanese Society of Pathology*, a list of 35 articles which allegedly cite the petitioner as an author or one of her articles specifically (the search parameters are unknown), and 24 articles which cite one of the petitioner's articles published in 1997. Sixteen of the 35 listed articles and 10 of the 24 submitted articles are self-citations by co-authors. While the petitioner's work has been cited, independent researchers have not cited it on a scale that would demonstrate that the petitioner has sustained national or international acclaim.

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

While not specifically argued by counsel, some of the petitioner's references on appeal refer to her as "irreplaceable" and indicate that her presence at the Henry Ford Hospital and Medical Center is "critical." While the Henry Ford Hospital and Medical Center certainly has a distinguished reputation, we cannot conclude that every talented research assistant³ plays a leadership or critical role for the medical center as a whole. The record remains absent evidence that the petitioner has played a leading or critical role for any organization with a distinguished reputation.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Claims of such notoriety and prestige by the petitioner's own collaborators and colleagues, without additional evidence, is insufficient.

Review of the record does not establish that the petitioner has distinguished herself as a scientist to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a scientist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

³ On appeal, counsel vigorously challenges the director's description of the petitioner's position as a "research assistant," insisting that the petitioner is actually a "research associate." The petition signed by the petitioner under penalty of perjury and the petitioner's own resume, however, reflect that the petitioner is a research assistant.

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.