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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:

05 DEC 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)

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 that 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 that 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 that 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

Robert P. Wiemann, 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.

The petitioner holds a doctorate from the University of Cincinnati ("UC"). At the time he filed the petition, the petitioner was an advanced R&D chemist at BFGoodrich. His résumé indicates that he has since moved to a clinical research associate position at Boehringer-Ingelheim Roxane Laboratories, Inc., although the record

contains no evidence from that company, nor any statement from any of its officials.

Counsel describes the petitioner's occupation:

[The petitioner] has dedicated himself to the research and development of drug delivery systems. . . . When a drug is administered in a solid form such as a tablet, that tablet contains not only the active drug ingredient, but also substances which make up the drug delivery system. These substances control factors such as the rate and location of release and absorption of the active ingredient. . . . With the introduction of each new drug, a new drug delivery system must be introduced.

Through his research, [the petitioner] studies controlled release systems from the biological perspective, to determine the best delivery system for the use of a particular drug within the body. His research [r]evolves around in vivo animal testing, which is the central tool in determining a drug's interaction within the body. From the information gained through in vivo research, [the petitioner] is able to determine needed improvements in drug delivery systems as well as develop new systems.

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, counsel 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 states that the petitioner satisfies this criterion because the Indianapolis Cincinnati Discussion Group ("ICDG") of the American Association of Pharmaceutical Scientists awarded the petitioner the Third Place Award at the ICDG Graduate Student Research Poster Competition in 1995. There is no evidence that this award is nationally or internationally recognized; the awarding entity, judging from its name, appears to be a local branch of a national organization. The award does not show that the petitioner is among the very top pharmacokinetic researchers; at most, it compares him to other graduate students in the Indianapolis/Cincinnati area. Graduate study is not a field of

endeavor, but rather advanced training for future entry into such a field.

The record contains evidence of other student fellowships and scholarships, which counsel (in the introductory letter) does not mention except in an exhibit list. There is no evidence that any of these awards are significant outside of the University of Cincinnati, where the petitioner was a doctoral student at the time, or even that they are available to anyone other than students at that university. An award which is only available to students at one institution is neither national nor international in scope. While earning an academic scholarship is a praiseworthy achievement, it is not so rare an accomplishment that only the very top figures in the field do so.

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 Association of Pharmaceutical Scientists ("AAPS"), the Controlled Release Society ("CRS"), and Rho Chi Pharmacy Honor Society. The record contains nothing to establish the membership requirements of the AAPS or CRS, and thus the petitioner has not shown that these organizations require outstanding achievements of their members.

In a letter on UC letterhead, addressed to the petitioner, Bryna Sherman, president of the Beta Nu Chapter of the Rho Chi Society, states:

The Beta Nu Chapter of the Rho Chi Pharmacy Honorary Society of the University of Cincinnati extends to you an invitation to become a member. Your selection for membership is based on your academic excellence as indicated by your grade point average in excess of 3.7 and the fact that your scholarly output while at the College has been exceptional.

Ms. Sherman states that Rho Chi "rais[es] the standards of American colleges of pharmacy" and that it honors "students with outstanding abilities and achievements."

There is no evidence that the membership selection was made by recognized experts at the national or international level. Rather, the decision was made at the local chapter level. As noted above, graduate study is not a field of endeavor, and a student society that admits members who have yet to truly begin their careers in earnest cannot meet this very strict regulatory criterion.

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 states that the petitioner's "research has been cited over 78 times throughout numerous professional scientific and medical journals." Citation of the beneficiary's work, however, does not establish that the articles containing the citations are "about" the beneficiary or his work. These citations are better understood as a gauge of the field's reaction to the beneficiary's own writings, which are addressed by a separate criterion, further below.

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.

Counsel states that the petitioner satisfies this criterion because the petitioner has peer-reviewed articles for two journals, and written a book review that appeared in the International Journal of Clinical Pharmacology and Therapeutics. The record contains a printed book review by the petitioner, but the published piece itself does not identify the journal in which it appeared. On the same page as the petitioner's book review is a second book review, also written by an individual at the University of Cincinnati, suggesting that the journal is published by UC or perhaps one or more UC officials serve on the journal's editorial board.

UC Professor (now emeritus) W.A. Ritschel, who supervised the petitioner's doctoral studies, states that he himself "often asked [the petitioner to serve] as a second reviewer for submitted research papers I received as member of editorial board of several internationally acclaimed scientific journals." The record contains several references to Prof. Ritschel's own international reputation in his field. If the review requests were originally sent to Prof. Ritschel, who passed them on to the petitioner, then the petitioner's work as a peer reviewer is more indicative of Prof. Ritschel's opinion of the petitioner than of a wider reputation in the field.

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

The record contains documentation showing that the petitioner has applied for a patent. Leaving aside the fact that the patent had not even been granted as of the filing date, the record contains

nothing from the U.S. Patent Office to establish that the granting of a patent establishes the significance of an invention.

Counsel cites several witness letters to establish that the petitioner satisfies this criterion. Prof. W.A. Ritschel, identified above, praises the petitioner's "solid and broad background," "excellent skills," and "expertise in experimental design," and states "I believe [the petitioner] is one of the very best scientists to graduate from our program." With regard to the petitioner's specific achievements, Prof. Ritschel states:

[The petitioner] was the first in the field of Biopharmaceutics to apply Neural Computing Technology to correlate the chemical structure of drug molecules to their protein binding properties. . . . Since then, several other scientists have expanded the applications of Neural Computing in various areas in the Pharmaceutical Sciences.

[The petitioner's] doctoral dissertation research was in another novel area. His work focused on developing a physiological controlled release drug delivery system based on Biopharmaceutical and Pharmacokinetic principles. He was successful in demonstrating that a controlled release drug delivery system designed to control the release of the drug based on its pharmacokinetic profile and biopharmaceutical absorption profile, provides superior control on drug levels in the body thereby minimizing the possibility of either toxic or sub-therapeutic drug levels.

As noted above, the record identifies Prof. Ritschel as a leader in his field. His assertions therefore carry considerable weight. At the same time, when contemplating whether the petitioner is at the top of his field, we cannot avoid comparing the petitioner's accomplishments with those of Prof. Ritschel. For instance, Prof. Ritschel claims national honors from over a dozen countries worldwide, and to have published over 400 articles, compared with ten by the petitioner.

Other UC faculty members offer similar descriptions of the petitioner's work, often making statements to the effect that the petitioner is among the best scientists to emerge from the University of Cincinnati's College of Pharmacy. UC Professor Eugene Somoza states that the petitioner "played a major role" in a research project "to determine the pharmacokinetic properties of the opiate partial agonist buprenorphine."

Dr. Nimish N. Vachharajani, senior research investigator at Bristol-Myers Squibb Pharmaceutical Research Institute, states that he "had the opportunity to . . . observe [the petitioner] at the University of Cincinnati" but does not elaborate. Dr. Vachharajani claims roughly the same amount of experience as the petitioner,

suggesting that the two may have studied together at UC, but the record offers nothing concrete in this regard. Dr. Vachharajani states that the petitioner's "work . . . with meperidine and acetazolamide has brought new insight, and has received wide attention." Dr. Vachharajani does not further define "wide attention" or provide a direct source for this information.

Dr. E. Doug Dickens, director of Emerging Technology at BFGoodrich, states that the company hired the petitioner on the strength of his "excellent background." Dr. Dickens describes the petitioner's work at BFGoodrich:

[The petitioner] is a member of a research team responsible for the characterization and assessment of a novel oral insulin delivery system. . . .

[H]is main responsibility was in the pharmacokinetic/pharmacodynamic assessment of the formulation and in coordinating the related testing of the formulation in animals.

Dr. Dickens does not specify how this work is of major importance to the field. His assertion that "[t]his work . . . is considered proprietary" suggests that the results of the petitioner's work will be confidential and therefore not disseminated outside of the company.

With only one exception, the witnesses are connected to the University of Cincinnati where the petitioner studied for his doctorate. The lone exception is an official of BFGoodrich, the petitioner's employer at the time the letter was written. These letters, therefore, are not first-hand evidence that the petitioner's work is known outside of the institutions where he has worked and studied. Several of the witnesses are, themselves, evidently much more accomplished and honored in their field than the petitioner himself.

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

The petitioner claims to have written ten articles, and seven conference presentations. The record documents over seventy citations of the petitioner's work, almost all of them pertaining to one article published in 1993. This appears to be a very unusual volume of citations. We find that the petitioner has satisfied this criterion, albeit with the observation that (according to the citation information submitted with the petition) nothing the petitioner has published after 1993 has been cited except by his own collaborators.

The director requested additional evidence to show not only that those close to the petitioner regard him as an "outstanding young scientist," but that the petitioner has earned national or international acclaim as an extraordinary researcher at the very top of his field. In response, the petitioner has submitted additional letters and documents.

Dr. Jerome P. Skelly, adjunct professor at the University of Cincinnati, states that the petitioner has "truly an outstanding record" for a researcher who "only obtained his doctorate three years ago." Dr. Skelly states that the petitioner's work with neural computing technology and high altitude pharmacokinetics "place him among the very best even at this early stage of his career." Dr. Skelly states that "in these two areas [the petitioner] is among the top most in his field, because there simply aren't that many in the whole field of pharmacy who are studying these newly important areas." Dr. Skelly continues:

Neural networks is a very important, new and virtually completely unstudied area in its applications to the pharmaceutical sciences. [The petitioner] is one of a handful of pharmaceutical scientists with experience in this field. This is an area that is so new, that its potential impact cannot be estimated in quantitative terms. It will, however, open many doors to problem solution that remain presently closed.

[The petitioner's] work in "High Altitude Pharmacokinetics" is also at the cutting edge of pharmaceutical science. The revelations of his and Ritschel's published work have stunned those in pharmaceuticals. Until this work was published, no one guessed that drug absorption, distribution through the body, metabolism by organ systems and elimination from the body would be any different [among individuals living at high altitudes] from that of people living at sea level. . . . With the retirement of Professor Emeritus Ritschel, [the petitioner] truly belongs to a very small peer group of researchers in this area of research. . . . It is of the utmost importance for us to understand all of the drug dosing and metabolic variables, prior to having to treat astronaut or aquanaut disease.

'With regard to Dr. Skelly's assertion that the petitioner has amassed "truly an outstanding record" because "he already has one patent applied for; published ten scientific papers in peer reviewed scientific journals, and made seven presentations," we note that Dr. Skelly's own curriculum vitae is 52 pages long, listing hundreds of articles and presentations, as well as leadership positions at pharmaceutical companies and the U.S. Food and Drug Administration.

Professor Mansoor A. Khan of Texas Tech University states:

I first became familiar with [the petitioner] about 5 years ago when I found out about the new research he was involved in. . . . [The petitioner's] team . . . was studying the effects of high altitude exposure on the pharmacokinetics of various drug substances. . . . In my opinion, this research is truly ground-breaking. . . . [The petitioner's] expertise in this area is of great importance to pharmaceutical research in this country.

[The petitioner] is a well-known leader and his novel contributions to the relation of drug properties to the human physiology makes him a world-class scientist.

The petitioner submits a copy of a November 1998 article from the internet publication Doctor's Guide, indicating that "researchers at the University of Cincinnati and the University of Chile" have discovered that "exposure to high altitude results in significant physiologic changes" which can affect the absorption of some drugs. The article does not identify the petitioner or any other researcher by name, and thus it does not directly contribute to the petitioner's acclaim in the field.

The petitioner submits a letter inviting him to deliver a lecture at an international conference. The letter is dated July 2000, a year after the filing of the petition, and thus cannot retroactively establish the petitioner's eligibility as of that 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 director denied the petition, stating that the petitioner cannot place himself at the top of his field simply by narrowing his "field" down to an extremely narrow subspecialty. The director stated that the petitioner's evidence, by and large, does not persuasively satisfy the regulatory criteria.

On appeal, counsel argues that the petitioner's "significant original achievements have resulted in publications and far-reaching developments for health care, space travel, tourism, oceanography, pharmacology and humanity as a whole." Counsel repeats various general assertions offered previously, such as the assertion that the petitioner has developed "a more cost effective drug development process," without stating any specifics or citing any supporting evidence.

Counsel repeats descriptions of the petitioner's past projects. Describing these projects does not establish their significance to

the field. For instance, counsel asserts that the petitioner has worked in the area of drug delivery systems, but counsel also states that every new drug demands a new delivery system. Given the sheer number of drugs on the market, this suggests that working with drug delivery systems is a fairly routine phase of drug development, rather than a major development that stands out in the field. Counsel's assertion that the petitioner's patent application is still pending, with most of the petitioner's specific claims apparently in dispute, is not persuasive evidence of extraordinary ability.

Counsel states "[t]he Service incorrectly surmised that the specialties of high altitude pharmacokinetics and neural computing are too narrow to support the conclusion that Petitioner is an alien of extraordinary ability." The director's conclusion is directly supported by witness statements to the effect that, because there are so few people in the petitioner's exact specialty, the petitioner is at the top of the field. For example, Dr. Jerome P. Skelly (whose letter counsel cites on appeal) had stated that the petitioner "is among the top most in his field, because there simply aren't that many in the whole field of pharmacy who are studying these newly important areas." The plain language of the statute indicates that national or international acclaim is an integral and essential requirement for the highly restrictive visa classification sought in this proceeding. The evidence does not establish that the petitioner is widely known outside of colleges and companies where he has worked.

The remainder of counsel's brief consists of repeated arguments and quotations from previously submitted witness letters. The evidence submitted with the appeal brief consists largely of copies of previously submitted documents, as well as more recent documents establishing that the U.S. Patent Office has not yet accepted the majority of the claims made by the petitioner in his patent application.

The petitioner also submits evidence regarding additional memberships in professional associations. There are letters, dated well after the petition's filing date, inviting the petitioner to apply for membership. These letters prove that the petitioner was not a member of any of these organizations at the time he filed the petition, and there is no evidence that the petitioner actually applied for membership in response to the solicitations from these associations. Also, as with the initially claimed associations, there is no evidence that any of these associations require outstanding achievements as judged by recognized national or international experts. A membership in (for instance) the highly exclusive and prestigious U.S. National Academy of Sciences would satisfy the regulatory criterion. Membership in an organization that admits everyone who can pay the dues, or everyone who works in a given field or holds a certain academic degree, does not satisfy

the criterion because payment of dues, career choice and professional credentials are not outstanding achievements.

The petitioner submits three new letters, two of which are from individuals who had previously offered letters in support of the petition. The three witnesses are Prof. Peter C. Schmidt, who had been an adjunct professor at UC; Prof. Mansoor A. Khan of Texas Tech University; and Dr. Ajaz S. Hussein, who was an associate professor at the University of Cincinnati while the petitioner was a student there. Dr. Hussein's letter focuses mostly on the assertion that the petitioner is highly trained and therefore an asset to the U.S. pharmaceutical industry. Prof. Schmidt states that the petitioner's research is "truly innovative" and the petitioner's background "is very unique." Prof. Schmidt states that the petitioner has "developed a drug delivery system" that is "more effective than most of the commonly used methods." Prof. Schmidt asserts that this system "can be used for a wide variety of drugs" but he does not indicate that it actually is being used in this fashion. If the petitioner's method represents a significant improvement and is widely known throughout the field, one would assume that a number of drug companies have adopted the system. The record contains no such evidence, suggesting that the industry overall either does not share Dr. Schmidt's appraisal, or else is simply unaware of the petitioner's work (in which case he is not nationally acclaimed).

Prof. Khan asserts that the petitioner's "work in the area of high altitude pharmacokinetics . . . has amazed the entire pharmaceutical community." While we do not question Prof. Khan's sincerity, his letter cannot suffice to establish that the petitioner's work in this area has captured the attention of the entire field. The statute demands "extensive documentation" of sustained acclaim. If the entire field is "amazed" and "stunned" by the petitioner's work, it is far from unreasonable to expect there to exist some form of objective evidence to establish so. Instead, the evidence of record contains little direct evidence to show that the petitioner's work has attracted widespread attention, let alone acclaim, outside of the University of Cincinnati.

The record does not show heavy citation of the petitioner's published work regarding high altitude pharmacokinetics; the only citations documented at all are self-citations by Prof. Ritschel, who collaborated with the petitioner on the project. Prof. Khan expresses confidence that "[t]his new area of high altitude pharmacokinetics has very significant and far-reaching implications for the treatment of astronauts, mountain climbers, tourists to high altitude resorts and most importantly, humanity as a whole." The record does not establish widespread agreement with this conclusion; for example, the petitioner has not submitted a letter from a high-ranking official of NASA to establish that agency's serious interest in the petitioner's research as it applies to the

medical treatment of astronauts. The ability to envision widespread applications of the petitioner's work does not establish that there is any significant national or international momentum actually to implement those applications.

The record establishes that the petitioner is a prolific and respected researcher, who has contributed to significant projects. We cannot conclude, however, that the petitioner is among the top figures in his field, or that his work is broadly recognized by a significant number of researchers outside of the University of Cincinnati and the companies that have employed him. The very impressive achievements claimed by a number of the petitioner's most enthusiastic witnesses serve to demonstrate that there are a number of individuals who are considerably more accomplished than the petitioner in his field. It is our contention that if the petitioner were among the best-known figures in his field (which he must be to qualify for this very restrictive visa classification), there would be a variety of objective supporting evidence, which (unlike witness letters) would exist whether or not the petitioner had chosen to file a visa petition. The objective documentation that the record does contain is not of a caliber that establishes extraordinary ability and sustained acclaim. Many witnesses assert that the petitioner's career is highly promising, and this may well be so, but promise is not acclaim, and we must conclude that the filing of the petition at hand is premature at best.

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 pharmacokineticist 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. 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.