

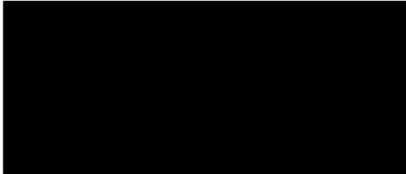


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

11 DEC 2007

File: [Redacted] Office: Texas Service Center Date:

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 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reopen, which the director dismissed. The matter 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 classification as an alien with extraordinary ability as a cardiologist at the University of Texas-Houston Medical School ("UTHMS"). 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.

The petitioner won an award while training at the University of Texas. The petitioner has not shown that an award that is limited to the students or trainees at one single institution is a nationally or internationally recognized prize or award. Counsel states that the petitioner has won several awards in his native Turkey, but cites no evidence except the petitioner's own resume. The petitioner's resume is essentially a list of claims rather than documentation of his receipt of awards.

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.

Documentation in the record shows that the American College of Cardiology ("ACC") accepted the petitioner in 1998 into the "temporary membership category" of "Affiliate-in-Training." In 1999, the petitioner was admitted into the American Medical Association ("AMA"). The petitioner has also been certified as a diplomate by the American Board of Internal Medicine ("ABIM").

The record contains a brochure, "Admission Requirements and Application Procedure," from the ACC. The brochure states "[c]andidates who have recently finished their training and are not yet well established in practice in the cardiovascular field may apply for the Member category." As noted above, the petitioner was, as of the filing date, a temporary affiliate-in-training rather than a member. The brochure indicates that fellowship in the ACC is reserved for those who are "recognized as clearly outstanding in their own country." The record contains no evidence that the petitioner is a fellow of the ACC, and therefore its requirements for fellowship are irrelevant to this petition.

An AMA membership application in the record states:

Membership in the AMA is open to:

- Medical students at an accredited allopathic or osteopathic medical school in the United States or Puerto Rico.
- Resident physicians who are attending an accredited residency or fellowship program in the U.S.

- Physicians who have earned their doctor of medicine or doctor of osteopathy degree and are residing and practicing in the U.S.

It is obvious from the above that the AMA does not require outstanding achievements of its members; one need only be a physician or even a medical student. Nevertheless, counsel had expressly included the AMA in a list of associations which, purportedly, "require outstanding achievements of their members." Counsel's claim is entirely refuted by definitive evidence from the AMA itself, and the credibility of counsel's many other unsubstantiated claims must be viewed in this light.

The record contains nothing to establish the requirements for board certification by the ABIM. If such certification is simply a professional credential, obtained after achieving a set amount of training or experience, then it does not meet the strict guidelines of the regulatory criterion.

The petitioner is an associate of the American College of Physicians-American Society of Internal Medicine ("ACP-ASIM"). An ACP-ASIM brochure in the record states:

Associateship is a special category of **temporary** membership [emphasis in original] generally limited to the 6 years after graduation from medical school. . . . Physicians in training, fourth-year medical students, and international medical graduates are eligible for Associate membership upon being accepted into an approved postgraduate training program in internal medicine or one of its subspecialties.

The brochure states that a candidate for regular membership must hold a medical degree, be a licensed physician, satisfy the qualifications for admission into the ABIM, and secure the endorsement of two current masters (master being a higher membership category). These requirements are not outstanding achievements. The brochure indicates that "ACP-ASIM is the largest medical specialty society in the world, with approximately 115,000 members, including more than 13,000 medical students." Counsel does not explain how an organization so large can nevertheless have highly exclusive membership requirements.

For the above reasons, the petitioner has not satisfied this 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.

The petitioner did not initially claim to have satisfied this criterion. In a request for further evidence, the director

specifically stated that a scholarly article that contains a footnoted citation of the petitioner's work does not constitute published material about the alien. Nevertheless, the petitioner has responded to this request by submitting citation information. Counsel does not address or rebut the director's finding that bibliographic citations cannot suffice in this regard. Such citations are best considered in the context of weighing the impact of the petitioner's own published work, addressed in 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.

The petitioner reviewed a manuscript for publication in Mayo Clinic Proceedings. Counsel argues that the very act of judging fulfills this criterion, without any regard to the circumstances under which the judging took place. Nevertheless, we cannot ignore that the petitioner was a resident at the Mayo Clinic at the time he was asked to review the manuscript. We cannot construe national or international acclaim from a request originating from the petitioner's own employer, especially in the absence of information to establish how Mayo Clinic Proceedings selects its reviewers. The record shows that the peer review was anonymous, and therefore the act of reviewing the paper would not spread the petitioner's reputation beyond those already familiar with his work.

The petitioner co-wrote an editorial comment in Catheterization and Cardiovascular Interventions, in which the petitioner and his co-author (a UTHMS professor) discuss and criticize recent research in "myocardial salvage methods." This comment is stronger evidence of the petitioner's activity as a judge of the work of others in the field.

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

In a statement accompanying the petition, the petitioner describes his research in the medical field of cardiology. The petitioner's projects included "determining infarct size using vectorcardiograms," "limiting the damage done by myocardial infarction," and "treating the aortic aneurysm patients without surgery," among other areas of interest. Certainly, aortic aneurysm (a weakening and thinning of the walls of the body's principal artery) and myocardial infarction (heart attack) are areas of major concern in cardiology, but the petitioner's own description of his work cannot establish major significance or sustained acclaim arising from that work. 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).

Counsel states "[t]he letters in support of his petition, his other publications . . . and the fact that his work has been cited and/or discussed in other scientific publications, all point to the fact that [the petitioner] is held in very high esteem by others in his field." The petitioner's own publications are covered elsewhere in the regulations, and therefore counsel's argument that the very existence of those publications satisfies this criterion as well is not persuasive. We discuss the claimed citations of those works in the context of the petitioner's published work.

With regard to the letters, every one of these letters, without exception, is from a UTHMS faculty member. However highly the UTHMS faculty may regard the petitioner, his reputation at one university cannot constitute national or international acclaim.

Professor James T. Willerson, chairman of the Department of Internal Medicine at UTHMS, states:

[The petitioner] is one of the most outstanding trainees in cardiology that we have had in our program in Houston in the ten years that I have been the Chairman of Medicine. . . . His energy seems limitless, and his desire to become a leading cardiologist is impressive.

I believe that he will become one of the very best fellows in any training program in which he works. I expect him to become a major figure in American cardiology as physician, teacher, and clinical investigator.

Prof. Willerson does not place the petitioner at the top of his field. Rather, Prof. Willerson clearly views the petitioner as a highly gifted "trainee." Prof. Willerson's reference to the petitioner's future involvement in a "training program" shows that he does not consider the petitioner to have fully completed his education, let alone risen to the top of the field. Prof. Willerson's confidence that the petitioner will one day "become a leading cardiologist" is not evidence of sustained acclaim as one who is already at the top of the field. Prof. Willerson does not single out any of the petitioner's contributions as being of major significance.

Prof. Francisco Fuentes, states that the petitioner is "knowledgeable," "skillful," and "has outstanding leadership abilities." Prof. Fuentes discusses the petitioner's performance as a trainee at UTHMS but he does not establish that the petitioner has won widespread acclaim outside of that institution. Simply listing the petitioner's research projects does not establish their importance.

The above two letters were the first submitted. Subsequent letters, submitted after the request for further evidence, contain what appear to be attempts to conform to the regulatory language. For example, Dr. Oscar Rosales states that the petitioner "has made important contributions to our understanding of therapeutic strategies to limit the amount of heart damage following an acute myocardial infarction" and that the petitioner "has been instrumental in establishing several protocols in our cardiac catheterization laboratory."

Even these newer letters, however, repeatedly confirm that the petitioner is a trainee rather than an established physician or researcher, and the witnesses compare the petitioner not with the top figures in his field, but with others who have trained at UTHMS. For instance, Professor H. Vernon Anderson states that the petitioner "is one of the finest and most accomplished clinicians and clinical investigators that I have ever had the pleasure to mentor." The overall impression conveyed by these letters is not that the petitioner is already one of the best-known figures in his field, but that, given his talent, he is likely to reach such a level at some unspecified point in the future. The assertion that the petitioner "will make important contributions" is, by nature, speculative and does not establish that the petitioner's existing work has earned him sustained 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.

Counsel contends that the very existence of published material must necessarily satisfy the criterion, and that "[w]hether a scientist is required to publish results of their work is inconsequential." We cannot agree with this assessment, because in a field where publication is commonplace, the very act of publication itself does not distinguish the top researchers from the others in the field. Also, the above regulation's repeated use of the term "major" recognizes that not all scholarly journals are equal in terms of prestige and impact; an article in, for instance, Nature or the New England Journal of Medicine is more likely to attract attention than a piece in a local publication or a highly specialized journal with minimal circulation.

The petitioner submits a list of articles that had been submitted for publication, but evidently had not been published as of the filing date. Unpublished manuscripts are not a sign of extraordinary ability and cannot fulfill this criterion.

The record does document some articles by the petitioner that have already been published. Counsel states "[t]he significance of these publications can be clearly shown by the number and caliber of scientists citing and/or discussing [the petitioner's] work." While we agree that a researcher's citation record is a persuasive indicator of that researcher's standing in the field, we must study

the record to determine how this argument applies to the matter at hand.

The petitioner submits a computer printout identifying his publications and providing various publication information, including the number of citations. Without exception, every one of the petitioner's articles includes the notation "Times Cited: 0." The only listed article that shows any citations ("Times Cited: 3") does not list the petitioner as one of its authors.

The record lists every article cited in the petitioner's published work, but this information is inconsequential for our purposes; it has nothing to do with the number of times (if any) that the petitioner's own work has been cited. The listed articles are all plainly dated prior to the petitioner's citing article, proving that it is the petitioner who cites those articles and not vice versa. Whether counsel's misreading of this evidence was willful or inadvertent is beside the point; the evidence simply does not establish that any researcher has ever cited the petitioner's work. The record contains nothing to demonstrate that the petitioner's published work has attracted attention, or influenced researchers, outside of the Mayo Clinic and UTHMS.

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

Counsel states that the petitioner's "work has been displayed at scientific showcases," i.e. "nationwide research symposia." The plain wording of the regulation (to which counsel repeatedly insists the Service must adhere) refers to "artistic exhibitions or showcases." Conference presentations are intended to disseminate highly technical information to colleagues in a specialized field, and in this sense these presentations are more closely analogous to scholarly publications than to artistic display.

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

Counsel asserts that the petitioner has satisfied this criterion through his work at the Mayo Clinic and the University of Texas-Houston. We do not dispute the distinguished reputations of these two institutions. The petitioner, however, has not established that he played a leading or critical role at either place. The petitioner shows that he served for one year as the chief fellow in cardiovascular medicine at UTHMS, but it remains that this was essentially a training position, as was his previous residency at the Mayo Clinic. To state that students and trainees play a leading or critical role is to stretch the definition of that term beyond any useful meaning.

The director denied the petition, stating that the petitioner has met three of the regulatory criteria (leading or critical role,

authorship of scholarly articles, and judging the work of others) but nevertheless has not shown extraordinary ability. The director observed that "all letters of support are from individuals whom [sic] are associated with the University of Texas at Houston and who have worked with the beneficiary."

Subsequent to the director's denial, the petitioner filed a motion to reopen, consisting of arguments from counsel and a new witness letter. The director dismissed the petitioner's motion, acknowledging the petitioner's submission of a new witness letter, but asserting that "the petitioner has provided no new facts" as required by 8 C.F.R. 103.5(a)(2). The petitioner has appealed this decision, stating that his motion met the requirements of a motion to reopen and therefore should have received due consideration.

Upon consideration, we find that the petitioner's submission of relevant new evidence, and legal arguments regarding specific findings in the director's decision, establish that the petitioner's filing qualifies as a motion. We will consider this submission in the context of the petitioner's appeal.

Counsel argues that, if the petitioner has met three of the criteria, then he has established eligibility and the petition must be approved. We concur that, if the petitioner had indeed satisfied three of the criteria, he would have met his burden. For reasons discussed above, however, the director's finding is unsupported.

In particular, we cannot uphold the director's finding that the petitioner served in a leading or critical role at UTHMS; his professors there have repeatedly discussed how they were his mentors and that he was there in the capacity of a trainee. The record contains barely any documentation at all regarding his residency at the Mayo Clinic; what evidence there is does not suggest that the petitioner was a leading or critical figure at the Mayo Clinic during his time there.

The director had noted that all of the witness letters were from UTHMS faculty members. The petitioner has not directly addressed this finding, instead submitting another letter from the same source. The new letter is from UTHMS Professor Ward Casscells, who lists the petitioner's achievements and states that the petitioner "is headed for great things in cardiology," and that the petitioner shows "unusual promise for academic medicine." These assertions, like those that came before, are couched in terms of what the witness expects the petitioner to accomplish in the future. A professor's high hopes for a student do not demonstrate or imply sustained national or international acclaim.

UTHMS is a highly-regarded medical school staffed by many recognized experts. The predictions of these individuals regarding the petitioner's potential may yet come to fruition. It remains, however, that recognition by the petitioner's own teachers cannot

serve in the place of sustained acclaim at a national or international level, and the expectation of future acclaim, regardless of who holds this expectation, is not tantamount to existing acclaim. In this sense, the filing of the petition was premature at best. Assertions regarding wider acclaim rest on misreadings of the evidence and claims that lack any evidentiary support whatsoever. 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).

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 cardiologist or researcher 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.