



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
11th Floor  
Washington, D.C. 20536



File: [Redacted] Office: Nebraska Service Center

Date: 11 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)

IN BEHALF OF PETITIONER:  
[Redacted]

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. Wienandt, 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

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(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. In other words, the evidence submitted to address each criterion must be examined as to whether it reflects national or international acclaim.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a medical doctor. 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. On appeal, counsel argues that the director acknowledged that the petitioner had addressed several criteria but concluded that the petitioner did not establish his eligibility because he was not a Nobel Laureate, ignoring the lesser regulatory requirements. Counsel quotes phrases of the director's decision and mischaracterizes his conclusions. The director stated that the evidence did not demonstrate the type of national or international acclaim on the level of, for example, a Nobel Laureate. The director continued, however, to address the evidence submitted in support of the lesser criteria and concluded that the evidence did not establish that the petitioner had attained national or international acclaim. We do not find, as counsel argues, that the director denied the petition because the petitioner lacked a Nobel Prize.

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.*

While counsel discusses this criterion jointly with the membership criterion discussed below, counsel appears to argue that the petitioner meets this criterion simply by graduating in the top ten percent of a highly competitive medical school. Academic study is not a field of endeavor, but training for a future field of endeavor. Thus, any scholastic achievement based on academic performance cannot be considered as evidence to meet this criterion. Moreover, class rank is not an award or prize and compares the petitioner only with other students at the medical school. Class rank cannot be considered evidence that the petitioner ranks as one of the few at the top of his field when compared with all experts in his field.

The record also contains a leadership award issued by the American Medical Association Foundation. The materials about the award included in the record indicate that it is awarded to 25 residents or fellow physicians who, "have exhibited outstanding leadership abilities in organized medicine, civic or non-clinical medical school or hospital activities." The award does not appear to reflect recognition of the petitioner's abilities as a doctor, but, rather, as an administrative leader in the medical community.

*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 director acknowledged that the petitioner belonged to various organizations. Counsel focuses on this statement and omits the director's conclusion that the memberships did not demonstrate national or international acclaim. We concur with the director. As will be discussed, none of the organizations require outstanding achievements of their members. As such, membership in these organizations is not evidence of national or international acclaim.

The record contains the petitioner's certificate of membership in the Royal College of Physicians and information regarding the membership requirements. In order to qualify for membership, a

doctor must take the MRCP exam, which is competitive and many candidates do not pass on their first or second attempt. Passing a test administered en masse to over 5,000 candidates annually is not an outstanding achievement attracting national or international acclaim; even where the test is a difficult one with a less than one-third initial pass rate.<sup>1</sup> Assuming that only one-third of the 5,000 candidates pass, and the number is presumably higher since not all 5,000 are taking the test for the first time, then 1,667 candidates pass each year. Not all 1,667 can be considered one of the very few at the top of the medical field.

The petitioner is also a member of the American College of Physicians and American Society of Internal Medicine. His membership card, however, reveals that his membership class is that of "associate," a temporary membership class for those with less than six years of experience after graduation. The accompanying material reveals that an associate need only obtain a recommendation from the director of his training or a current Master or Fellow of the Society. A recommendation from one's advisor is hardly evidence of outstanding achievements as judged by recognized national or international experts in the field.

*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 relies on his teaching duties at the Chicago Medical School and his election as President of the House Staff Association where he is responsible for supervising medical interns and students. Grading students is inherent to the position of instructor or graduate teaching assistant. Every TA, teacher, and professor cannot demonstrate national or international acclaim or be determined to be one of the very few at the top of their field. Similarly, every chief resident who supervises medical students and interns cannot demonstrate national or international acclaim. These duties merely reflect that the petitioner was respected by his professor and fellow residents. They are not indicative of national or international acclaim or even recognition.

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

Dr. Axel Feller, Chief Division of Gastroenterology at the North Chicago Veteran Affairs Hospital and Associate Professor Department of Medicine at Finch University, writes:

[The petitioner pioneered the development of an innovative and original treatment for pneumothorax, also known as the collapsed [sic] of the lung.

...

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<sup>1</sup> Counsel alleges that the pass rate for candidates taking the exam for the first time is less than one-third. The submitted materials regarding the MRCP do not confirm that allegation. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

[The petitioner] invented a revolutionary procedure utilizing a pig tail catheter that causes almost no bleeding or permanent scarring of the patients' chest cavity. His unique technique involved the use of a specially modified hypodermic needle and suction. Thereby, inflicting far less trauma to the patient and substantially mitigating the probability of secondary infections, leakages, or other complications by avoiding the insertion of a tube into the chest.

...

[The petitioner's] expertise was invaluable in designing and monitoring a large research study comparing two different forms of treatment for gastro-esophageal reflux disease. His rare skill with endoscopy was essential for an accurate examination of patients before, during, and after treatment.

... The purpose of this landmark study, designed by [the petitioner] and others, was to determine the cost effectiveness and suitability of patient selection for various treatment modalities [the drug lansoprazole versus the surgical procedure of laproscopic fundoplication.]

... His role in the study included every aspect from recruiting the patients, testing the treatments, and follow up examination. In short, [the petitioner's] contributions were vital to the success of the study's innovative results.

[The petitioner] was responsible for designing treatment protocols, performing controlled endoscopic examinations, and evaluating the collected data for an important study on the effects of enteric coating on non-steroidal anti-inflammatory drugs (NSAIDs).

Dr. Eric Gluck, Chief of Medicine at the North Chicago VA Medical Center, writes:

[The petitioner] has rare expertise and unique first hand knowledge with some of the most innovative procedures in the many challenging subspecialties that comprise Internal Medicine. [The petitioner] has pioneered the developments of an original treatment for pneumothorax, also known as collapsed lungs. He has consistently demonstrated superior clinical skills by conceiving of an additional alternative to the standard treatments for pneumothorax. In cases of pneumothorax without bronchopleural fistula [The petitioner's] novel discovery of a less invasive alternative therapeutic [sic] measure using a Pig-tail catheter and suction attendant to this invasive procedure by more traditional methods. Thus, dramatically mitigating post operation complications along with risks and expenses for the patient. His extraordinary clinical skills and exceptional technical abilities enabled him to create an important treatment option for the unfortunate sufferers of pneumothorax. [The petitioner] has performed his new technique many times and has taught its mechanics to numerous colleagues. He has had extensive experience with advanced

endoscopic procedures in the field of Gastroenterology and has done leading research in gastroenterology in connection with the treatment options of refractory GERD (gastro-esophageal reflux disease) and on the safety profile of 'enteric coated' Non Steroidal Anti-inflammatory Drugs.

Dr. S.A. Najeed, a research associate at Rush University in Chicago; Dr. Tariq Rahim at Cook County Hospital in Chicago, and Janice Gilden, a professor at the University of Chicago and Chief of Endocrinology at St. Mary of Nazareth Hospital Center provide similar information regarding the petitioner.

The record also includes several recommendation letters for residency at the Chicago Medical Center from staff and faculty at The Graduate Hospital, University of Pennsylvania; Warrington Hospital; and The Royal Oldham Hospital who observed the petitioner's work at those institutions.

The letters are all general in nature, attest to the petitioner's competency or above average abilities as a doctor, but make no mention of any contributions by the petitioner.

None of the references who discuss the petitioner's alleged contributions indicate that the petitioner's research has impacted or changed the way the author practices medicine. In addition, the letters are all from doctors in the Chicago area. While letters from colleagues and supervisors are valuable in detailing the petitioner's work, they cannot, by themselves, establish national or international acclaim. The record does not demonstrate that the petitioner's contributions have garnered any attention outside of Chicago.

The authorship of scholarly articles is admittedly a separate criterion which the petitioner does not claim to meet. As the petitioner has not submitted letters from outside the Chicago area, however, the further lack of evidence that the petitioner's research has been published and widely cited is significant. It can be expected that major contributions to the medical field which have attracted national or international attention would be published and widely cited.

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

The references assert that the petitioner was elected to the Graduate Medical Education Committee for the Chicago Medical School, Finch University of Health Sciences which determines the academic direction and standards of graduate education programs administered by the University. The references also assert that the petitioner was elected President of the House Staff Association at the Chicago Medical School, representing residents and serving as the chief negotiator on behalf of the residents' interests. These roles are documented in the record. The petitioner, however, is not serving a leading or critical role for Finch University, but for the Graduate Medical Education Committee. The record does not demonstrate that the Committee has a distinguished reputation nationally. Similarly, the record does not demonstrate that the House Staff Association of the Chicago Medical School has a distinguished reputation nationally independently of the Chicago Medical School itself. Moreover, the petitioner was selected for these positions from among his fellow residents and colleagues at the Chicago Medical School. These selections are not evidence

of national or international acclaim.

The record also reveals that the petitioner served on the Mount Sinai Hospital Medical Center of Chicago's Pastoral Care Advisory Board. The reputation of this Board and the selection process for membership on the Board is not documented in the record.

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a doctor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a doctor, 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.