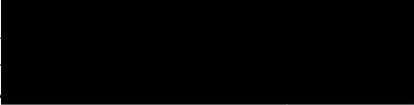




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File:

Office: Nebraska Service Center

Date: JUL 12 2001

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petitioner seeks classification as an alien with extraordinary ability in the sciences. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner asserts that he meets this criterion based on his receipt of an award from the Ministry of Public Health in China in 1996. While the petitioner claims this award is the "highest given by the government of China," he provides no evidence to support that claim and has not established the number of people who receive this award.

The petitioner also notes that he received a Guanghua Scholarship in 1991. A scholarship for "outstanding postgraduates" presumably based on the individual's performance as a student cannot be considered a national award in a field of endeavor. University study is not a field of endeavor, but training for future employment in a field of endeavor. A scholarship is awarded based on a comparison of graduate students, and the most experienced and established scientists are not considered.

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 provides evidence of his appointment as a committee member of the Chinese Society of Industrial Toxicology and the New York Academy of Sciences. The petitioner has not provided any evidence of the membership requirements of either organization. That the petitioner has been appointed to the committee of an organization which may not require outstanding achievements of its members does not change the nature of the organization. Whether the petitioner's membership on the committee constitutes the performance of a leading or critical role for an organization or establishment that has a distinguished reputation will be discussed 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.

In a letter submitted with his petition, the petitioner claims:

(1) As a committee member of the Chinese Society of Industrial Toxicology, I have engaged in review papers for journals such as Chinese Journal of Industrial Hygiene and Occupational Health, Journal of Toxicology, Journal of Labour Medicine, etc. I also participated in the review and selection of the submitted papers for the biannual meeting on Industrial Toxicology sponsored by our society.

(2) I was one of the key persons who conducted the China National Eighth Five-Year-Plan Research Project on treatment of pneumoconiosis, which was the only national research project in the area of industrial hygiene and occupational health and involved twenty-seven institutions and more than five hundred professional investigators. In this project I was in charge of the section of biochemical assays. I was responsible for the

inspection of biochemical assays in all the participating institutions and made instruction and recommendation to them.

(3) I was invited by [REDACTED] Director of World Health Organization Regional Office for the Western Pacific, to attend a WHO meeting on earlier diagnosis and treatment of pneumoconiosis as a temporary advisor in 1995. Our responsibility is to evaluate the work done in all the participating institutions of the WHO multicentre collaborative research project (China, Japan and South Korea) on earlier diagnosis and treatment of pneumoconiosis and made recommendation to WHO.

(4) I have been the supervisor for both undergraduate and postgraduate students and in a position in charge of their work.

The petitioner fails to provide any evidence that his appointment to the committee for the Chinese Society of Industrial Toxicology involved the review of scientific articles submitted for publication. For example, there is no evidence that the Society publishes its own journal and that the petitioner was on an editorial committee. While the petitioner submitted the Study on the Treatment of Pneumoconiosis Work Report for the National Eighth Five-Year-Plan Key Project which identifies the petitioner as one of 15 "main" researchers, the report is in Chinese and the record contains no evidence that the petitioner's participation in this project involved judging the work of others. In addition, the petitioner's supervision of student research, a duty performed by numerous faculty at every scientific institution, does not amount to the type of judgement contemplated in the regulations.

The record contains evidence that the petitioner attended a WHO meeting as a temporary advisor. A letter from [REDACTED] Regional Director, indicates the petitioner's duties as temporary advisor would be to "review and finalize the conclusions and recommendations of the multicentre research and to develop a future course of action relating to dust-lung diseases in the region." The record contains an article published in Report to WHO in 1995. The article, co-authored by the petitioner, indicates the research was conducted by the Department of Occupational Health, School of Public Health, Beijing Medical University "supported by WHO Multicentre Study on Early Diagnosis and Treatment of Pneumoconiosis." Thus, the record suggests the petitioner may have only been reviewing his own research as temporary advisor to the WHO.

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

The petitioner claims to have contributed significant research in the areas of atherosclerosis and pneumoconiosis. Specifically, the petitioner claims to have discovered that A IV is a potent antioxidant and to have discovered a correlation between hydroxyl proline and lung fibrosis to aid in the early diagnosis of lung fibrosis for pneumoconiosis, cystic fibrosis, asbestosis, smoking related lung diseases, and chronic inflammatory lung diseases.

The petitioner's claim to have made a major contribution in the area of atherosclerosis is not fully supported. The record does support the petitioner's claim that he was instrumental in research performed at the University of Cincinnati. The letters from the researchers at the petitioner's lab assert "through his work, we now understand why transgenic animals . . . are immune to the development of heart disease," "he was instrumental in the initial studies demonstrating a role of this apolipoprotein in protecting LDL from oxidation," and "he was the first to discover that apolipoprotein A IV . . . is a potent antioxidant." The petitioner submitted his article on Apolipoprotein A IV published as a rapid communication in the American Journal of Physiology.

The petitioner has not, however, established that this research constitutes a major contribution. The petitioner claims that the research has been reviewed by [REDACTED] (Nobel Laureate) and [REDACTED] both members of the National Academy of Sciences. This claim is supported by the petitioner's colleagues and an "acknowledgement" at the end of the rapid communication reprint thanking [REDACTED] for reviewing the article. The petitioner has not, however, provided letters from these distinguished scientists confirming their interest and providing their own evaluation of the significance of the research. The fact that a [REDACTED] reviewed the work and that the article was accepted as a rapid communication does not necessarily imply that the research resulted in a contribution of major significance. The petitioner's assertion that [REDACTED] is considering a collaborative project with the petitioner is unsupported.

The petitioner's supervisor [REDACTED] Professor of Pathology and Physiology at the University of Cincinnati, asserts that the petitioner's research "is going to benefit patients with atherosclerosis and heart disease from all over the world." The record contains no evidence, however, that the petitioner's research has already led to improved treatment or that new treatments are currently in clinical trials. The remaining letters of reference refer mostly to the potential that the petitioner's research will eventually lead to major contributions.

[REDACTED] Professor and Vice Chairman for Research at the University of Cincinnati (where the petitioner is currently performing postdoctoral research) states:

Information gained from [the petitioner's] studies will provided [sic] valuable information to assist clinicians and scientists interested in designing therapeutic treatment to reduce the morbidity and mortality of coronary heart disease. . . . [The petitioner's] work in this area is just beginning. The initial data that he has gathered so far showed that continued research in this direction is likely to yield novel and exciting information.

[REDACTED] Professor of Nutrition Science at Penn State indicates he knows of the petitioner's work through a sabbatical at the University of Cincinnati and states:

Given the time and academic freedom [the petitioner] will undoubtedly achieve the ambition and enthusiasm in helping solving [sic] the public health problem of this country such as heart disease.

██████████ Director, Division of Digestive Diseases at the University of Cincinnati says of the petitioner's research:

This collaborative effort has produced some very exciting results, which may have important ramifications for the prevention and management of malignant diseases.

██████████ Assistant Professor of Medicine at the University of Cincinnati states:

This pioneering work has important ramifications for the pathogenesis of atherosclerosis and should aid in the development of new approaches to the treatment of coronary artery disease. [The petitioner's] collaborations with my laboratory, where he has been studying the effects of an endogenous antioxidant, bilirubin, have been equally fruitful. . . . It is anticipated that this exciting work may lay the foundation for potentially new therapies for the prevention and treatment of various forms of cancer, particularly cancer of the breast.

The only reference letter from an individual not personally associated with the petitioner's research is from ██████████ Chief, Gastroenterology Division at the New Jersey Medical School. ██████████ states generally that the petitioner has made a "significant contribution to our country" and that his continued residence in the United States is in "the national interest."¹ With regard to the specifics of the petitioner's research, however ██████████ says:

This novel finding is quite relevant and important to the United States [sic] national problem of coronary artery disease related to hypercholesterolemia. [The petitioner's] outstanding laboratory skills, in combination with his keen grasp of this subject, makes him especially suitable to investigate this field of research.

The reference letters simply do not support the petitioner's claim to have already made a contribution of major significance. Rather, they suggest that the petitioner's research is innovative and has the potential, with additional research, to lead to the treatment and the prevention of diseases.

The petitioner has repeatedly pointed to his communication with Nobel Laureate ██████████ who discovered the structure of DNA. That the petitioner submitted a question to a renowned Nobel Laureate in 1987, while still a student, regarding the structure of DNA and received a brief response which contained no evaluation of the petitioner's research or abilities in no way implies that the petitioner himself was or is at the very top of his field.

¹ The term "national interest" is not relevant to this classification. The petitioner seeks classification as an alien of extraordinary ability, not as a member of the professions holding an advanced degree or an alien of exceptional ability seeking a waiver of the labor certification requirement in the national interest.

The petitioner's contribution to the area of pneumoconiosis is somewhat better supported. The petitioner was one of two authors of the report to the WHO and attended the WHO meeting in 1995 as a temporary advisor based on his research in this area. Original contributions, however, are not enough. They must be of major significance. Once again, there is no evidence the petitioner's research has led to improved diagnosis and treatment for pneumoconiosis or that such treatments are in clinical trials.

While the diseases the petitioner is studying are serious, the petitioner's area of research alone cannot establish that the petitioner's contributions in this area have major significance.

In response to the director's request for additional documentation, the petitioner concedes, "I have the ability to do the first rank research and am doing a research with great significance." While the petitioner may have the potential to reach the top of his field, he has not demonstrated that he has already done so.

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

The petitioner has submitted evidence that he has had approximately 30 articles published and that he has translated several more. As stated by the director, scientific publications are one of the normal means by which scholars document their research and exchange ideas.

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 of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. Significantly, the petitioner has not provided any evidence that these articles are commonly cited by other researchers or that they have drawn national attention as claimed by the petitioner. As stated above, while he petitioner has apparently had an article reviewed by a Nobel Laureate, the record does not contain [redacted] evaluation of the petitioner's research.

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

The petitioner has admittedly served as a committee member for the Chinese Society of Industrial Toxicology. The petitioner has not, however, demonstrated that as a committee member he performed in a leading or critical role for the organization, nor has he submitted any evidence

regarding the reputation of the organization. The petitioner argues on appeal that there are only 21 members on the committee and that they have to be at the very top of their field. While the announcement of committee members confirms the number of members, the petitioner has not established the requirements for committee membership. In addition, the record lacks evidence that committee members have a leading or critical role within the organization. It is not known whether the petitioner served on a short-term ad hoc committee or a standing committee that controls the activities of the organization. Nor has the petitioner established the reputation of the organization.

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.

While the petitioner has clearly contributed to his field, review of the record does not establish that the petitioner has distinguished himself 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 scientist, 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.