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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

JUN 6 2001

File: EAC 97 111 53665 Office: Vermont Service Center Date:

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, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner, Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted, the previous decisions of the director and the Associate Commissioner will be affirmed and the petition will be denied.

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 as an immunologist and medical ethicist. The director and the Associate Commissioner determined the petitioner had not established that she qualifies for classification as an alien of extraordinary ability.

On motion, the petitioner contends that the Associate Commissioner did not give due consideration to the evidence of record.

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 she has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an immunologist and medical ethicist. 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 motion, the petitioner discusses previously submitted evidence pertaining to 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.*

In discussing this criterion, the Associate Commissioner stated:

The petitioner received a third place award in Mathematics from the Scientific and Technical Research Institution of Turkey. The regulations, however, require the receipt of prizes or awards.

On motion, the petitioner states that the Associate Commissioner's wording suggests that the Associate Commissioner did not acknowledge the presence of the award in the record. The wording of the above passage is ambiguous, but the meaning appears to be that the petitioner had documented receipt of only one award, rather than multiple "prizes or awards" as required by the plain wording of the regulation.

Even the one award acknowledged in the Associate Commissioner's prior decision is questionable. The translated certificate indicates that the petitioner won "third place in Mathematics in Marmara region as a result of competition between students of secondary school's last class" during the 1977-1978 academic year. The petitioner claims extraordinary ability in biochemistry, rather than in mathematics. Furthermore, the record indicates that the petitioner was born in late 1963 and thus was probably not yet 15 years old when she received this award. The award is clearly not a nationally or internationally recognized award for achievements in immunology or biochemistry. The petitioner placed third in a high school mathematics competition.

Other honors claimed by the petitioner cannot be considered to be prizes or awards in any realistic sense. The petitioner won a scholarship to attend college, but it does not follow that the petitioner was recognized as one of the nation's top scientists. Merit-based college scholarships are not so rare that they qualify as national prizes or awards.

Similarly, the petitioner observes that she graduated as the valedictorian of her high school, with a record high grade point

average. Every high school which ranks its students must logically have a top student in every graduating class. It does not follow that the petitioner thereby earned national or international acclaim, even accepting the petitioner's assertion that her high school was especially prestigious. The petitioner claims extraordinary ability in a professional field which requires substantial college training at the undergraduate and graduate levels. The petitioner's accomplishments before she had even entered college simply cannot demonstrate that she is among the most accomplished and acclaimed in her field.

The petitioner cites page 103 of the July 22, 1996 issue of Chemical and Engineering News, which according to the petitioner lists presentations at the 212th meeting of the American Chemical Society. The journal list four research papers which were the subject of "Award Addresses," and the petitioner was one of six co-authors of the second listed paper. The record does not name the award or describe the criteria underlying it, and the minimal coverage given in the journal does not indicate that the scientific community views the unnamed award as being nationally or internationally significant. To recognize every prize conferred at every scientific gathering would be to render this criterion so broad as to make it meaningless as a means of distinguishing the very top researchers.

*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 Associate Commissioner has acknowledged the petitioner's membership in the Turkish Medical Association, the Turkish Society of Psychosomatics and Psychotherapy, and the Turkish Society of Immunology. The Associate Commissioner determined that "[t]he record . . . contains no first-hand evidence of the criteria for membership in these organizations."

On motion, the petitioner asserts "the law does not require evidence regarding the criteria for membership in these organizations. Instead, the law requires that the petitioner is a member of such organizations." (Emphasis in original.) The petitioner maintains that the criteria for membership are the concern of the organizations themselves, and not of the Service. Nevertheless, the above regulation states that the petitioner must be a member of "associations . . . which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." Obviously, without evidence that these organizations require outstanding achievements, the petitioner's memberships cannot satisfy this criterion. For example, if membership in the Turkish Medical Association is open to every dues-paying physician in Turkey, then clearly that organization does not require outstanding achievements

of its members. This criterion, like all the regulatory criteria, is meant to be very narrowly construed, and most professional associations do not qualify to satisfy this criterion.

The petitioner asserts that the above-named organizations "do not . . . grant membership to everyone," but cites no evidence to establish to what extent membership is limited. The petitioner then concedes "I am a member of the Turkish Medical Association simply because I am a Medical Doctor and I am Turkish," but contends that her membership in the other two named organizations relied upon her reputation as a leading medical researcher in Turkey. The petitioner offers no evidence to support this characterization.

The petitioner suggests that the Service "contact these institutions" if the available evidence is not sufficient. The burden of proof in this case is on the petitioner rather than on the Service. The director had already notified the petitioner that her evidence was insufficient. The Service is under no obligation to seek information from third parties such as professional associations. Unlike the petitioner, the Service has no vested interest in the outcome of this case. If the petitioner believes that the above associations have information which is helpful to her case, it is entirely her responsibility to obtain that information and forward it to the Service for inclusion in the record. This office is not required to actively assist the petitioner with her case by soliciting information and evidence which the petitioner herself has not seen fit to obtain.

The petitioner's argument that she played significant roles for the above organizations is best addressed in connection with a separate criterion, below, concerning leading or critical roles for distinguished organizations or establishments. The petitioner cannot satisfy the present criterion by holding high office in an organization which does not require outstanding achievements of its members.

*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 Associate Commissioner had indicated that the petitioner had not claimed to have satisfied this criterion. On motion, the petitioner protests the Associate Commissioner's "superficial" review of the evidence of record and states that her "publication about Turkish Medicine was cited in the major media by one of the associate professors of the Immunology Training Board." The petitioner refers to a newspaper article, which cites two of her papers as sources.

Citation of the petitioner's work, however, does not establish that the article in question is "about" the petitioner or her work. The article is about the field of immunology in general. An alien cannot satisfy this criterion simply by establishing that her name has appeared in print. Citation of the work of others is expected and routine in the scientific community. The very fact that the work has been cited demonstrates that other scientists have found her research to be useful, but a scientist does not earn widespread acclaim simply by producing useful or valid results. One must weigh the impact and implications of a scientist's findings.

The evidence provided by the petitioner does not demonstrate that the petitioner has been the subject of major media coverage.

*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 asserts that she satisfies this criterion because the Turkish Medicine Association "has assigned me as an inspector to audit treatment practices of medical doctors." Inspections and audits are generally intended to document compliance with procedures, or to survey the state of the profession. The petitioner has not shown that she has judged the comparative merits of the work of others in her field. Including work as an inspector or auditor would rely on too broad an interpretation of this criterion; such duties are not limited to the top members of a given field.

Furthermore, the record does not indicate that the petitioner has acted "as an inspector to audit treatment practices of medical doctors" on any kind of regular basis. The record shows only that the Turkish Medical Association appointed the petitioner to conduct an "investigation against Dr. Sedat Ekici." The record does not reveal the grounds for the investigation of this one doctor. If, as it appears, Dr. Ekici was investigated for suspected wrongdoing, the petitioner's participation in that investigation does not constitute judging the work of others.

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

The petitioner contributed to the development of a drug which holds two patents. The petitioner asserts on motion that the Associate Commissioner has unfairly dismissed her contribution as being the work of one member of a group. On motion, the petitioner maintains that the multidisciplinary nature of the research required experts in a variety of fields, and that it would be unreasonable to expect the petitioner successfully to have conducted this research alone.

The petitioner contends that "a scientific patent is a major scientific contribution to any field and must not be omitted from the evaluation process." It remains that the burden is on the petitioner to demonstrate that her accomplishments as an immunologist and biochemist have earned her sustained national or international acclaim. The patent itself cannot serve as presumptive evidence of that acclaim. Countless thousands of researchers hold one or more patents, and they are not all nationally or internationally acclaimed.

The petitioner is correct in her assertion that collaborating on a project, rather than working alone, does not diminish the significance of one's contribution to a given project. All the same, the petitioner must establish that the scientific community has acknowledged that her contribution is of major significance. It cannot suffice for the petitioner to offer her personal assessment of the worth of her own contribution.

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

The Associate Commissioner had previously indicated that the petitioner satisfied this criterion. The petitioner asserts on motion that this criterion is the only one to which the Associate Commissioner devoted proper attention and analysis. The petitioner offers no explanation for this assessment, apart from her contention that the Service erred in every evidentiary determination that was not favorable to her.

This office notes here that Dr. Michael Shermer has indicated in his 1997 book Why People Believe Weird Things (New York: W.H. Freeman and Company) that "[t]here are now . . . more than six million articles published in well over 100,000 scientific journals each year" (p. 24). It is plainly absurd to suggest that every one of those six million articles serves as *prima facie* evidence of national or international acclaim for each co-author (for many such articles are co-written) of each of those articles. The statutory intent, that the alien be shown to be at the top of his or her field, is better satisfied by evidence that demonstrates the alien has consistently published work in prestigious, major journals (the word "major" appears repeatedly in the wording of the criterion). To hold otherwise would hypothetically allow every alien with the wherewithal to publish his or her own journal to satisfy this criterion.

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

The petitioner asserts that she fulfills this criterion because she is "the assistant editor of the first journal of immunology in Turkey," and because she is "the first medical doctor who has

specialized in the field of medical ethics, and that, at this first place, I have led the development of this field in Turkey." The petitioner also states that the Turkish Medical Association "has appointed me as the judge reporter in medical lawsuits." The record does not contain clear evidence that any distinguished organization or establishment has entrusted the petitioner with a position which is leading or critical for that organization or establishment as a whole. The petitioner's holding lower-echelon positions of trust and responsibility is not dispositive in this case.

The petitioner contends, on motion, that the Associate Commissioner has not given thorough consideration to all of the evidence of record. It must be noted in this regard that the record of proceeding is over four inches thick, and an exhaustive catalogue and analysis of each individual document in the record would greatly and unnecessarily increase the length of this decision without substantially affecting its outcome. Those documents which the petitioner has cited on motion as being especially significant do not demonstrate that the petitioner is eligible for the visa classification sought.

The petitioner states that she had previously filed an identical petition which was approved, although the consulate in Istanbul refused to issue a visa. The petitioner asserts that the Service has acted inconsistently by approving one petition and denying another, when both were supported by the same evidence.

This office is not in possession of the record of proceeding of the allegedly approved petition, and it is not clear whether that record is truly identical to the record of proceeding in this case. Furthermore, this office is unable to discern the circumstances which apparently led to the approval of the earlier petition. It remains that an analysis of the evidence of record, in conjunction with a review of the evidentiary criteria and the spirit of the underlying statute and regulations, does not permit this office to conclude that the petitioner is among the most acclaimed medical researchers in Turkey or internationally. Absent such a finding, the petition cannot properly be approved.

The petitioner has not explained why, if an earlier petition was approved, she has filed a new petition using identical evidence. A denial of a visa application at a consulate would not nullify the approval of the underlying petition. On the other hand, if the approval of the earlier petition has been revoked, then the Service cannot be said to have acted inconsistently by revoking the approval of one petition, and then denying a subsequent identical petition.

On motion, the petitioner asserts that the Associate Commissioner has disregarded her work in the field of medical ethics, another field in which the petitioner claims to have reached the very top. The petitioner maintains that she is the first specialist in