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]

File: EAC 99 071 52015 Office: Vermont Service Center Date: MAR 2 6 2001

IN RE: Petitioner:
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)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

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

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 petition seeks to classify the petitioner as an alien with extraordinary ability as a pharmacognosist. Webster's Ninth New Collegiate Dictionary defines "pharmacognosy" as "descriptive pharmacology dealing with crude drugs and simples," the term "simples" referring here to medicinal plants. At the time of

filing, the petitioner worked for [redacted], preparing herbal extracts for medicinal applications. 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 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 claims that he satisfies this criterion through membership in the Albanian Pharmaceutical Association. The record does not contain any documentation from this association to establish its membership criteria.

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.

Professor [redacted] of Tirana University refers to the petitioner's "superintendence of college degrees through research," and names three research projects between 1981 and 1983. The record does not show the level of these degrees or the extent of the petitioner's involvement. As a university faculty member, the petitioner could be expected to oversee the work of students; such duties are not inherently extraordinary among university professors and instructors.

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

Professor [redacted] of Tirana University states that the petitioner "is one of the pioneers of this interesting field in Albania and is distinguished for his original contributions." Prof. [redacted] states that the petitioner collects samples of plants, from which he extracts and identifies medicinal compounds. This activity appears to be intrinsic to the nature of pharmacognosy. Prof. [redacted] does not explain how the petitioner's work in this area has been more significant than that of others whose occupation consists of extracting medicinal compounds from plants. Prof. [redacted] also notes that the petitioner has published books and articles.

Publication is covered under a separate criterion; the very writing of such published material is not inherently a contribution of major significance, particularly in a research-based field where publication is essentially expected.

Professor [redacted], also of Tirana University, concurs that the petitioner "is considered in our country one of the pioneers in the field of Medicinal Plants, Vegetable Crude Drugs and Phytomedicines. His very rich Herbarium . . . has served as a model for many researchers of this field." Prof. Resuli asserts that the petitioner has developed several medicines which "have been successfully tried clinically in different disorders" such as digestive disorders and respiratory diseases. Prof. Resuli asserts that the petitioner's "preparation of Stomatological Phytomedicines" is of particular importance.

Dr. [redacted] director of Standardization and Quality for Albania's Council of Ministers, states that the petitioner "has been the expert that has given a great contribution in the compilation of the Albanian Standards (STASH 1988) for Medicinal Plants."

[redacted] of Paul Müggenburg GmbH & Co. states that the petitioner is "a Specialist and Manager of Herbs and Spices . . . at Agroexport/Alimpex. . . . Through his activity in this field, as a Specialist and Expert he has gained an important Name in many European countries." Mr. Müggenburg states that the petitioner "has influenced further improvement of the Quality" of these herbs and spices, and that his "specified List of Albanian Herbs and Spices plays an important role for the Albanian exporters as well as foreign importers."

Prof. [redacted] observes that the petitioner has worked as a "specialist and Sales Manager" for a German spice company, in which capacity the petitioner is responsible "for the purchase and quality inspection of Herbs and Spices" including over 1,000 tons of sage leaves per year. This work appears to be, at best, tangential to the petitioner's research of medicinal plants. This, rather than pharmacognosy, appears to have been the petitioner's main activity since 1985 according to several witnesses.

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

The record documents the petitioner's authorship of numerous books and articles in the field of medicinal plants, including the English-language Medicinal Plants from Albania published by the Chamber of Commerce of Albania.

On April 21, 1999, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the petitioner as an alien of extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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."

The director noted that while several of the initially-submitted letters refer to the petitioner as a major figure in his field, there is little explanation of how this is so; for instance, the witnesses have not explained why the petitioner's accomplishments are substantially more significant than those of his peers. Without elaboration, the flat assertion that the petitioner is one of the best in his field is difficult to evaluate or verify. Most of the initial letters are from institutions and companies that have employed the petitioner; this range of witnesses does not establish that the petitioner is well-known among those entities that have not directly employed him.

In response, the petitioner submits additional letters, and a copy of one of the petitioner's scholarly publications. Prof. [redacted] in his second letter, asserts:

> [The petitioner] realistically is considered a[n] herbal specialist of extraordinary ability, because he is able to formulate and apply methods of analysis for herbs and herbal medicines, standards of herbs, methods of isolation of active principles even when they are not available detailed in the current literature, formulate and prepare original and effective herbal remedies.

Given that the derivation of medicines from plants appears to be basic and fundamental to the nature of pharmacognosy, it is still not clear how the petitioner's ability to derive medicines from plants makes him an "extraordinary" pharmacognosist. Prof. Resuli does not indicate what tasks are within the abilities of "average" pharmacognosists in Albania or elsewhere.

[redacted], president of [redacted] Group, Inc., who has written as a collaborator with the petitioner, asserts that the petitioner is "the leading expert on Sage (*Salvia officinalis*), widely used as a condiment in America." Mr. [redacted] praises the petitioner's "depth of knowledge and breadth of experience" and his "unique insight into source plants used for human benefits."

The director denied the petition on August 18, 1999, stating that the petitioner has not demonstrated how the evidence establishes the petitioner's eligibility. The director found that the record lacks the "extensive documentation" required by the statute, and

stated that the witnesses have not explained the source of their claimed knowledge about the petitioner and his accomplishments.

On appeal, the petitioner submits further witness letters. [redacted] sets forth his own accomplishments in his field (such as authorship of over 700 articles and work with national organizations), which appear to dwarf the petitioner's own achievements in the field. Mr. [redacted] states that he first became aware of the petitioner while seeking a collaborator "who was intimately familiar with European phytomedicines, and who could access the latest scientific literature from Germany, Italy, and other European countries." The petitioner's "access" to this literature appears to derive from the petitioner's fluency in several languages. Mr. [redacted] states that their collaborative effort "is in the final stages of preparation" for publication, and he concludes that the petitioner "is internationally respected in medicinal and aromatic plant research."

Mr. [redacted] letters are the only evidence originating from outside Albania. Whatever Mr. [redacted] opinion of the petitioner's professional reputation, there is no objective evidence that the petitioner enjoys an international reputation as a top pharmacognosist. For instance, the record does not show heavy international citation of the petitioner's scholarly publications, nor does the record contain reference materials from several different countries which recognize the petitioner as a major figure in the field.

Professor [redacted] states that the petitioner's "work is familiar to me because his achievements and research contributions . . . are nationally and internationally acclaimed." It seems doubtful that international acclaim is the basis for Prof. Juca's knowledge of the petitioner's work, because the two served on the faculty of the same university for over a decade.

Prof. [redacted] states that the petitioner's research "has advanced our understanding of the selective ways for the isolation of active plant constituents, finding the right solvents for the preparation of Herbal Extracts . . . , as well as preparation of standardized Herbal Medicines." Most of the witnesses who attest to the petitioner's acclaim in the field are on the faculty of Tirana University, where the petitioner himself served from 1974 to 1985. In the absence of persuasive evidence to show that pharmacognostical research in Albania is confined to that one university, we must conclude that the evidence does not establish national acclaim.

While the petitioner has done some work at the national level, the record does not show a national consensus among Albania's pharmacognosists that the petitioner is at the top of his field. Subjective witness statements can only go so far in lieu of the

objective documentation contemplated by the statute and the regulations. Such documentation, if it exists, should be readily obtainable; an individual who is nationally acclaimed as an extraordinary figure at the top of his or her field need not rely predominantly rely on often vague letters from institutions which have hired him or her.

We noted that the petitioner has been in the United States since July 1996, two and a half years before he filed the petition in January 1999. The record does not show that, during this thirty-month period, the petitioner had attracted significant attention in the United States through the work he has performed in the United States. This observation necessarily raises questions as to whether the petitioner has sustained whatever level of acclaim he may once have reached.

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 pharmacognosist 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 in his field and that he has gained some level of recognition, but 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.