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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

[redacted]

Public Copy

File: WAC 99 033 51659 Office: California Service Center Date: MAY 24 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)

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. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 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 a medical researcher specializing in the study of pediatric infectious diseases. 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.

With the petition, the petitioner has submitted copies of Service memoranda which discuss the proper use of these regulatory criteria. Counsel has highlighted a portion of one memorandum, which reads, in part, "meeting three of the criteria for extraordinary aliens . . . is sufficient to establish the caliber of the alien. There is no need for further documentation on the question of the caliber of the alien." Counsel has not highlighted the two sentences that immediately follow: "However, please note that the examiner must examine the evidence presented. This is not simply a case of counting pieces of paper."

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 received $1000 from Beaufour-IPSEN International, a French pharmaceutical company. While a witness asserts that the petitioner received a prize from Beaufour-IPSEN for one of her papers, that witness is not connected with Beaufour IPSEN and offers no documentation to support that claim. The letter from Beaufour-IPSEN itself indicates only that the petitioner received an "international bonus" and that the petitioner "was the first in Kazakhstan who conduct[ed] clinical approbations" of three drugs developed by the company. An untranslated certificate contains the phrase "*3ème PRIX*," or "Third Prize." The burden is on the petitioner to show that this $1000 prize or "bonus" represents a significant national or international award. As the record now stands, we cannot conclude that the petitioner has won prizes which place her at the top of her field.

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.

A certificate in the record states "INTERNATIONAL ACADEMY OF SCIENCES OF NATURE AND SOCIETY / pursuant to its Chapter / ELECTED [the petitioner] / FULL MEMBER OF THE ACADEMY / (Moscow branche [sic] office)." Another certificate states "[f]or the great achievements in the area of medical science, [the petitioner] was elected as an actual member of [the] International Academy of

Natural and Social Science, for Kazakh Unit." These two certificates appear to refer to different branches of the same international association. The record contains no other evidence about the International Academy of Sciences of Nature and Society. The indication that members are elected by "chapters" or "branches" suggests that members are selected locally rather than at the national or international level. Also supporting this conclusion is the fact that the petitioner appears to have been elected twice, first to the "Moscow branch" and then to the "Kazakh Unit." The second election would appear to be redundant unless the membership is considered to be local rather than international. The evidence of record is insufficient for us to conclude that the petitioner has satisfied this criterion.

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 is a member of the Expert Committee of the Department of Academic Attestation at the Kazakhstan Ministry of Science. In this capacity, the petitioner evaluates candidates for academic degrees and academic positions. This work appears to be at a major, national level.

The petitioner is also a member of the Certifying Board of Scientists of the Kazakhstan Academy of Sciences.

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

Counsel asserts that the petitioner "has been a **forerunner in the field of children's infectious diseases**, especially with regard to **viral hepatitis and AIDS**" [emphasis in original]. Counsel lists these contributions:

> [The petitioner] was **awarded a patent for creating a treatment regimen** for children with **chronic viral hepatitis B**. . . . [The petitioner's] **treatment plan has been adopted country-wide and also internationally**. . . .
>
> In its move to reform the antiquated Soviet medical system, the Kazak[h] government turned to [the petitioner] to provide guidance on modernizing pediatric care. . . .
>
> [The petitioner] has **created a body of work** which is **considered the leading authority** on inoculating children against **infectious diseases**.

Regarding the treatment regimen, the petitioner does not appear to have played any role in developing the actual vaccine; the petitioner merely modified the existing dosage regimen for children of various ages. The issuance of a patent for this regimen attests to its originality, but not necessarily to its significance. The petitioner has produced no evidence that original but less significant innovations are denied patent benefits.

K. Ormantaev, chairman of the Association of Pediatricians of Kazakhstan, states:

> [The petitioner] has participated in writing the ethical code for pediatricians of Kazakhstan and in development of the conceptual base of the children's health care system reform for Kazakhstan.
>
> She also contributed to creation of the project of private medical practice and professional training for pediatricians and pediatricians-specialists in infectious diseases; she was involved in development of national professional standards for "family doctor" (pediatrician or general practice) for medical schools."

Counsel does not explain how the development of professional standards makes the petitioner a leading figure in medical research (as opposed to administrative issues in the practice of medicine). The petitioner's work in developing professional standards appears to fit more into the criterion of a leading or critical role for a distinguished establishment, further below. Developing these standards is not a result of scientific research and does not represent a scientific contribution.

Regarding counsel's third assertion the record contains no indication that the petitioner's "body of work . . . is considered the leading authority on inoculating children against infectious diseases." Rather, the evidence cited to support this assertion (a letter from the head doctor at a Kazakhstan children's hospital) indicates only that the petitioner "carries out scientific investigations regarding the urgency of treating various infectious diseases in children." It is not remarkable that the petitioner would pursue such studies at the City Hospital Clinic for Infectious Childhood Diseases.

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

Counsel asserts that the petitioner "has authored **over 130 scholarly articles/conference abstracts and 17 study guides in the field of infectious diseases in children.**" The petitioner submits lists of her claimed publications, but no direct evidence that

these works appeared in major publications (the word "major" appears repeatedly in the regulation). It cannot suffice simply to show that the petitioner's work has appeared in print. Furthermore, the list of publications is attested by an official of Kazakh State Medical University. There is no evidence that the university was directly involved in issuing any of the publications, and thus that university officials have standing to attest to the publications. Also, we note that the record contains no evidence that other researchers have cited the petitioner's published work. Such citations would establish both the wide distribution and the influence of the petitioner's work.

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.

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

Counsel asserts that the petitioner satisfies this criterion because she "has participated in numerous national and **international scientific conferences** where she presented her medical research findings to other researcher[s] working in the same field." These conferences are not artistic exhibitions or showcases. The petitioner's presentations appear to be more akin to scholarly articles, because they involve the dissemination of scholarly information to a specialized audience.

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

Counsel states that the petitioner satisfies this criterion through her work on the Expert Committee of the Department of Academic Attestation at the Kazakhstan Ministry of Science, and on the Scientific Council of Kazakh State Medical University. The record shows that the petitioner participated in the development of professional standards, evidently at a national level, and to this extent she satisfies this criterion.

The director denied the petition, acknowledging that the petitioner "is an accomplished researcher" but finding that the petitioner has not established sustained national or international acclaim "as being at the top of her field of endeavor." The director observed that, while the petitioner has listed her own achievements, she has offered nothing to allow a comparison between herself and others in her field in Kazakhstan or elsewhere.

On appeal, counsel argues that the director should have applied a "preponderance of evidence" standard, rather than a more rigorous level of proof. The director, however, had never indicated that any other standard figured in the rendering of the decision. Certainly, establishing a preponderance of evidence involves more than simply listing the petitioner's accomplishments and declaring that only an extraordinary researcher could have done such things.

Counsel draws unsupported, speculative conclusions from the record. For example, counsel asserts that the petitioner "is a leading figure in the education of doctoral candidates." While the record shows that the petitioner is involved in their selection, it does not show that the petitioner plays a more prominent role than others on the same committee. Also, counsel asserts that the petitioner "has been featured as a speaker before many national and international medical conferences." From this evidence, counsel concludes that the petitioner "is of international renown." Such conferences, however, routinely involve oral presentations, often only ten or fifteen minutes in length. The petitioner has not shown that only the top researchers in a given field make oral presentations at such conferences.

The record shows that, with regard to the administrative facet of her profession, the petitioner has reached some level of prominence. The record does not, however, show that the petitioner's work in research itself has won her sustained acclaim. In a statement accompanying the petition, the petitioner states her intention to work "as a volunteer in Child Care Centers" and in a "Volunteer job at the Department of Public Health." The petitioner also states her intention to present research papers to various entities and organizations, all but one of which are based in San Francisco. The petitioner lists several institutions where she plans to conduct research, but does not show that any of these institutions have any interest in employing her. The statute and regulations require no formal job offer, but if the petitioner is to couch her future plans in terms of employment at specific sites, it is not unreasonable to expect some indication that these entities are aware of, and in agreement with, the petitioner's stated plan to work there.

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 herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner has enjoyed a long and fruitful career as a researcher, and has climbed in the academic hierarchy of Kazakhstan's medical establishment, but is not persuasive that the petitioner's achievements as a researcher set her significantly above almost all others in her 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.