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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]

File: [Redacted] Office: Nebraska Service Center Date: 06 SEP 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]

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clearly unwarranted

INSTRUCTIONS: invasion of personal privacy

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Handwritten signature of Robert P. Wiemann

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.

At the time he filed the petition, the petitioner was a doctoral student at the University of Minnesota. Counsel states that the petitioner "is an internationally recognized expert within the field of antibiotic discovery and development. . . . [The petitioner] has made unique and extraordinary contributions to the world's knowledge of antibiotics." Counsel initially stated that, after the petitioner completes his degree, "Pharmakon Discovery,

Inc., is seeking to employ [the petitioner] to exploit the commercial potential of the methymycin system that he created." Subsequently, however, counsel has mentioned the petitioner's "future employer, Midwest Molecular, Inc." The record does not establish the relationship, if any, between Pharmakon and Midwest, or between either company and the University of Minnesota. (One of the petitioner's professors indicates that he has started his own biotechnology company, which he does not identify by name.)

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, 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.

In 1989 and 1990, the petitioner won the Dow Chemical Award 1989, which counsel states "is presented only to the top 2% of the Chemistry Department students at Fudan University." This award is neither national nor international; its recipients are limited to students in one department at one university. The petitioner also received the Unilever Award at Fudan University in 1992. According to Professor Daodao Zhang of Fudan University, the Unilever Award is "the most prestigious award of Fudan University given to a total of 24 students each year for their excellent research." This award may place the petitioner at the top of Fudan University's 1992 student body, but it does not follow that recipients of the award enjoy significant, sustained acclaim outside of the university.

Counsel states that the petitioner "was also named 'Outstanding College Graduate,' the highest honor granted to undergraduate students by the Government of Shanghai City, and received the 'People's Scholarship,' seven times." The record contains no evidence that an award from a city government is nationally or internationally recognized. Similarly, the "People's Scholarship" was awarded to the petitioner not by any national or international body, but by Fudan University, which he was attending at the time. Merit scholarships based on superior academic performance are known throughout academia; there is no evidence that the petitioner became known nationally or internationally by receiving such scholarships.

After he filed the petition, the petitioner received a doctoral dissertation fellowship from the University of Minnesota. Counsel deems this a "highly prestigious award," but it is nonetheless not

a national or international award; the only people eligible to receive it are doctoral students at the University of Minnesota.

College study is not a field of endeavor; rather, it is training for future employment in such a field. The record contains no evidence that the petitioner, as of the filing date, has received any awards that are not, by nature, restricted to college students or recent graduates.

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.

Counsel states that the petitioner's membership in the Phi Kappa Phi honor society fulfills this criterion. The record contains no evidence to show that prospective members must show outstanding achievements or that new members are admitted by recognized national or international experts. The petitioner's membership certificate indicates that the petitioner was elected into "the Chapter at [the] University of Minnesota," which suggests that membership decisions are made locally, rather than nationally or internationally; and that the membership consists of students rather than experienced, established researchers who have, unlike the petitioner, already completed their professional training.

Documentation from Phi Kappa Phi itself indicates that the society has "more than 900,000 members" worldwide, and that "[t]hose elected to membership in Phi Kappa Phi include the upper five-percent of last-term juniors and the upper ten-percent of seniors, along with outstanding graduate students, faculty, and alumni." Counsel indicates that a graduate student qualifies as outstanding "by ranking scholastically in the upper 10% of all graduate and professional students in that particular institution." Superior academic performance, while praiseworthy, is not an outstanding achievement that results in national or international acclaim, and an honor society which chooses its members based on academic performance does not fulfill this criterion.

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.

Counsel states that the petitioner's work was the subject of an NBC News story in 1998, but the record contains no corroborating evidence from the National Broadcasting Company, either to confirm that the broadcast took place, or that the petitioner himself figured heavily in the news story.

An article in Chemical & Engineering News from 1998 states that "Minnesota researchers have cloned and characterized . . . a promising system for use in combinatorial biosynthesis." The article mentions the petitioner only twice by name, in the following sentences:

It was a collaborative effort between associate professor David H. Sherman of the department of microbiology and the Biological Process Technology Institute and chemistry professor Hung-wen Liu of the University of Minnesota, Minneapolis, along with graduate students Yonquan Xue and [the petitioner]. . . .

After cloning and sequencing the biosynthetic genes for the desosamine sugar in methymycin and neomethymycin, Liu, Sherman and [the petitioner] constructed another new polyketide analog by deleting one of the genes in that cluster.

Elsewhere, the researchers are repeatedly identified as "Sherman, Liu, and coworkers."

The journal Proceedings of the National Academy of Sciences published a commentary on one of the petitioner's papers, which appeared in the same issue of the journal. This commentary never mentions the petitioner in the body of the text, except in collective references to "researchers at the University of Minnesota"; his name does not appear except in a footnoted citation. The petitioner was not the principal author of the pertinent article. It is only inferred, rather than expressed, that the petitioner is a subject of discussion.

The above articles discuss research on which the petitioner collaborated. They are not, however, "about the alien" because they mention him rarely if at all. The regulation calls for "published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field." The record contains an article of this kind, from Chemical and Engineering News, which contains extensive quotations from various researchers, along with their photographs. Major popular science publications such as Discover will often profile a particular scientist and discuss his or her work and its significance. Given that some researchers are known to attract this degree of media coverage, thus bringing their names to the attention of wide audiences within and even beyond the field, we cannot attach the same weight to articles which mention the petitioner only briefly, and which indicate or at least strongly imply that the petitioner was not the principal researcher behind the projects discussed. The published materials in the record do not establish that the petitioner is one of the best-known figures in his field.

We note also that all of the above coverage dates from late 1998, shortly before the petition's filing; at most, it establishes a

burst of publicity surrounding a single paper, rather than a sustained pattern of media attention.

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.

Counsel states that the petitioner "has been involved in reviewing National Institutes of Health (NIH) grant proposals and papers for scientific journals," and that "only the highest caliber scientists in their field are sought to review the scientific merit of other scientists' research."

The record contains NIH documentation which indicates that NIH grant applications "are reviewed initially by peer review groups composed of scientists from the extramural research community." Nothing in this documentation states or implies that "only the highest caliber scientists in their field" participate in peer review, as counsel claims, and even then the record contains no confirmation from the NIH that the petitioner has acted as a peer reviewer.

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

Counsel cites several such contributions: "[c]loning and sequencing a biosynthetic gene cluster for methymycin, neomethymycin, narbomycin and pikromycin"; "[r]edesigning antibiotics methymycin and neomethymycin"; and "[s]olving the problem of antibiotic toxicity toward producing microorganisms."

In essence, the petitioner's work revolves around the problem of pathogenic microorganisms such as bacteria which develop resistance to antibiotics. As a result, scientists must develop new antibiotics to combat these disease-causing microbes. While other microorganisms can be genetically engineered to produce new antibiotic compounds, these compounds often prove toxic to the very cells that produce them, which raises a major barrier to the large-scale production of the new antibiotics. According to researchers at the University of Minnesota, the petitioner has isolated a gene that "can be used to create a self-protection system for these microorganisms, and therefore could become the answer needed to solve the toxicity problem."

Initially, counsel has cited letters from various witnesses, who describe the petitioner's role in the above research. These witnesses, however, are all faculty members at Fudan University and the University of Minnesota, where the petitioner has studied and was still studying when he filed the petition. Clearly, these witnesses believe that the petitioner is responsible for significant advances in the field, but the letters do not show that

researchers outside of Fudan University and the University of Minnesota share that opinion. While these institutions may have earned reputations for excellence, the petitioner's reputation is not national or international if it is limited to those two universities.

Subsequently, in response to a request for further information, the petitioner has submitted letters from a broader variety of witnesses. Dr. Rick Lam, an anesthesiologist at the Mayo Clinic in Rochester, Minnesota, states:

[The petitioner's] current studies developing and discovering new antibiotics through directly manipulating the genetic information governing biosynthesis of these compounds in microorganisms offers [sic] . . . a new strategy for drug discovery. Termed the combinatorial biology approach, it has a great potential to discover new antibiotic drugs in [a] shorter period of time. . . . This approach could be an invaluable weapon against pathogenic microbes. [The petitioner] is one of the few researchers who pioneered this approach.

Dr. Kevin A. Reynolds, associate professor at Virginia Commonwealth University, is the author of the above-mentioned article in Proceedings of the National Academy of Sciences which discusses one of the petitioner's projects (albeit without mentioning the petitioner in the article itself). Dr. Reynolds states:

I have been aware of [the petitioner] and his extraordinary research ability for some time through his breakthrough work in the field of polyketide antibiotic studies. . . . This groundbreaking work demonstrated, for the first time, that nature can use a single gene cluster to make a number of different antibiotic structures. It provided a tremendous insight into the manner in which nature utilizes its genetic tools to obtain molecular diversity. This finding has great impact on the development of a combinatorial biology approach that will revolutionize the way to discover new antibiotic drugs. . . .

[The petitioner's] tremendous success has attracted a lot of attention in the field.

The published research, itself, may have attracted significant attention, but we note again that Dr. Reynolds himself, in his commentary in the Proceedings of the National Academy of Sciences, made no mention of the petitioner by name, except in one of dozens of footnoted citations.

Cornell University Professor Jon S. Thorson, head of the Laboratory for Biosynthetic Chemistry at Memorial Sloan-Kettering Cancer Center, states that coverage in Chemical and Engineering News "is unusual and highly coveted by researchers associated with all areas

of chemistry and is only reserved for leading scientific contributions."

Dr. Hiroyuki Isobe, assistant professor at the University of Tokyo, states that the petitioner "has made numerous significant contributions to the scientific world. . . . His stellar scientific contributions automatically place him at the top of the field."

These letters indicate that the petitioner's work is regarded as highly significant, not only at the universities where he has studied, but at prestigious institutions in the U.S. and abroad. At the same time, we cannot avoid the observation that many of these witnesses (who, unlike the petitioner, have completed their training and established full-time careers) can boast of accomplishments and credentials which dwarf those of the petitioner. We also note that much of the commentary relating to the petitioner's specific contributions is couched in terms of potential future impact, provided unspecified conditions are met at some future time. It is not clear what practical impact the petitioner's work has already had on the problem of antibiotic resistance and the development of new drugs.

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 co-authored several published articles, including three in the Journal of the American Chemical Society and one in the Proceedings of the National Academy of Sciences. The petitioner has also been involved in conference presentations, the abstracts for which have appeared in the published proceedings of those conferences.

The record indicates that these journals are highly prestigious, and that at least some of the petitioner's articles have attracted significant attention (as described further above). The petitioner has thus satisfied this criterion.

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

Counsel asserts that the petitioner performed in such roles for Fudan University and the University of Minnesota. We will not dispute the reputations of these institutions, but the petitioner was not a dean or department head at either of these universities. Rather, the petitioner was (and remained, as of the filing date) one of thousands of students studying there; the petitioner, at the time of filing, was one of approximately 13,000 graduate students (not counting night students) at the Twin Cities campus of the University of Minnesota. Whatever functions the petitioner may have fulfilled in one particular laboratory within one university department, the petitioner has not shown that his activities were

leading or critical at an institutional level, or substantially more important to the university as a whole than the activities of the other 13,000 graduate students there (250 of whom studied in the Chemistry Department).

The director denied the petition, stating that it cannot suffice for the petitioner merely to submit evidence which falls under various criteria; such evidence "must clearly demonstrate that the alien has achieved sustained national or international acclaim."

The director noted that the petitioner's awards are available only to students at one particular university. On appeal, counsel acknowledges that the awards "were all restricted to students at Fudan University, but Fudan University is one of the most elite institutions in the country" and therefore the petitioner, in order to receive the awards, "had to be better than the best in the country." This unsubstantiated argument is not persuasive. We reject the assertion that acclaim arises, directly or indirectly, from an alien's attendance at a well-regarded university.

Counsel discusses other awards which the petitioner did not receive until after the petition's filing date. In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Furthermore, these awards are also student awards, with the exception of a \$500 travel grant which the petitioner has not shown to be a particularly prestigious or nationally recognized award.

Pertaining to the petitioner's published work, counsel states:

In the sciences, journals are ranked, at least in part, on their impact factor. Impact factor refers to the number of times the typical article in that journal is cited by others. The higher the impact, the more prestigious the journal is considered to be. The fact that [the petitioner's] work has been cited is an indication that it is considered to be of importance to the field as a whole.

The impact factor is an average, derived from the aggregate citations of all articles published in a given journal. This statistical figure does not show that any one article, by the petitioner or anyone else, has been heavily cited. The record contains only one citation of the petitioner's work, in a commentary which appeared in the same issue of the same journal that carried the cited article.

The remainder of counsel's brief is devoted to a discussion of letters already submitted and discussed.

The petitioner has certainly participated in at least one research project which is widely viewed as significant in the field. The

importance of the petitioner's role in the project is difficult to determine objectively, because it is stressed in letters prepared expressly to support this petition, but the petitioner's name is rarely mentioned in relation to the project in materials prepared for general publication rather than for submission to the Service.

The petitioner has taken part in important research, and significant, sustained acclaim may well lie in his future. The overall picture presented by the record, however, is one of a gifted student rather than an accomplished researcher in his own right who has already reached the top of his field.

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 chemist 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 has attracted some notice for his work, 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, or that his is among the most readily recognized names in the 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.