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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: EAC 00 079 53249

Office: Vermont Service Center

Date: 22 APR 2002

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:



Public Copy

INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

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(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.

The petitioner is a staff scientist at Celera Genomics Corporation, one of the companies participating in the Human Genome Project (the effort to map the human genetic code). 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.

Counsel states that the petitioner satisfied this criterion because he “was awarded a visiting fellowship for 1996-1998 at the National Institutes of Health,” “received a stipend from the Russian Academy of Sciences given to prominent young researchers,” and “received the award for Diploma Work at Moscow State University.”

The award from Moscow State University is not a national or international award because consideration for the award is limited to the graduate students at that one university. The petitioner’s stipend from the Russian Academy of Sciences during the last year of his doctoral studies appears, likewise, to have been limited to one institution. It is not uncommon for universities to pay stipends or otherwise offer financial support to their graduate students.

The only claimed award that falls after the completion of the petitioner’s graduate work is the visiting fellowship at the National Institutes of Health (“NIH”). A letter from the director of the Fogarty International Center at NIH states “[t]his award will enable you to gain biomedical research experience.” The petitioner was paid “a stipend of \$32,000” per year. There is no indication that the fellowship is a widely known prize for excellence in the field, as the regulation requires. Instead, the fellowship appears to represent an opportunity “to gain experience,” and the stipend represents, in essence, remuneration for ongoing research work rather than a prize for work that the petitioner had already completed.

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 satisfies this criterion because the petitioner “is a member of two prominent associations, The American Society of Biochemistry and Molecular Biology, and the American Association for the Advancement of Science.” Membership in “prominent associations” does not satisfy this criterion unless those associations require outstanding achievements of their members. The U.S. National Academy of Sciences is such an association, admitting only a handful of new members each year, who represent the elite in their profession. The petitioner has not submitted any documentation to establish the membership requirements for either the American Society of Biochemistry and Molecular Biology or the American Association for the Advancement of Science, even though these requirements are readily available to the general public from the associations themselves through their web sites.¹

¹ “Membership in AAAS is open to all individuals who support the goals and objectives of the Association and are willing to contribute to the achievements of those goals and objectives” (www.aaas.org/membership/m-cat.shtml). With regard to the American Society of Biochemistry and Molecular Biology, of which the petitioner is a regular member, membership information at www.asbmb.org states “[r]egular membership is available to any individual who holds at least a doctoral degree and who has published, since receipt of the doctoral degree, at least one paper in a refereed journal devoted to biochemistry and molecular biology.” Other categories of membership are available

Counsel adds “[i]n addition to these associations, the places where [the petitioner] has worked include the most prestigious scientific centers of the world.” Employment is not membership in an association and the petitioner has not shown that the employers in question require outstanding achievement, as judged by recognized national or international experts, from all their prospective employees.

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 observes that other scientists have cited the petitioner’s research in their publications. Citation of the petitioner’s work, however, does not establish that the articles containing the citations are “about” the beneficiary or his work. These citations are better understood as a gauge of the field’s reaction to the petitioner’s own writings, covered by a separate criterion further below.

Counsel states:

[T]he Human Genome Project, regarded as the biggest scientific challenge of the century, has received extensive coverage in the scientific and general press. . . . Most of the articles review at length the importance of Celera and its founder, [REDACTED] as well as the work being done at the National Institutes of Health. . . . They also describe the complex, high-volume, high-powered race to decode the human genome. The controversial method involves mind-boggling problems of computer analysis—the need to perform quadrillions of calculations.

Celera has assembled some of the biggest names in the field known as computational biology to perfect computer routines that can perform these calculations. . . . [The petitioner] is one of these scientists.

Review of the many articles submitted with the petition shows that the petitioner’s name does not appear in any of them. Therefore, by no reasonable standard are the articles “about the alien” as the regulation requires. Some articles discuss, in a very general way, the petitioner’s field, but they state nothing to show that the petitioner stands above others in that field. By the same reasoning, the petitioner cannot meet this criterion simply by submitting general articles about the Human Genome Project, or specific Celera projects involving the petitioner, if those articles do not actually mention the petitioner himself. One article includes “A Who’s Who of Celera” which names several individuals but not the petitioner. An individual who had never heard of the petitioner could read all of these articles and still never have heard of the petitioner. Therefore, the articles do not contribute to the petitioner’s acclaim.

even to undergraduate students who still have years of training ahead of them before they are qualified even to begin working in the field.

At issue is not whether the Human Genome Project or Celera are well-known. Rather, the petitioner must show that he, individually, has earned sustained national or international acclaim. It cannot suffice simply to establish that the project has a high profile, and then to claim that the petitioner's involvement in so important a project is, itself, *prima facie* evidence of sustained acclaim.

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 "is often called as a reviewer of papers" submitted for publication in various journals. The record contains direct documentation of only two instances in which the petitioner performed peer review of other researchers' manuscripts, and this documentation gives no indication as to how the petitioner was chosen to participate in the review. Thus, the documentation in the record is insufficient to support the finding that the petitioner reviews such manuscripts with considerably greater frequency than is the norm for any given established researcher in the same field.

Counsel adds that the petitioner "has taught post-graduate courses at the International Centre for Genetic Engineering and Biotechnology, Trieste, Italy." The record indicates the courses were one week long [REDACTED] head of the Protein Structure and Function Group, states that the petitioner "worked in my group, under my direct supervision at ICGEB, as a post-doctoral fellow, between January 15, 1995 and November 10, 1996." There is no indication that the petitioner performed any "judging" at all, let alone that such judging went beyond the usual evaluation of student work that is routinely performed by teaching assistants and post-doctoral appointees with teaching responsibilities.

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

To establish the significance of his achievements, the petitioner has submitted several witness letters.

Dr. David Landsman, chief of the Computational Biology Branch at the National Center for Biotechnology Information at NIH, supervised the petitioner's fellowship work there. Dr. Landsman states:

[The petitioner] carefully prepared the databases of *Escherichia coli* and human promoters as well as genes and intra-genic regions of the same organisms. A multi-variable comparative analysis showed that the involvement of conformational components in the action of promoters differs dramatically for human and *E. coli*. In summary, DNA conformation seems to play a role only in bacteria. These results meant an end to the long-standing controversy over the importance of DNA curvature in promoter regions.

[REDACTED] does not establish the scope of "the long-standing controversy," nor does the record show that its resolution was the subject of much attention or discussion in trade publications. [REDACTED] describes other projects in which the petitioner participated. For example, he states:

[The petitioner and a collaborator] studied the common principles of distribution of curved DNA as well as low-complexity (i.e. repeated) sequences in several genomes. They found that there is a conspicuous pattern before the transcription start of a gene, which could be related to the common mechanisms of genome evolution and regulation. This original pioneering result was published in the special issue of the journal Computers and Chemistry.

[REDACTED] of Northwestern University states that the petitioner "performed sequence analyses of proteins which our laboratory is working with. He is undoubtedly an acknowledged authority in protein sequence and structure analysis."

[REDACTED] president and principal scientist of BioLingua Research, states that he and the petitioner have been collaborating "on a large computational biology research project that is likely to revolutionize (if successful) methods of DNA sequence analysis." Given that the petitioner's own collaborator cannot yet state that the project is "successful," it would seem premature to assert that this project has already won national or international acclaim.

[REDACTED] of Universal Health Research and Development Inc. describes a project on which he worked with the petitioner:

[The petitioner] worked with me on a very complex problem related to the design of fully synthetic peptide vaccine against Hepatitis A. The vaccine from the inactivated form of virus is very hard to produce, and it is unstable. Creation of a fully synthetic vaccine would be of a great help. . . .

The whole area of peptide vaccine design was rather new, and the structure of Hepatitis A envelope proteins was unknown. [The petitioner] has developed several theoretical algorithms aimed at predicting the parts of the viral envelope proteins responsible for stimulating B- and T-cell responses. Being an enthusiastic programmer, he created several computer programs that employed these algorithms, and they have been used in many projects ever since. The predictions made with [the petitioner's] programs help to optimize the search for immunodominant epitopes, which is very important taking into account the big size of viral proteins and high cost of the peptide synthesis and biological testing. . . . [T]he results of [the] whole project were highly acclaimed by [the] scientific community, being reported in several publications and [in] international symposia. . . .

[The petitioner] is undoubtedly one of the most outstanding specialists in theoretical molecular biology of his generation.

██████████ does not identify the "several publications." None of the published materials submitted with the petition pertain to the project described above; instead, they relate to the better-known Human Genome Project. Without more information, not to mention the materials themselves, we cannot determine the significance of the media coverage of the above project. The verbal assurance of the project's significance, from a participant in the project, cannot suffice in this regard.

All of the witnesses of record have supervised or collaborated with the petitioner. While some indicate that the petitioner has already made significant contributions, others simply assert that the petitioner shows great promise for future contributions. A number of witnesses (whose own credentials are often more extensive and impressive than the petitioner's own) simply describe what the petitioner has done.

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

The petitioner submits partial copies of 21 of his articles. Counsel states that the petitioner "has published over 35 scientific papers in peer-reviewed journals" and that his "writings have been cited over 90 times in scholarly articles since 1996." The petitioner submits a list of other articles that cite his work, but a list prepared by the petitioner amounts to a claim rather than evidence to support such a claim. Simply going on record without supporting documentation is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner need not submit complete copies of all of these publications, certainly; a printout from a recognized citation index would be satisfactory. Thus, the supporting evidence regarding this criterion is not as strong as it could be.

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

Counsel states that the petitioner's conference presentations satisfy this criterion. Scientific conferences are not artistic exhibitions or showcases; presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience. Counsel cannot make this criterion applicable to the petitioner's field simply by removing the word "artistic" from the regulation and replacing it with the word "scientific."

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director stated that the petitioner's initial submission did not include "opinions from independent international experts." In response, counsel states "in the event you are unable to approve this case under the 'extraordinary ability' category, I request you to consider the case under the 'exceptional ability' category with 'national interest' job waiver. . . . However, I strenuously suggest that you should approve [the] petition under the 'extraordinary ability' category."

While Service Center directors have sometimes allowed a change of classification before the rendering of a decision when it is clear that the petitioner made an error on the initial petition form, counsel here has not requested a correction. Rather, counsel appears to assert that the director should first adjudicate the petition under the extraordinary ability standard, and then, if the petition is not approvable under that standard, the director should adjudicate the petition again under a different standard. If the petitioner seeks consideration under two or more different classifications, he is free to file multiple petitions, one for each classification sought. There is no provision for multiple adjudications under multiple classifications arising from a single petition. The petitioner in this instance had filed only one petition, with one fee, and therefore he is entitled to one adjudication under the classification of his choice. Any decision in this proceeding will, of course, be without prejudice to future proceedings in which the petitioner seeks a different immigrant visa classification.

With regard to the director's request for independent witness letters, counsel states "[y]our request for evidence suggests that you believe letters from colleagues of a scientist are less reliable than from those who do not know him and presumably are less familiar with his work." This assertion misses the point. If the petitioner has truly earned national or international acclaim as one of the very top experts in his field, then his work must be well-known throughout the entire profession. It is virtually a truism to observe that someone whose work is known only to his collaborators and supervisors has not earned national or international acclaim.

Regarding the independence of the witnesses of record, counsel observes that six of the eight initial witnesses "were never [the petitioner's] co-authors, contrary to your statement that many of the letters were from his co-authors." The director, however, did not use the word "co-authors" in the notice. Rather, the director stated "[y]ou have submitted letters from individuals you have been or are currently associated with," an assertion amply borne out by review of the letters in question.

The petitioner submits three additional letters. Counsel states "[t]o reject these letters, from some of the top persons in the scientific field, by stating they are not 'independent,' flies in the face of" a letter from the then acting assistant commissioner for Adjudications to the then director of the Northern Service Center. In this letter, the acting assistant commissioner acknowledges that expert witness letters carry significant weight, but he also instructs the director to "please note that the examiner must evaluate the evidence presented. This is not simply a case of counting pieces of paper. . . . To repeat, we expect the examiner to evaluate evidence, not simply count it." When the central issue in contention is whether the petitioner has earned a truly national or international reputation, then it is extremely relevant to consider whether the witness letters are all from the petitioner's collaborators and superiors. Such letters can provide valuable insight into the nature of the petitioner's work, but they cannot establish, first-hand, that the petitioner's work is well-known outside of that circle of collaborators and superiors.

The first new letter is from [REDACTED] staff scientist at the National Center for Biotechnology Information (where the petitioner had worked as a visiting fellow). Dr. Tatusova states that the petitioner's work "led to the breakthrough research in the field of structural

genomics, garnering international attention in the field.” As we have observed above, first-hand evidence of international attention (such as copies of articles from international publications, or letters from international authorities with no connection to the petitioner) carries greater weight than the vague statement by the petitioner’s collaborator that the effort won international attention. We take this position not to impugn the honesty or integrity of the petitioner’s witnesses, but because there may well be different standards for what constitutes “international attention.” If the petitioner’s work aroused major interest all around the world, then it is hardly unreasonable to expect evidence to show it. If such evidence does not exist, then it is reasonable to ask how the petitioner’s close associates are aware of the claimed international attention.

The second witness, [REDACTED] also works at the National Center for Biotechnology Information, as a senior [REDACTED] states that the petitioner’s “most important achievements have been in the development of DNA conformation predictions.” Some of the expert witnesses, like [REDACTED] have asserted that the petitioner’s contributions are highly important. Nevertheless, by regulation, contributions of major significance can form only part of a successful claim of extraordinary ability. The petitioner has made relatively strong claims regarding only two of the ten regulatory criteria at 8 C.F.R. 204.5(h)(3), pertaining to his contributions and his scholarly publications.

The final witness is [REDACTED] senior director of DNA Resources at Celera, the company that employs the petitioner. [REDACTED] himself won a Nobel Prize in 1978, indicating that he is an internationally recognized expert at the top of his field. While the opinions of a Nobel laureate are obviously not to be taken lightly, we must examine [REDACTED] comments. [REDACTED] states that the petitioner “has an excellent background” and asserts that the company relies on the petitioner’s work because “[p]eople with his talents and experience are in very short supply and are in high demand. [REDACTED] does not indicate that the petitioner’s stature in the field is comparable [REDACTED] own prestigious standing. His assertion that Celera needs trained experts does not establish or imply that the petitioner is nationally or internationally acclaimed as one of the top figures in his field, which is the standard that the petitioner must, by law, meet. The law requires “extensive documentation” of sustained national or international acclaim, and the regulations at 8 C.F.R. 204.5(h)(3) elaborate upon this requirement. The petitioner cannot compensate for the absence of such documentation by showing that his close associates hold him in high esteem. The achievements of some of these witnesses serves only to highlight what appears to be a significant gulf between those witnesses’ standing in the field and the petitioner’s own.

The director denied the petition, stating “[i]t is reasonable to expect that a wide range of international experts would be familiar with [the petitioner’s] work, if in fact, it is truly significant.” The director found that the petitioner has not submitted persuasive evidence of sustained national or international acclaim, and that letters from current and former close associates and mentors cannot take the place of such evidence.

On appeal, the petitioner submits a personal statement. There is no evidence that counsel was involved in the preparation of the appeal. With regard to his witness letters, the petitioner states “I feel that the term ‘association’ used [by the director] is too broad. . . . With three of these

scientists I've never worked together at the same time at the same institute." The record nevertheless establishes connections, such as collaborations between researchers at more than one institute, or the petitioner's having conducted tests on behalf of outside researchers.

The petitioner takes exception to the director's finding that student awards are not qualifying awards for the purposes of this petition. The petitioner asserts that he works in "a relatively new area of knowledge" which, thus far, does not have a large number of prizes. The petitioner specifically states that there is "no Nobel Prize, for example" in the field of "bioinformatics." This example falls short for several reasons, not the least of which being the petitioner's prior submission of a letter from a superior of his who has, in fact, won the Nobel Prize. There are only very few broad categories of Nobel Prize, one of which is "medicine or physiology." The study of the human genetic structure readily falls under the broad heading of physiology, and several Nobel Prizes (such as [REDACTED] prize, and the earlier prize awarded to [REDACTED] Watson and [REDACTED] for the discovery of DNA's molecular structure) recognize work with genetics and related areas of molecular biology.

It remains that a student prize, by definition, is available only to students, and the most experienced experts in the field are excluded from consideration. A student award can, at most, establish one student's standing among other students. To qualify for the highly restrictive immigrant visa classification he seeks, the petitioner must establish that he stands at the very top of his entire field, not just that, as a student, he was at the top of students in his age group. Graduate study is not a field of endeavor, but rather advanced training for future entry into such a field.

The petitioner asserts that he has satisfied the criterion pertaining to published work, stating that "numerous citations" establish that his publications "are interesting for many people that actively work in the area." As noted above, the record lacks direct evidence of such citations. Nevertheless, the petitioner is correct that heavily cited publications carry more weight than published articles that appear to have attracted little notice in the field.

Concerning membership in associations in the field, the petitioner states "[t]o become a member of the American Society of Biochemistry and Molecular Biology, I submitted the recommendations from two members of the Society. I also submitted a list of my publications and achievements. Only after careful analysis by the Board I was elected a member of the Society." The petitioner submits nothing from the Society to confirm or clarify the "careful analysis" to which the petitioner states his application was subjected. The only actual membership requirement that the petitioner discusses on appeal is sponsorship by an existing member, which is not an outstanding achievement.

The petitioner asserts that the director overlooked the petitioner's peer review for scholarly journals, and his teaching work at ICGEB. As noted above, the petitioner was a post-doctoral fellow at ICGEB rather than a full faculty member, and the record is silent as to how that body selects its post-doctoral fellows. The petitioner has documented his peer review of two manuscripts, without providing any direct evidence (for instance, from journal publishers) to show that only the top researchers in the field receive a similar quantity of review solicitations.

The petitioner asserts that "the recommendation of a Nobel Laureate is the most solid credential that one could seek." At issue here is the reputation not of the petitioner's witnesses, but of the petitioner himself. The petitioner must, by law, be able to demonstrate through "extensive documentation" that he, as an individual, has earned sustained national or international acclaim for his work. The petitioner cannot establish such acclaim merely by association with a well-known project, a prestigious employer, or superiors or collaborators who have won such acclaim. There may well be, as the petitioner asserts on appeal, only a small number of adequately trained professionals in the petitioner's specialty, but the size of the petitioner's field has no bearing on whether or not the petitioner has established sustained acclaim in that 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 and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a bioinformatics researcher 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 is not persuasive that the petitioner's achievements set him (rather than his employer or his superiors) 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.