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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: AUG 23 2002

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]

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, 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

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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.

At the time he filed the petition, the petitioner worked as a research fellow at the Mayo Clinic, Rochester, Minnesota. 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.*

The petitioner submits copies of several award certificates. Nearly all of them are awards from Tongji Medical University, where the petitioner studied and later taught, and these awards appear to be limited to students and faculty of that one university rather than being national or international in scope.

China's National Science and Technology Committee presented the petitioner with the "National Outstanding Award of Social Survey Thesis" in 1988. The record contains little information about this award, which the petitioner received when he was a 21-year-old undergraduate student, or what exactly the petitioner did that qualified him for the award. Thus, the evidence is not sufficient to allow us to conclude that this award is a nationally recognized award for excellence in the petitioner's field – a field which, as an undergraduate student, the petitioner had not yet entered in earnest in 1988.

On June 6, 2000, the Nitric Oxide Society presented the petitioner with the 2000 Young Investigator Award "for superior research achievement in the field of nitric oxide biology/chemistry." The official signature on the award certificate is that of Jack Lancaster, president of the Nitric Oxide Society, but the certificate has also been informally signed by Robert Furchgott, Louis Ignarro, and Ferid Murad, who shared the 1998 Nobel Prize in physiology and medicine for their discovery of nitric oxide's properties as a signal transmitter, particularly with regard to regulation of blood flow. The Scientific Advisory Board for the conference at which the award was presented consists of 48 international scientists, including two of the above-named Nobel laureates. The petitioner must show that he stands as an equal or near-equal among these individuals, not merely that they were involved in presenting him with an award. The term "Young Investigator Award" appears to suggest that the most experienced and accomplished researchers were excluded from consideration for this award. The record does not contain documentation of the criteria that define a "young researcher" or specify who does or does not qualify for consideration for the award.

Witnesses refer to other awards but the record contains no documentation from the awarding entities to confirm the petitioner's receipt thereof, or the nature of the awards.

*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 contends that he satisfies this criterion through his membership in the American Association for the Study of Liver Diseases ("AASLD"), the American Association for the Advancement of Science and the American Society for Biochemistry and Molecular Biology

(“ASBMB”). The record confirms the petitioner’s memberships, but contains no documentation from any of these associations to establish that they require outstanding achievements of their members as judged by national or international experts. Associations that admit anyone working in a particular field, or anyone who pays required dues, or who meets a fixed minimum threshold of education and/or experience, do not satisfy this criterion because career choice, payment of dues, education and experience are not outstanding achievements.

*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.*

Dr. Dachun Tang, an assistant professor at Indiana University, states that the petitioner “has been invited to judge other people’s work, including thesis, papers and projects,” but does not elaborate or provide specific examples.

The record indicates that the petitioner contributed to peer review of manuscripts submitted for publication in journals. The petitioner, however, was not the one invited to perform the review. Rather, the publishers solicited reviews from Dr. Vijay Shah, the petitioner’s supervisor, who delegated some of the reviewing work to the petitioner. Thus, the petitioner’s involvement reflects Dr. Shah’s confidence in the petitioner’s abilities, but it is not indicative of any national or international reputation. Furthermore, peer review is a routine step in the publication of many journal articles. Occasional peer review, at the request of one’s supervisor, cannot carry the same weight as extremely frequent invitations to perform such review, or other judging activities such as editing a major national or international journal, or serving on a committee to select the winners of a significant prize.

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

Dr. Vijay H. Shah, an assistant professor who has “closely supervised [the petitioner’s] activities” at the Mayo Clinic, states:

[A]t the University of Minnesota . . . [the petitioner] performed excellent experiments in terms of vascular biology. For example, he discovered that very low density lipoprotein (VLDL) was oxidized by vascular cell walls such as endothelial cells, smooth muscle cells, and macrophages and further promote atherosclerosis. Additionally, he determined that the mutant of calponin, an important regulatory protein in smooth muscle contraction, improves impaired relaxation and has numerous applications in addressing the problems associated with hypertension. . . .

[At the Mayo Clinic, the petitioner’s] preliminary research focused on determining two endothelial nitric oxide synthesis (eNOS) binding proteins, dynamin-2 and caveolin-1, which regulate eNOS catalysis and targeting in normal and portal hypertensive liver through protein-protein interactions. . . . [The petitioner’s] studies

have significant results for future experimental therapeutics in the treatment of patients with liver disease such as liver cirrhosis. . . . Gene therapy is a powerful new technology for this disease. [The petitioner's] work overcame a number of technical and safety limitations and led to progress in the field of vascular NOS gene transfer and the potential use of NOS gene therapy for liver cirrhosis.

Yale University Professor William C. Sessa, whose laboratory collaborates with Dr. Shah's laboratory, deems the petitioner's work "pivotal" and "profound" and states that the petitioner has:

- 1) established the vital role of eNOS derived NO in the regulation of hepatic vasodilation;
- 2) identified a deficiency of hepatic eNOS activity and NO production as a key pathogenic mechanism in the development of portal hypertension; and
- 3) discovered that dynamin-2, a GTPase protein, can regulate eNOS catalysis and targeting in normal and portal hypertensive liver through specific protein-protein interactions.

The petitioner submits several witness letters discussing his work. Dr. Timothy J. McCabe, a postdoctoral fellow at Yale University, states that he has "not personally met" the petitioner, although the record contains an article<sup>1</sup> that lists Dr. McCabe and the petitioner among its seven authors, indicating that the two have collaborated at a distance. Dr. McCabe states:

[The petitioner's] studies of the eNOS associated proteins, also plays an important role in influencing blood vessel resistance and liver disease. . . . [The petitioner] employed a recombinant adenovirus, AdeNOS (Adenovirus encoding eNOS), for in vivo gene transfer to animals, and successfully expressed eNOS in rats in vivo. Furthermore, he proved that eNOS was properly post-translationally processed in hepatocytes and functions the same as endogenous eNOS. This is critical work because nitric oxide released from sinusoidal endothelial cell[s] is reduced in liver cirrhosis; ostensibly owing to impaired function of eNOS. Thus, [the petitioner's] studies may provide a mechanism by which to supplement NO to liver.

The record contains other letters from individuals who have worked with or supervised the petitioner. These individuals offer similar endorsements of the petitioner's expertise and accomplishments, and support the finding that the petitioner has made original contributions of major significance.

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

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<sup>1</sup> "Direct interaction between endothelial nitric oxide synthase and dynamin-2: Implications for nitric oxide synthase function," *J Biol Chem* 275(29):22268-72. Dr. McCabe names the article in his *curriculum vitae* and the petitioner submits a copy of the article among examples of his work.

The petitioner submits copies of several articles that he has written with various collaborators, along with abstracts of conference presentations. We must consider all the evidence pertaining to this petition in the context of the regulatory definition of “extraordinary ability” at 8 C.F.R. 204.5(h)(2), cited earlier in this decision. Given the sheer volume of scholarly articles published each year, the very existence of articles by the petitioner cannot be considered *prima facie* evidence that the petitioner is nationally or internationally acclaimed as a figure at the very top of his field.

The petitioner does not appear to have produced such a high quantity of published articles that he could be considered among the most productive researchers in the field. One of the petitioner’s witnesses, Professor Scott L. Friedman of Mount Sinai School of Medicine, has published 87 peer-reviewed articles, not counting conference presentations. Also, the petitioner has not established the impact that his published work has had on other scientists. One objective measure of such impact would be independent citations of the petitioner’s publications. Such citations are tracked in several different indexes, but the record contains no evidence stating how often, if at all, other researchers cite the petitioner’s published work.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. In response, the petitioner has submitted additional witness letters and a statement from counsel, which consists essentially of excerpts from the new letters and discussion of other documents.

Counsel discusses copies of new articles by the petitioner, a letter inviting the petitioner to join the New York Academy of Sciences, a letter inviting the petitioner to submit biographical information to a *Who’s Who* directory published by Marquis, and copies of reprint requests from researchers in South America and eastern Europe. These documents are not sufficient to change the outcome of the petition. The *Who’s Who* directories contain thousands, sometimes tens of thousands, of capsule biographies, and assertions about the reputations of the directories tend to derive from Marquis’ own promotional materials. Membership in the New York Academy of Sciences is open to anyone with an interest in science. The fact that some prominent scientists are members does not in any way imply that all the members are prominent, or that such prominence is a condition of membership.<sup>2</sup>

A small number of reprint requests demonstrates shared interest in the petitioner’s area of research, but the petitioner has not established that such requests are rare in the field. Indeed, many reprint requests are in the form of pre-printed postcards, indicating that the requests are fairly routine. The petitioner has not shown that he has received an extraordinarily high volume of such requests. Furthermore, the requests do not demonstrate the field’s reaction to the petitioner’s work, because such requests presumably come from individuals who do not already have a copy of the petitioner’s work.

Patricia J. Erwin, chief reference librarian at the Mayo Clinic, observes that “all of [the petitioner’s] presentations . . . appear in ‘high impact’ journals,” i.e. journals that are heavily

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<sup>2</sup> On appeal, the petitioner submits a list of his memberships in associations, and this list does not include the New York Academy of Sciences, suggesting that he did not join that association.

cited by researchers. The fact that a journal has a high overall impact factor does not imply that any one article in that journal has had a proportionate impact. The record contains no evidence regarding the citation history of his articles.

The new letters submitted in response to the notice discuss the importance of the petitioner's discoveries, which we have already acknowledged. Dr. Alex F. Chen, now an assistant professor at Michigan State University, states "I do not know [the petitioner] personally . . . I first came upon his work through his publications." The record contains an article that credits Dr. Chen and the petitioner among its co-authors,<sup>3</sup> indicating (as with Dr. McCabe above) that there is at least some continuity of research between Dr. Chen's efforts at the Mayo Clinic and the petitioner's work there. Dr. Chen worked at the Mayo Clinic until June 1999, the month the petitioner began working there. Most of the other witnesses offering letters are either officials of the Mayo Clinic, or individuals who have worked with him there to some extent. The most independent witness appears to be Professor José Luis Rosa of Barcelona University, who states that the petitioner's work has influenced his research. These letters reinforce the assertion that the petitioner has made important contributions to his field, but bring the petitioner no closer to meeting other regulatory criteria.

The director denied the petition, acknowledging the significance of the petitioner's findings but stating that the petitioner has not met at least three criteria to a degree sufficient to demonstrate sustained national or international acclaim. On appeal, the petitioner submits an updated *curriculum vitae* and documentation showing that he has continued to assist Dr. Shah in reviewing manuscripts. The petitioner discusses previously submitted evidence, and asserts that that evidence should have sufficed to establish his eligibility.

The petitioner fails to offer support for crucial assertions on appeal. For instance, the petitioner states that many of the organizations to which he belongs "require outstanding achievements of their members, judged by recognized national or international experts in our field such as AASLD, ASBMB." The petitioner does not provide any corroborative evidence, even though documentation of the membership requirements should be readily obtainable from AASLD and ASBMB.<sup>4</sup> The petitioner's assertions regarding his awards and other evidence are similarly unsupported.

The plain wording of the statute, cited above, calls for "extensive documentation" of sustained acclaim. The petitioner has produced a quantity of documentation, but he relies on vague or

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<sup>3</sup> "Gene transfer of recombinant endothelial nitric oxide synthase to liver in vivo and in vitro," in *Am J Physiol Gastrointest Liver Physiol* 279:G1023-30.

<sup>4</sup> The membership criteria for both organizations are freely available via the World Wide Web. According to [www.aasld.org](http://www.aasld.org), "[a]ny physician, scientist, or researcher working in the United States, Canada, or Mexico who has contributed to knowledge about the liver or biliary tract" qualifies for membership, provided they meet other fixed criteria such as "[a]n academic appointment" and "[t]wo or more publications . . . relating to liver disease." According to [www.asbmb.org](http://www.asbmb.org), "[r]egular membership is available to any individual who holds 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." This information demonstrates that at least some of the petitioner's unsubstantiated claims are not accurate.

unsubstantiated assertions to establish the significance of that documentation. From the available evidence, we cannot conclude that the petitioner is one of the best known or most highly acclaimed figures in his field, nationally or internationally.

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 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 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.