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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: WAC 01 254 54769 Office: CALIFORNIA SERVICE CENTER Date: **DEC 06 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:



PURE 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, 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

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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 postgraduate researcher at the University of California, San Diego ("UCSD") working in the field of virology.

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 four of the regulatory criteria at 8 C.F.R. 204.5(h)(3). Failure to satisfy any two of these four would necessarily preclude the approval of the petition.

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 “according to an article in *Los Angeles Times* on April 4, 2000, [the petitioner] is an expert in herpes virus” playing an important part in ongoing research. The article, however, is not about the petitioner, and he did not come to the attention of the media because of his expertise. Rather, the article, entitled “Academia Falls Short in Competition for Foreign Worker Visas,” is a general discussion of the effect that annual limits on H-1B nonimmigrant visas have on university research laboratories. Only the last three paragraphs of the five-column, half-page article mention the petitioner. The petitioner is one of several examples of a foreign researcher with an expiring visa. To state that this article is “about the alien . . . relating to the alien’s work in the field” is, at best, highly misleading.

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

The petitioner’s research has focused on varicella zoster virus (“VZV”), which causes chicken pox and shingles. Counsel states:

As a graduate researcher at the University of Iowa, [the petitioner] has been a leading researcher in a National Institute of Health-funded project to characterize the biological features of VZV at a molecular level. To accomplish this, [the petitioner] developed several methods, which for the first time allowed virologists to investigate biological processes of VZV infections at molecular and microscopic levels with high precision. For instance, [the petitioner] developed a new procedure called immunofluorescent confocal microscopy. A micrograph showing results he acquired with this novel method was so outstanding that it was displayed on the web homepage of the Central Microscopy Research Facility of the University of Iowa. . . . The method he developed has become the main approach in the study of VZV.

The petitioner states that he “identified the existence of a relationship between cyclin dependent kinase (CDK) and a herpes viral protein.” The petitioner deems this to be a “tremendous discovery.” The petitioner cannot establish the importance of his work by offering his own opinion, or that of counsel, in that matter. The use of a photograph on a web site is not necessarily demonstrative of the significance of the photograph; it could just as easily be a question of aesthetic appeal, or the photograph could serve as a generic representation of the type of work undertaken at the facility.

The petitioner submits several witness letters discussing his research. We will discuss examples of these letters below. All of the initial witnesses have supervised, instructed, or worked with the

petitioner at UCSD or at the University of Iowa, where the petitioner earned his doctoral degree. Thus, the letters are not first-hand evidence that the petitioner's work has earned him acclaim beyond the universities where he has studied and worked.

Professor Sally S. Atherton, chair of Cellular Biology and Anatomy at the Medical College of Georgia, was a visiting professor at the University of Iowa when she collaborated with the petitioner there. Prof. Atherton states:

[The petitioner] was the leading researcher and the driving force in an NIH-funded project to characterise the biological features of VZV at [the] molecular level. To accomplish this, [the petitioner] developed several methods, which for the first time allowed virologists to investigate biological processes of VZV infections at molecular and microscopic levels with high precision. . . . The method he developed has become the main approach in the study of VZV. . . . His new method is an extraordinary achievement. . . .

Years of research and significant novel achievements have made [the petitioner] a well-established outstanding virologist.

Professor Deborah H. Spector, chair of the Molecular Biology Section in UCSD's Division of Biology, has supervised the petitioner's research since March 2000. Prof. Spector states:

[The petitioner's] accomplishments to date have been extraordinary. Using a mouse model, he has been a leading investigator on the project and has developed an immunization strategy with DNA vectors expressing CMV [cytomegalovirus] proteins and inactivated viral particles that completely protects against subsequent CMV infection. To our knowledge this is the first time that this strategy has been employed. . . . These results have momentous implications with respect to design of a human vaccine, and it is imperative that we continue this research. Without question, [the petitioner's] participation is essential to the success of this work.

Professor Michael G. Rosenfeld of UCSD states that the petitioner "is an internationally-recognized investigator in the study of Herpes Virus." Various witnesses offer statements which should be readily amenable to corroboration, but the record either contains no corroboration, or else it appears to conflict with those statements. For instance, one witness states that an article by the petitioner which appeared in the *Journal of Virology* has been "frequently cited by other scientists," although the record identifies only four other research groups that had cited the article as of the date of that claim. The witness also states that the petitioner's "expertise in herpes virus was unique and well recognized, according to [the] Los Angeles Times on April 20, 2000." This article, mentioned above, does not deem the petitioner's expertise to be "unique" or "well recognized," and the only evaluation of the petitioner's work that appears in the article is a quotation from his supervisor, Prof. Deborah Spector. We offer these observations not to accuse any witness of deliberate misrepresentation, but rather to emphasize that direct, first-hand documentary evidence carries greater weight than letters from collaborators and superiors because such letters may rely on incomplete or mistaken information.

We note that many of the petitioner's witnesses are, judging from their *curricula vitae*, considerably more accomplished, established, and celebrated than the petitioner himself.

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

The director determined that the petitioner has satisfied this criterion.

The petitioner has co-authored three journal articles and five conference presentations. Counsel states that the petitioner's "articles have been widely cited in reputable scientific journals." The petitioner initially submitted documentation showing that one of his articles has been cited a total of six times by four different research groups. A subsequent submission shows roughly twice that number of citations.

Counsel states that the petitioner "was invited to co-author the world's most authoritative book on VZV." The book in question is over 500 pages long, with over 40 credited co-authors. The petitioner is one of three co-authors of one 18-page chapter in the book. The reference to the volume being "the world's most authoritative book" on the subject derives from a promotional blurb on the back cover of the book itself. The record does not contain the invitation to contribute the chapter, and counsel does not specify by whom the petitioner "was invited." The first-named author of the chapter is University of Iowa Professor Charles Grose, who claims a lengthy list of achievements in the field and who was supervising the petitioner's doctoral studies when he and the petitioner collaborated on the article with another author. If the publishers specifically sought the petitioner to write the chapter, that would carry much more weight than if the publishers sought Prof. Grose, who in turn recruited the petitioner to assist with the task.

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 "played a critical role in the VZV research funded by the National Institute of Health at the University of Iowa. His creativity in solving complex problems was responsible for the success of the research project. [The petitioner's] research findings concerning the VZV are of critical importance for virologists to understand the virus at a molecular level." Counsel adds that the petitioner "is playing a critical role in the design and development of DNA vaccines" at UCSD.

While the University of Iowa and UCSD are distinguished institutions, the petitioner's participation in individual projects there is not indicative of a leading or critical role for either university as a whole. Work that is critical to the outcome of one specific project is not, by extension, critical to the entire university where the research takes place. Any university with doctoral and/or postdoctoral programs will have numerous research projects underway at any given time, and a given project is not, on its own, an organization or establishment with a distinguished reputation. Some of his supervisors, as department chairs, have a stronger claim to leadership roles than does

the petitioner, whose work has been in the capacity of a student and then a temporary postdoctoral researcher, both of which are training rather than leadership positions.

The director instructed the petitioner to submit additional evidence to satisfy the criteria at 8 C.F.R. 204.5(h)(3). In response, the petitioner has submitted further documentation as well as arguments from counsel. Counsel discusses three of the four previously claimed criteria, but does not reaffirm the prior claim that the petitioner has performed in a leading or critical role for an organization or establishment with a distinguished reputation.

With regard to published material about the petitioner, counsel states that the petitioner's "research is so significant that it has attracted the attention of the national media" and offers information about the circulation of the *Los Angeles Times*. As we have already shown, the *Times* mentioned the petitioner not because of the significance of his research, but because he was an illustrative example of a researcher whose visa extension was in jeopardy due to increased consumption of visa numbers by workers in the high-tech sector. Counsel asserts:

The article says, "[the petitioner], an expert on the herpes virus that is the major cause of viral birth defects in children, is trying to develop a vaccine that works against it. His knowledge, particularly of a certain glycoprotein, is a very essential component in the development of this vaccine."

The relevant section of the article actually reads:

[The petitioner], an expert on the herpes virus that is the major cause of viral birth defects in children, is trying to develop a vaccine that works against it.

"There is quite a lot at stake here," Spector said. "His knowledge, particularly of a certain glycoprotein, is a very essential component in the development of this vaccine."

Counsel has, thus, edited the passage to remove both Prof. Spector's name and the quotation marks around the last sentence. When examined in the context of the entire article, it is clear that the brief mention of the petitioner and his work have more to do with his visa status than with the importance of his work. The record contains no media articles that illustrate or discuss the petitioner's claimed status as a recognized researcher whose methods have been adopted internationally.

Counsel asserts that the major importance of the petitioner's work is evident from the publication of the petitioner's work in the *Journal of Virology*. While that journal is a major publication in the field, we cannot find that every article published in a major journal represents a contribution of major importance. Such a finding would essentially indicate that every author published in such a journal automatically satisfies two of the three necessary criteria, which goes against the statutory call for "extensive documentation." Certainly a major contribution could be the subject of a published article, but publication cannot serve as sufficient evidence of significance.

The petitioner claims that his method is widely used, a claim which can be demonstrated through the submission of evidence from a broad range of facilities indicating that those facilities use the technique in question. If no such evidence exists, it is not clear how the petitioner could know that his method is in fact widely used.

Counsel cites the petitioner's development of a new vaccine regimen, the results of which "will be published in another issue of the *Journal of Virology* in May 2002." If this report had not yet been published as of the filing date, then it would seem premature to assert its major significance.

The petitioner has submitted additional letters. Witnesses from a variety of universities and other institutions across the United States state that they have followed the petitioner's work and consider it to be highly significant. These letters, many from apparently independent sources, strengthen the contention that the petitioner's work is of major significance in the field.

The director denied the petition, stating that the petitioner has met only two criteria, pertaining to scholarly articles and contributions of major significance. The director noted that the *Los Angeles Times* article is not an article about the petitioner and his work, but an article about a visa shortfall which happens to include the petitioner among several examples of researchers affected by the shortage. On appeal, the petitioner has submitted voluminous documentation, consisting almost entirely of copies of previously-submitted documents. The only new material submitted on appeal is a brief from counsel.

Counsel states that the petitioner "has submitted evidence documenting more than the required number of criteria, [but] the Service based its denial on problems it had with only one of the criteria, failing to see that Petitioner qualified on the other criteria." The director did, in fact, acknowledge the petitioner's satisfaction of two criteria, stating "the self-petitioner has demonstrated that he made original scientific contributions and served as an author of scholarly articles." The petitioner had claimed to satisfy only two other criteria, one of which relied entirely on the *Los Angeles Times* article which, as we have explained, is not persuasive evidence of acclaim.

The remaining criterion is the petitioner's claimed leading or critical role for distinguished organizations or establishments. As noted above, the initial submission regarding this criterion was not persuasive, and the petitioner's response to the director's request for further evidence included nothing to reinforce that claim. On appeal, counsel offers no new argument with regard to this criterion, to show that individual research projects are distinguished establishments or that the petitioner has fulfilled a leading or critical role for an entire university instead of one of its many laboratories.

Counsel asserts that the director did not give due weight to the citations of the petitioner's article in the *Journal of Virology*. These citations are of greatest relevance when considering the impact of the petitioner's published scholarly articles, a criterion which the director found the petitioner to have satisfied.

Counsel returns to the book, *Varicella-Zoster Virus*, for which the petitioner co-authored a chapter. Counsel asserts “[t]he book is clearly about the virus and about Petitioner’s work.” While the first part of this assertion is self-evident, we cannot accept the latter part. The book is indeed about VZV, but there is no evidence that the petitioner’s work is a principal subject of the book. Furthermore, while the petitioner wrote part of the book, the petitioner’s own writings cannot reasonably be deemed published material about the petitioner and his work. His own writings plainly fall under a separate criterion.

Counsel acknowledges the article in the *Los Angeles Times* “was not about Petitioner’s work in its totality, but the Service misses the point.” Counsel again notes “[t]he statement in the article” referring to the petitioner’s knowledge as “a very essential component” of the project, and asserts that the article “acknowledges [the petitioner] as an expert in the field of herpes virus research.”

Counsel appears, on appeal, to have abandoned the prior assertion that the petitioner’s “research is so significant that it has attracted the attention of the national media.” Nevertheless, counsel maintains that it is significant that the article referred to the petitioner as an “expert” in his field. Expertise is not inherently indicative of sustained acclaim or extraordinary ability, and we again note that the reference to the petitioner as “a very essential component” is the opinion of the petitioner’s supervisor, rather than an independent finding by the reporter who wrote the article. Even then, counsel’s argument requires the presumption that only an extraordinary, acclaimed researcher could ever be an essential component of a research project.

The petitioner has not persuasively satisfied at least three of the ten criteria at 8 C.F.R. 204.5(h)(3) and therefore the petition is not approvable. The petitioner is at the beginning of what appears to be a promising career, and we cannot rule out the petitioner’s future eligibility, but as of the filing date of this petition, the petitioner had not yet achieved sustained national or international acclaim as defined by the regulations.

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.