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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted]

Office: Nebraska Service Center

Date: DEC 09 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

Elizabeth Hayward
for 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 --

(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.

This petition, filed on October 23, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a scientist. At the time of filing, the petitioner was employed as a research scientist at Nanosphere, Inc., a biotechnology company. 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 sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted the following evidence:

1. Certificate from the University Grants Commission stating: "Certified that [the petitioner] has qualified at the UGC/Joint Council of Scientific and Industrial Research-UGC National Education Test (Master's level) held in March, 1988 in the subject chemistry and, is eligible, if admitted to a university, to receive the Junior Research Fellowship of the University Grants Commission" (May 21, 1991).
2. Certificate from the Indian Institute of Chemical Technology, Hayderabad, "in Recognition of [the petitioner's] efforts for successful commercialization of the process Etoposide for the first time." The certificate was signed by the "Director, Regional Research Laboratory, Hyderabad" (April 1, 1991).
3. Certificate from the Indian Institute of Chemical Technology "in Recognition of the contribution of the successful commercialization of Norfloxacin Technology." The certificate was signed by the "Director, Regional Research Laboratory, Hyderabad" (November 7, 1988).

All three of the above certificates were pre-printed "form" documents with the petitioner's name and other data handwritten or typed into blank spaces. The record does not indicate exactly how many individuals received these awards, but the existence of pre-printed "form" documents suggests multiple winners.

The petitioner provided a pamphlet from the Council of Scientific and Industrial Research that describes the Junior Research Fellowship. The pamphlet states the following:

A certain number of Junior Research Fellowships will be awarded each year... The upper age limit for JRF shall be 28 years... The selection of the award for JRF shall be made on the basis of a written test... The stipend of a JRF selected through the all India test will be for a period of two years...

The pamphlet contains another section devoted to "Senior Research Fellowships" which arguably carry more prestige than that of Junior Research Fellowships. The information contained in the pamphlet demonstrates that the petitioner's receipt of a Junior Research Fellowship does not reflect achievement at the very top of his field. We note that older, more experienced scientists who had already completed advanced training were excluded from competing for the fellowship. The Junior Research Fellowship was not national recognition for excellence in the scientific field, but, rather, financial support for future research. The fellowship funding was awarded not by outside nomination, demonstrating the field's regard for the petitioner's ability, but upon the petitioner's application to the organization providing the grant. The petitioner's Junior Research Fellowship

clearly excluded the most eminent and established researchers from consideration and therefore does not rise to the level of a nationally recognized award.

The two certificates from the Indian Institute of Chemical Technology that were signed by the “Director, Regional Research Laboratory, Hyderabad” reflect institutional or at best regional, rather than national, recognition. We note that the petitioner received his Ph.D. from the Indian Institute of Chemical Technology and that, according to Dr. Mitra Roy, “...one technology development award is granted within each of [the Indian Institute of Chemical Technology’s] chemistry departments each year.” The petitioner has provided little evidence showing that this award enjoys significant recognition beyond the institution where it was presented.

On appeal, the petitioner submits news articles and product information about Cipla, the drug manufacturer in India that marketed Etoposide and Norfloxacin. While this information constitutes evidence of the petitioner’s scientific contribution, it does not establish that the pre-printed form certificates from the Indian Institute of Chemical Technology equate to nationally recognized awards. The petitioner’s scientific contributions will be addressed under a separate criterion.

In sum, the petitioner has failed to demonstrate that he earned national or international acclaim as a result of receiving the awards and junior fellowship grant listed above.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion because participation, employment, education, experience, test scores and recommendations do not constitute outstanding achievements. In addition, memberships in an association that evaluates membership applications at the local chapter level do not qualify. It is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association cannot satisfy the criterion, because the key issue is membership requirements rather than the association’s overall reputation.

The petitioner submitted evidence that he became a member of the American Chemical Society on January 1, 1999. The petitioner provided information from the American Chemical Society’s website reflecting that the organization has “more than 163,000 members.” The documentation provided by the petitioner contains the following information regarding full membership:

Entitled to all member benefits including lower member subscription rates and a subscription (print and online) to Chemical & Engineering News, individuals must have a bachelor's

degree in a chemical science from an ACS approved program, a bachelor's degree in a chemical science from a non-approved ACS program and three years work experience, an earned doctor's or master's degree in a chemical science, or less formal training than indicated above but having significant achievement in a chemical science.

Thus, an individual could be admitted as a member of this organization simply by possessing a "bachelor's degree in chemical science from an ACS approved program."

The petitioner also submitted evidence of his membership in the American Association for the Advancement of Science. According to information provided by the petitioner, this organization has "more than 138,000 members." The petitioner did not provide evidence of the membership criteria for this organization.

In sum, the petitioner has offered no evidence showing that his memberships in the American Association for the Advancement of Science and American Chemical Society required outstanding scientific achievements or that he was judged by national or international experts in consideration of his membership.

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.

The petitioner submitted an article entitled "Research Paves the Way for Faster, Better, Cheaper DNA Detection Method." The article appeared in *Northwestern News*, a publication circulated by Northwestern University, where the petitioner worked as a research associate. Being briefly mentioned in *Northwestern News* does not reflect coverage in the major media. We note that the article devotes less than three sentences to the petitioner. The article is mostly about Professor Chad Mirkin and refers to the petitioner as a "postdoctoral associate." Other researchers were also briefly mentioned in the article. The plain wording of the regulation requires the petitioner to submit "published materials about the alien," and a local article that only briefly mentions the petitioner would not satisfy this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner submitted letters from the editors of *Tetrahedron Letters*, *Chemical Communications*, and *Synlett Publications* acknowledging the petitioner's offer to serve as a referee for those publications. For example, the letter from the representative of *Synlett Publications* states: "I am in receipt of your letter dated September 20, 1999. Thank you for your request to act as a referee... I will keep you in mind to referee future publications." The petitioner has offered no evidence that he actually conducted reviews for these publications. We further note that the representatives from these publications were responding to the petitioner's request to act as referee rather than actively seeking out the petitioner based on his acclaim as a

scientist.

The petitioner submits letters from researchers who state that the petitioner supervised masters and Ph.D. students while working in their laboratories. In an occupation where “judging” the work of others is an inherent duty of the occupation, such as an instructor, teacher, professor or editor, simply performing one’s job related duties demonstrates competency, and is not evidence of national or international acclaim.¹ Instead, a petitioner must demonstrate that his sustained national or international acclaim resulted in his selection to serve as a judge of the work of others in his field. Similarly, the judging must be on a level that reflects the petitioner’s acclaimed status in his field. For example, judging tenured research professors carries greater weight than judging Ph.D. students. The supervision of students was an inherent duty of the petitioner’s position, and the petitioner has not shown that his selection to serve as a judge of the work of these students was due to his acclaim in the field.

In sum, the petitioner has not submitted evidence under this criterion to demonstrate his status as a top scientist.

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

The petitioner provided numerous witness letters discussing his scientific contributions. The petitioner submitted evidence that credits him with the synthesis of Etoposide, a cancer chemotherapy agent, and Norfloxacin, an anti-inflammatory agent. We note that these pharmaceuticals were marketed by Cipla, Ltd. for use throughout the world. We further note that the petitioner’s research has been heavily cited thus demonstrating that his work has garnered significant attention from throughout the scientific community. We concur with the director’s finding that the petitioner satisfies this criterion.

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

The petitioner submitted evidence of his authorship of articles appearing in *Analytical Chemistry*, *Bioconjugate Chemistry*, *Bioorganic and Medicinal Chemistry Letters*, *Tetrahedron Sciences*, and *Chemical Communications*. Also submitted was a citation index showing that petitioner’s articles have been cited 133 times, thus demonstrating that the petitioner’s published findings have captured the attention of independent researchers. We concur with the director’s finding that the petitioner satisfies this criterion.

¹ This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

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

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel argues that the petitioner's employment with Nanosphere, Inc. satisfies this criterion. Counsel states: "Nanosphere, Inc. has established a strong and unquestionable reputation" through its receipt of substantial funding, significant patent record, publication record and notoriety." We note, however, that Nanosphere was not founded until 2000. The company's website describes Nanosphere as "a venture capital-backed company," but the petitioner has provided no evidence of the company's proven business success. For example, the petitioner offers no evidence confirming that Nanosphere's products have been successfully marketed. Dr. James Storhoff, Senior Scientist at Nanosphere, states: "We at Nanosphere envision that the nanoparticle probe technology will be one of the first nanotechnology based medical probes developed." The burden is on the petitioner to demonstrate that this organization has a distinguished reputation when compared to established biotechnology companies throughout the United States.

The petitioner provides an article dated February 22, 2002 from a technology website. The article, entitled "Nanosphere's DNA Detection System to be Commercialized," states: "The first products to be commercialized will be for use in research communities such as university laboratories or hospital research settings." The article quotes Nanosphere's investor relations specialist as stating "Beta sites for research use of the product will be active by the end of this year." Such statements are suggestive of future results rather than a past record of distinguished achievement. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that alien's seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Given that the petitioner has offered no evidence of Nanosphere's proven commercial success, it could easily be argued that the company has not distinguished itself from numerous other biotechnology companies already marketing their products.

According to literature provided by the petitioner, "Nanosphere was founded in 2000 by Northwestern University professors Chad Mirkin and Robert Letsinger." Information provided in Dr. Storhoff's letter reflects that the company has 22 employees. We note that Dr. Storhoff holds the position of Senior Scientist and that Vijay Vasista is the Chief Operating Officer. The importance of their roles and responsibilities far exceed those of the petitioner. A review of the documentation provided reveals little evidence to establish that the petitioner has ever supervised or overseen other individuals within this organization that employs 22 individuals. Furthermore, the record does not indicate that the petitioner has consistently exercised substantial control over organizational decisions in the same manner as Drs. Mirkin, Letsinger, Storhoff and Vijay Vasista. We find that the petitioner has failed to demonstrate that he performed a leading or critical role



within Nanosphere or that his role has attracted sustained national or international attention.

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. The petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

As noted by the director, the petitioner has demonstrated that he is an accomplished researcher in his field. Review of the record, however, does not establish that the petitioner has distinguished himself as a scientific 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 the 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.