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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



DEC 10 2002

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date:

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: SELF-REPRESENTED

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.

The petitioner is a postdoctoral research associate at Pacific Northwest National Laboratory ("PNNL"). The petitioner states that his "projects at PNNL involve world-class research on recombinant protein expression combined with nanomaterials for the development of biosensors and bioreactors in the fields of Biotechnology and Nanotechnology."

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 received a research fellowship from the Alexander von Humboldt Foundation in 1997. The petitioner deems the Humboldt Fellowship an internationally prestigious award. Documentation in the record from the foundation itself states that the purpose of the fellowship is "to assist non-German scholars in undertaking postgraduate studies in Germany." Postgraduate studies are, in essence, advanced training, indicating that the fellowships are available only to researchers at the beginning of their careers, whom the Humboldt Foundation does not consider to be fully trained. Nothing in the record shows that the fellowship is considered a prize for excellence in the field of endeavor, rather than a practical means of "enabling [scholars] to undertake periods of research in Germany."

The petitioner received three Guanghai ("Brilliance") fellowships, which, he states, are "given to only the best graduate students in top universities in China." The translated fellowship certificates signed by the presidents of Hangzhou University (for 1990-91 and 1991-92) identify the petitioner as "a graduate student pursuing a master's degree." The 1994-95 certificate from the president of Fudan University identifies the petitioner as "a student in the Department of Chemistry." Considering that the petitioner did not even have a master's degree yet when he received his first fellowship at age 24, we cannot consider this fellowship as evidence that the petitioner was among China's top researchers at that time. The documentation shows that the fellowships are not national awards for excellence in the field (graduate study is not a field of endeavor), but rather scholarships awarded by individual universities to students at those universities. Whatever prestige such a fellowship may hold at a given university, it does not demonstrate acclaim or recognition outside of that university.

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 documents his membership in Sigma Xi, the American Association for the Advancement of Science ("AAAS"), the American Chemical Society ("ACS") and the American Society for Biochemistry and Molecular Biology ("ASBMB").

Sigma Xi documents indicate that the petitioner "was duly elected a Member by the Tri-Cities Washington Chapter of the Society." Thus, the membership decision was not made at a national or international level as the regulation requires. Documents in the record, printed from

www.sigmaxi.org,¹ show that “[f]ull membership is conferred upon those who have demonstrated noteworthy achievements in research.” The documents also indicate that Sigma Xi has “nearly 75,000” members, and that it “initiates nearly 5,000 new members” annually.

Documentation in the record shows that “[r]egular membership [in ASBMB] is available to any individual who holds a doctorate, has published since receipt of a doctoral degree at least one paper in a refereed journal devoted to biochemistry and molecular biology. The applicant must also be sponsored by one Regular member of the Society.” While these requirements are more restrictive than fully open membership, completing a doctorate, publishing one paper, and securing the support of one sponsor are not outstanding achievements. The petitioner acknowledges that ASBMB’s parent organization, the Federation of American Societies for Experimental Biology, “is the largest Life Sciences Community in the nation,” whereas AAAS “is now the world’s largest general science organization” and ACS “is the world’s top organization in chemistry.” Large size is not an indicator that the societies have stringent membership requirements.

The petitioner states “ACS membership requires recommendations from recognized national or international scientists and his institutional superiors, and review of his professional accomplishments before admission.” The petitioner submits general information printed from www.acs.org but no membership requirements.² The petitioner does not discuss AAAS’ membership requirements at all, providing only general information from its web site, www.aaas.org.³ It is plain from the information at these sites that none of these associations and societies require outstanding achievements of their members as judged by recognized national or international experts.

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 documentation of his authorship of 25 published articles and his authorship of additional articles, not yet published as of the filing date. The petitioner also submits material from citation indices, indicating frequent citation of several of his articles. One article alone has been cited over 30 times (including some self-citations). The petitioner’s prolific publication of articles which, through citation, have been shown to influence others in the field, satisfies this criterion.

¹ A “Definition of Terms” on the site indicates “[n]oteworthy achievement in research specified for election or promotion to full membership must be evidenced by publication, patents, written reports or a thesis or dissertation.” These accomplishments are not inherently outstanding; every doctoral candidate, for instance, must produce a dissertation.

² The ACS Bylaws, available through the site named above, indicate that membership is available to anyone who meets any of various combinations of education and professional experience. A bachelor’s degree from an ACS-approved department is sufficient (ACS Bylaws, bylaw I, section 3a(1)).

³ This web site states “[m]embership in AAAS is open to all individuals who support the goals and objectives of the Association and are willing to contribute to the achievement of those goals and objectives.”

Beyond the above criteria, the petitioner submits letters from several individuals closely involved with the petitioner's past or present research. Numerous witnesses from PNNL include Dr. Eric J. Ackerman, who states:

[The petitioner's] current federally funded research in my lab at PNNL investigates enzyme stability in nanoporous materials containing variable pore sizes. His data will be crucial in exploiting biological materials for nanotechnology applications. We have observed that an enzyme immobilized in nanoporous materials exhibited enhanced stability and activity compared to the non-immobilized enzyme. Our exciting results were that we found a way to stabilize the enzymes and we have submitted a patent application on our methods.

...

In the meantime, using these enzymatic nanomaterials, [the petitioner] also has obtained significant results on our new projects to create novel nano-bioreactors and nano-biosensors. This approach may result in smaller, more efficient chemical plants that do not generate pollutants during operation as well as smaller, more stable and more sensitive biosensors that have a wide range of applications in medical diagnostics, environmental monitoring, and against chemical/biological weapons.

While Dr. Ackerman discusses what "may" result from the petitioner's work, he does not specify the extent to which the petitioner's work at PNNL has already earned national or international acclaim. Other PNNL officials offer similarly speculative assessments, such as the assertion that the petitioner is "likely to contribute" to this emerging area of technology. The curricula vitae of many of these officials list accomplishments which appear substantially to outweigh the petitioner's own achievements.

Personnel from other facilities where the petitioner has worked and/or studied, such as Virginia Commonwealth University and Fudan University, praise the petitioner's work and assert that he possesses rare and unique capabilities as a researcher. Because these individuals have all worked with the petitioner, their letters (however sincere) are not first-hand, direct evidence that the petitioner has earned recognition outside of the institutions where he has worked.

The director informed the petitioner that the initial documentation was not sufficient to establish eligibility, and instructed the petitioner to submit additional evidence. In response, the petitioner has submitted further materials regarding his work at PNNL. This documentation indicates that the petitioner's work has resulted in a patent application and journal articles that were in preparation at the time of the petitioner's response. The petitioner also notes that he received a 15% salary increase effective February 2002. These materials concern themselves, by and large, with developments after the petition's October 2001 filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner has also submitted two further letters from current or former collaborators at PNNL, asserting that the petitioner has made significant contributions to the research project underway there. As with the initial letters, these letters are largely speculative regarding what may result from the petitioner's work, rather than discussing the impact that the petitioner's work has already had at a national or international level. The importance of the petitioner's work to the research team at PNNL is not evidence of wider acclaim.

The director denied the petition, stating that the petitioner has "convincingly met" the criterion pertaining to published articles, but has otherwise failed to demonstrate significant acclaim or recognition outside of the institutions where he has conducted his research.

On appeal, the petitioner asserts that he has met sufficient criteria to establish his eligibility. He submits further documentation of his published work and citations thereof, which we need not consider at length because we do not contest his satisfaction of the related criterion at 8 C.F.R. 204.5(h)(3)(vi).

The petitioner claims, on appeal, to have satisfied a previously unclaimed 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 states "I am not yet an editor, however, due to international impact and influence of my excellent representative work, I have been selected to judge the work of other international scientists as part of the normal peer review process for manuscripts for [several] international journals." The petitioner submits copies of letters inviting him to review the manuscripts. We note that one of these invitations is in the form of an electronic mail message, replying to an earlier message by the petitioner. The text of the petitioner's message is included in the reply. The petitioner had stated "I would like to be listed in your database as a reviewer." There is no indication in any of the messages that the petitioner had been selected as a reviewer based on his reputation, rather than on his expressed willingness to serve as a reviewer. As the petitioner notes, peer review is a "normal" part of the publication process rather than a rare occurrence or honor reserved for an elite few in the field.

It is significant that all of these requests are dated between April 10 and April 22, 2002. The denial notice was issued on April 4, 2002. There is no evidence that the petitioner had received any such invitations as of the petition's filing date, or at any time prior to the denial of the petition. The petitioner's receipt of over half a dozen such invitations, every one of them issued immediately after the denial of the petition (and at least one of them actively solicited by the petitioner himself), suggests their issuance for the specific purpose of supporting the then-upcoming appeal. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See *Matter of Izummi*, 22 I & N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, *supra*.

The petitioner argues that his Humboldt Research Fellowship qualifies as an international award, disputing the director's conclusion to the contrary. He states that the "Humboldt Research Fellowship is neither a postdoctoral fellowship nor . . . a source of funding to conduct extensive research in Germany," supporting this point by observing that some Humboldt Fellows were already professors when they received fellowships. The petitioner submits documentation from the Humboldt Foundation, including the fellowship's application requirements. These requirements are, in full:

1. Doctorate or comparable academic degree (Ph.D., C.Sc. or equivalent) and/or research work over several years, proven in a convincing manner via publications in (internationally) recognised scientific journals; applications by academics approaching their doctorate degree are accepted on submission of their thesis.
2. Proof of independent research work through recognised academic publications, preferably in international journals.
3. Adequate language abilities: scholars in humanities must possess and provide proof of sound German language abilities; scholars in natural and engineering sciences must possess and provide proof of at least a good command of English (German or English language certificates are required).
4. Age not over 40 years (key date: receipt of complete application); in well-founded cases – and if the age limit is only slightly exceeded – exceptions can be made to a limited extent, depending on the specific training situation in individual countries.

The above requirements plainly demonstrate that the most established and experienced researchers are ineligible for the fellowships, because of the maximum age of 40 years. The emphasis on young researchers is consistent with earlier Humboldt Foundation materials, submitted with the initial filing, stating that the purpose of the fellowships is "to assist non-German scholars in undertaking postgraduate studies in Germany." Humboldt Foundation documents submitted on appeal indicate that "[d]ecisions are based primarily on the quality and feasibility of research projects proposed by the candidates as well as their international publications," and that "[a]pproximately 500 research fellowships are available per annum." This is a substantial number. In 1998, there were approximately 1,800 applications for fellowships, roughly 500 of which (28%) were approved. If an applicant has a better than one-in-four chance of receiving one of five hundred fellowships, it is not apparent that that the fellowship places its recipients at the very top of the field, even if researchers under the age of 40 could arbitrarily be said to belong to a field of endeavor separate from that of older researchers. It remains that the fellowship is not a prize or award, but rather a research assignment in which the fellows are remunerated for their work and expenses. Paid research work is not a prize, it is employment, and while a Humboldt Research Fellowship may indeed be a prestigious credential, it does not appear to be a sign of national or international acclaim.

The petitioner argues that “world-class professors and scientists” have spoken very highly of his accomplishments as a researcher. As we have already noted, these professors and scientists, without exception, have worked alongside the petitioner, often in a supervisory capacity, at institutions where the petitioner worked and/or studied, and their own accomplishments appear to overshadow those of the petitioner. While witness letters of this kind can fulfill a valuable supporting role in proceedings such as this, for example by describing the nature of the petitioner’s work, they cannot compensate for a lack of objectively verifiable documentation of the kind described in the regulations at 8 C.F.R. 204.5(h)(3) (which is, itself, based on the statutory requirement for “extensive documentation” of sustained acclaim). Some of these letters contain claims which conflict with first-hand documentation in the record, such as assertions by various witnesses that the petitioner became a member of AAAS owing to his record of achievement, when AAAS itself states that one need only share the association’s goals to become a member.

As we have noted above, the petitioner has produced influential publications in his field, with one article in particular showing heavy citation. This publication record, however, is not “extensive documentation” of sustained national or international acclaim. The preponderance of evidence in the record shows that the petitioner is respected by his collaborators and superiors, and that he is a prolific researcher working in a potentially important area, but we cannot find from the evidence presented that the petitioner has earned national or international acclaim as one of the very top researchers in his field of endeavor.

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.