



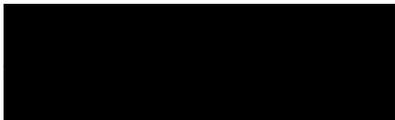
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: WAC-01-278-50634

Office: California Service Center

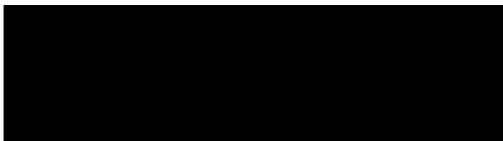
Date: **10 10 2002**

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*for Robert P. Wiemann*  
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

--

(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 seeks to classify the petitioner as an alien with extraordinary ability as a scientist. 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 that, 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 submitted a certificate of Appreciation from the City of Hope National Medical Center for providing three years of dedicated service to the center; two \$500 travel awards from the American Society of Hematology to defray the costs of attending their 40<sup>th</sup> and 41<sup>st</sup> annual meetings that included an invitation to a special student reception; a patent; a fellowship; scholarships; and a research grant application listing the petitioner as the primary investigator.

The director determined that grants and scholarships generally support future research or education and are not recognition of past achievements. On appeal, counsel asserts that the National Institutes of Health (NIH) is highly selective and bases their selections on the researcher's background.

We concur with the director that research grants function to fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievements. Moreover, the grant from NIH was awarded after the date of filing and is not evidence of the petitioner's eligibility at that time. See Matter of Katighak, 14 I&N Dec. 45, 49 (Comm. 1971).

Regarding the petitioner's scholarships, academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in a field of endeavor. Moreover, only students compete for such awards. The material submitted on appeal reveals that the ASH travel awards are limited to students, resident physicians, and postdoctoral researchers. As the petitioner did not compete with national or international experienced experts in the field, the awards cannot be considered evidence of the petitioner's national or international acclaim.

The petitioner's fellowship, while undoubtedly competitive, was simply a job offer. A job offer, regardless of the competitive nature of the job, is not an award or prize.

Finally, patents are not competitive awards for achievement in one's field. While a patent may attest to the originality of the innovation, a patent is issued regardless of significance. Depending on the significance of the innovation, however, a patent may serve as evidence of the petitioner's contributions to his field. Thus, we will consider the petitioner's patent below.

*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 response to the director's request for additional documentation, the petitioner submitted evidence of membership in the Association for Research in Vision and Ophthalmology (ARVO) and the American Association of Immunologists (AAI).

The petitioner submitted a renewal application for membership in ARVO. The form does not provide the organization's membership requirements. The petitioner also submitted his 2001 application for membership in AAI and an invitation to a conference sponsored by AAI in April 2002. The application indicates that an applicant for membership must meet one of the following requirements:

1. Possess a Ph.D., (or equivalent graduate degree, e.g., D.Sc.) in immunology or related disciplines, or an M.D. (or equivalent medical degree, e.g., D.D.S.) and be the **first** author of **one** significant original publication on an immunological topic in a reputable, **English language** refereed journal. Manuscripts "in press" are acceptable when accompanied by a letter from the publisher or Editor-In-Chief of the journal affirming its acceptance and imminent publication. Abstracts and unpublished papers **will not** be considered in evaluating whether a candidate meets the publications requirement for membership. The requirement for an advanced degree can be waived in certain circumstances if the candidate shows evidence of other appropriate training and research experience.
2. Be an established scientist with substantial achievement in a related discipline and have at least one collaborative paper on an immunological topic in a reputable, **English language** refereed journal.

(Emphasis in original.) The application must be signed by an active AAI member as a reference.

The director concluded that the petitioner had failed to submit the membership requirements of ARVO and AAI. On appeal, counsel asserts that ARVO membership "is limited to those having a strong interest in and making significant contributions to visual science." The assertions of counsel do not constitute evidence. Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner does not submit the official membership requirements for ARVO.

In addition, counsel reiterates the membership requirements for AAI quoted above. A degree and a published or "in-press" article in a peer-reviewed journal are not outstanding achievements in the field. As will be discussed in more detail below, it is inherent to the research field to publish articles. Thus, the petitioner has not established that AAI requires outstanding achievements of its members. In addition, the completed membership application is not evidence that the petitioner was a member of AAI at the time of filing.

*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.*

In response to the director's request for additional documentation, the petitioner submitted evidence that his articles have been cited, and included in review articles in his field. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. Even review articles are about the field in general. None of the review articles are primarily about the petitioner's work specifically. For these reasons, the director concluded that the petitioner does not meet this criterion. Counsel does not directly challenge this conclusion on appeal and we concur with the director. Nevertheless, this evidence will be considered below as evidence of the petitioner's contributions to his field.

*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.*

On appeal, counsel asserts that the petitioner meets this criterion by being the primary investigator of his research group. Supervising one's subordinates is inherent to the job of lead researcher. We cannot conclude that the head of every research group has sustained national or international acclaim.

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

Dr. Anthony Nesburn, the director of the petitioner's department at Cedar-Sinai Medical Center, states:

[The petitioner] has worked in Molecular and Cellular Immunology for the past 10 years and has contributed significantly to the field of vaccine development resulting in an impressive list of publications. [The petitioner] is a world leader in the development of lipopeptide vaccine. In 1997, [the petitioner] was first to demonstrate that . . . monopalmitoyl lipopeptide vaccines induce immune responses in non human-primates without additional immuno-adjuvant. This work that open[s] an entire new field of vaccinology, has resulted in a clinical vaccine trial in human[s] and in successful patent application in the US on which [the petitioner] was a co-inventor. In addition to these professional qualities manifested by [the petitioner], [he] has set up collaborations with researchers in several universities and hospitals in the US.

The addition of [the petitioner] to our research team has allowed us to begin studies on the lipopeptide technology to vaccinate against herpes infections. This is a long-term project, including both pre-clinical and clinical trials in humans, and its success depends on [the petitioner's] presence in the US.

Two other researchers at this center, Dr. Steven Wechsler and Dr. Homayon Ghiasi, provide similar information. Dr. Wechsler provides more detail regarding the petitioner's previous work at the

Pasteur Institute where the petitioner developed a vaccine for malaria approved for human use. On appeal, the petitioner submits a letter from another collaborator, Dr. Bouziane, who provides similar information.

The petitioner also submits an August 7, 2001 letter from Dr. Susan Kovats that was not previously in the record. Dr. Kovats, who supervised the petitioner's work at the City of Hope Medical Center, states:

[The petitioner's] previous work at City of Hope Medical Center entailed development of a candidate vaccine for human cytomegalovirus which was subsequently tested in pre-clinical murine models. Such a vaccine will be useful for patients undergoing bone marrow transplantation, where the risk of cytomegalovirus infection is quite significant. In my laboratory, [the petitioner] studied immune responses to the important human pathogen, Herpes Simplex Virus, a major cause of infectious blindness. [The petitioner] extended his expertise in my laboratory by learning about a very important aspect of the immune response to pathogens; that is, how antigens derived from viruses are displayed by cells of the body in order to initiate functional immune responses, a field termed "antigen presentation[.]" Many viral pathogens, including Herpes Simplex Virus, are capable of subverting the immune response. Therefore, an understanding of these mechanisms by which Herpes Simplex Virus may both initiate and subvert antigen presentation is of significant value. Information about antigen presentation events during Herpes Simplex Virus infection will aid in the development of vaccines.

[The petitioner] is poised to make an important contribution to the field of viral immune responses.

The above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim.

In addition, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

In response to the director's request for additional documentation, the petitioner submitted evidence that his articles are widely cited. While these citations cannot serve as evidence of published materials about the petitioner, they do reflect that his articles have been influential. We must also consider that the petitioner has patented a vaccine. As such, while letters from independent experts would have bolstered the petitioner's claim under this criterion, we conclude that the petitioner minimally meets 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 that he had authored eight published articles as of the date of filing. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

Initially, the petitioner submitted a review article in *Nature Medicine* that cites the petitioner's article in that issue but cautions, "enthusiasm for these results must be tempered by the fact that the authors did not include more than one or two controls in each experiment."

In response to the director's request for additional documentation, however, the petitioner submitted more compelling evidence of his articles' influence. Specifically, the petitioner submitted evidence that two of his articles have been cited at least 10 times, another article has been cited 32 times, and another article has been cited at least 20 times. While the petitioner may have been cited more often, the citation database materials submitted are difficult to match up. Regardless, this citation history is sufficient evidence of influence. As such, we concur with the director that the petitioner meets this criterion.

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

In response to the director's request for additional documentation, the petitioner submitted evidence that he has presented his work at scientific conferences. The director concluded that this criterion relates to visual artists. Counsel does not challenge this conclusion on appeal and we agree with the director.

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

On appeal, counsel includes a section in his brief entitled "evidence that [the petitioner] has been employed at organizations with distinguished reputations." The regulation at 8 C.F.R. 204.5(h)(3)(viii), however, requires not only that an alien be employed at a distinguished organization, but that he play a leading or critical role for that organization. The petitioner was a research fellow at the City of Hope's Beckman Research Institute and is a research scientist at the Cedars-Sinai Medical Center. While these organizations may have a distinguished reputation, we cannot conclude that every postdoctoral researcher or scientist who plays an important role in a

distinguished organization's laboratory plays a leading or critical role for the organization as a whole.

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 scientist 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 indicates that the petitioner shows talent as a scientist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.