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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



16 DEC 2002

File: WAC 02 087 55381 Office: CALIFORNIA SERVICE CENTER Date:

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]

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 CFR 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 CFR 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, 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 CFR 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 CFR 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 researcher at Stanford University.

The regulation at 8 CFR 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 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.

Counsel states:

Due to his outstanding achievements in biomedical research, [the petitioner] has been granted membership in [the] *American Association for the Advancement of Science* (AAAS), one of the world's leading organization[s] for top scientists. . . . Membership in this organization is limited to those who have achieved professional competence and recognition in their respected fields of science.

[The petitioner] is also a member of the *Society for Developmental Biology* (SDB), a member society of the *Federation of American Societies for Experimental Biology* (FASEB). . . . [The petitioner's] membership in this distinguished organization is without a doubt an indication of his public recognition as an outstanding biomedical scientist.

The petitioner submits a copy of his AAAS membership certificate, and a printout from AAAS' official web site, www.aaas.org. The excerpt submitted does not specify AAAS' membership requirements, although it does indicate that AAAS has "more than 138,000 members" and that membership is open to "[s]cientists, full-time students, postdoctorals, and residents," thus indicating that AAAS distinguishes between "postdoctorals" (such as the petitioner) and "scientists." Counsel offers absolutely no corroboration for the claim that the petitioner's AAAS membership is the result of outstanding achievements as counsel claims, that AAAS will not admit members without "recognition," or that the association's 138,000 members represent "top scientists" rather than a broad cross-section of scientists.

Portions of www.aaas.org not submitted by the petitioner show that "[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." The petitioner also submits partial printouts from SDB's web site, sdb.bio.purdue.edu. Once again, the petitioner does not submit anything from the site that actually specifies SDB's membership requirements. Article I, Section 2 of SDB's Code of Regulations states "[a] doctoral degree or its equivalent and an interest in development and growth in biological systems shall be prerequisites for full membership." The code lists no other requirements for full membership.

Because the petitioner has submitted documentation from the above web sites, the petitioner plainly had ready access to AAAS' and SDB's true membership requirements. Furthermore, by making any claims at all regarding those membership requirements, counsel has effectively

claimed to have knowledge of those requirements. Because AAAS' and SDB's own materials contradict counsel's claim that "[m]embership in [AAAS] is limited to those who have achieved professional competence and recognition in their respected fields of science" and that SDB membership "is without a doubt an indication of his public recognition as an outstanding biomedical scientist," we cannot consider counsel's representations to be reliable reflections of the true facts in this proceeding. Either counsel knew that the requirements were not what he described, or else counsel had no knowledge of the requirements and thus was in no position to attest thereto. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, in light of this contradiction, we note that the petitioner signed the I-140 petition form and thereby attested under penalty of perjury to the accuracy of the information submitted with that petition. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Elsewhere in the record, the petitioner submits a profile of Elaine Fuchs from the web site of the U.S. National Academy of Sciences ("NAS"). The NAS admits only a few dozen new members each year, and these members are selected by nationally recognized authorities rather than automatically admitted upon payment of dues or satisfaction of fixed criteria pertaining to length of experience, type of occupation, level of education and so on. In short, NAS is an association in the field, which requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

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 submits evidence showing that he has served as a peer reviewer, evaluating four manuscripts submitted for publication in the *Journal of Cell Science* and one grant application for the Association for International Cancer Research. The editor-in-chief of the *Journal of Cell Science*, Dr. Fiona M. Watt, supervised the petitioner's doctoral research. Therefore, the petitioner's work as a peer reviewer for the journal edited by Dr. Watt does not establish that the petitioner's work has attracted widespread attention; it shows only that he has earned the confidence of Dr. Watt.

Given that peer review is a standard element of the publication process, we must consider the volume of review requests rather than simply declaring every instance of such review to satisfy the criterion. In this instance, the petitioner has not shown that peer review for a single journal, edited

by his former supervisor, and review of a single grant application place him above almost all others in his field.

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

Counsel states:

[The petitioner's] original scientific contributions are best demonstrated by his many groundbreaking innovations and discoveries. While a doctoral candidate at the Imperial Cancer Research Fund (ICRF), [the petitioner] became the first scientists in the world to identify cell adhesion molecules as key regulators of epidermal stem cell fate. . . . This exceptional contribution to stem cell research also earned [the petitioner] a prominent stature in the field. . . .

[D]uring his postdoctoral stint at ICRF, [the petitioner] successfully developed an extremely efficient retroviral infection system to transduce foreign genes into cultured human skin cells. This scientific breakthrough overcame one of the major obstacles impeding the use of skin cells as recipient cells for gene therapy and showed great medical potential [for] safer and more effective gene therapy for human diseases. . . .

Now at Stanford Medical School, [the petitioner] is leading a research team in Dr. Matthew Scott's laboratory to investigate Hedgehog signal transduction. Hedgehog signal is crucial for normal human development. . . . For this project, [the petitioner] has developed a revolutionary assay system to identify a fundamental mechanism that membrane localization of Hedgehog signaling protein is essential for activating the pathway. . . . This groundbreaking result has shed light on the mechanisms of signal transduction and will undoubtedly lead to improved treatment for birth defects and childhood cancers.

The petitioner submits several witness letters discussing his work. Dr. Fiona M. Watt, principal scientist and head of the Keratinocyte Laboratory at ICRF, London, states:

I have now supervised over 20 PhD students and [the petitioner] is undoubtedly one of the best ever. He published several exceptional papers with me [and] he introduced new techniques and ideas into the lab. . . .

Although he has only been in Matt [Scott]'s lab for 2 years he has already produced beautiful data on the Hedgehog signalling pathway. . . .

Although [the petitioner] is still at an early stage in his career, he is already well known in the biomedical research community. . . .

[The petitioner] is an outstanding scientist who has made, and will continue to make, extraordinary contributions to biomedical research.

Professor Matthew Scott, who supervises the petitioner's work at Stanford University, states that the petitioner "is leading our work" in the study of Hedgehog signaling. Prof. Scott states that the petitioner "has become one of the world experts in this area," and that the petitioner's work "has led to new views of how the signaling system worked." He adds:

[The petitioner] has also used newly completed genome data to identify all five members of the protein family that includes the Hedgehog receptor. Three of them have never been studied before. . . . [The petitioner] has discovered potent biochemical activities for the new proteins. . . . [The petitioner] has the beginnings of a wonderful independent research program, with a new set of assays, a new set of discoveries, and a new set of genes.

Prof. Scott asserts that the petitioner "will remain an important researcher in our field for many years." Additional witnesses who have worked with the petitioner (mostly at Stanford and ICRF) offer comparable assessments of the petitioner's work.

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

The petitioner has written several published articles and conference presentations. The petitioner submits evidence of multiple citations of several of his articles. This evidence shows that one of the petitioner's articles has been cited 51 times, indicating that this article has had a measurable influence on other researchers in the field. In the aggregate, the petitioner's total output has garnered over 100 citations.

Counsel lists the petitioner's "highly acclaimed doctoral thesis" amongst his publications, but there is no evidence that the thesis has ever been published and counsel does not specify by whom the thesis is "highly acclaimed." Nevertheless, the petitioner's heavily cited publications satisfy this criterion.

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

Counsel states "[t]hroughout his career . . . [the petitioner] has always been performing in a leading and critical role for each institution/organization with which he has been associated." The record does not bear out this claim. The petitioner's work has been in the capacity of a student and, subsequently, a postdoctoral researcher. Both of these positions are low on the professional hierarchy of researchers; students and postdoctorals are trainees rather than fully-established researchers. Furthermore, while the petitioner may have had important input on individual projects at Stanford University (for instance), it does not follow that the petitioner played a critical role for Stanford as a whole rather than for one of countless research groups there.

The director instructed the petitioner to submit further evidence, stating that the materials submitted with the initial filing did not suffice to establish eligibility. The director made specific requests in this notice, such as a request for the minimum membership criteria for the associations named in the initial filing. The director stated that the petitioner had satisfied the criteria regarding authorship of scholarly articles and judging the work of others.

In response, the petitioner submits further documentation and arguments from counsel. Several of counsel's arguments are references to the petitioner's initial submission. Counsel repeats the assertion that the petitioner is a member of several associations as described at 8 CFR 204.5(h)(3)(ii). The petitioner submits general information from these associations, much of it irrelevant to establishing membership requirements.

Counsel cites the previously claimed memberships, as well as a new membership in the American Society for Cell Biology ("ASCB"). A letter in the record shows that the petitioner was notified of his acceptance into ASCB on December 28, 2001, days before he filed the petition. ASCB materials in the record read, in part: "**Qualification for Membership.** Members should have a Ph.D. or other professional degrees (e.g., M.D., D.V.M.), or have equivalent experience in scientific research. Successful application requires sponsorship by two Society members." Degrees and sponsorships are not outstanding achievements.

The petitioner submits a copy of a document identified as the bylaws of the Society for Developmental Biology. Article I, Section 1 of this document states, in full:

Section 1. Election to Membership. Members should have a professional degree (e.g. Ph.D., M.D., D.V.M.) or other relevant experience in developmental biology. SDB requires outstanding achievements of its members, who must undergo a nomination and approval process by the society's Board of Trustees before the election. (Amendment approved by the SDB membership in 1995 election.)

The aforementioned SDB web site, sdb.bio.purdue.edu, includes SDB's bylaws. As of November 21, 2002, Article I, Section 1 of the bylaws reads, in full:

*Section 1. **Election to Membership.*** Persons interested in becoming full, student or special members of the Society shall be allowed to self-nominate for the appropriate category. (Amendment approved by the SDB membership in 1995 election.) Student membership shall have a maximum duration of five years and shall be convertible to full membership when notice is received by the Board of Trustees that the doctorate has been conferred. Nomination forms shall be available through the office of the Business Manager.

The petitioner submitted his version of the SDB bylaws in May 2002. Conceivably, the bylaws could have been changed between May 2002 and November 2002. However, the bylaws as of November 2002 make specific reference to an amendment approved in 1995; they contain no

such reference to any 2002 amendment. Thus, there is no evidence that the bylaws have changed at all since 1995. We note also that the authentic bylaws do not represent evidence previously unavailable to the petitioner. The petitioner's initial filing contained printouts from this same web site, and therefore the petitioner was indisputably aware of the site's existence. Access to the bylaws via the site is not restricted by password, PIN, or any other security measure.

The petitioner's submission of what appears to be a fabricated copy of the bylaws, with the wording altered in order to conform to Service regulations, obviously raises very grave questions concerning the credibility of the petitioner's documentary submissions in general. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Even if the petitioner's submission of falsified bylaws was completely inadvertent and the petitioner believed them to be authentic, it remains that the bylaws submitted by the petitioner do not match the bylaws available from the SDB itself and thus they carry no weight.

Counsel asserts that the petitioner has satisfied newly claimed criteria, in addition to those claimed initially.

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

Counsel states that the petitioner has received three "nationally and/or internationally recognized prizes." Counsel asserts that these awards "are not limited to the individual school making the awards." The first claimed award is a graduate studentship and salary award from ICRF. We do not dispute counsel's claim that "ICRF studentships are highly sought after and competitive," but admission into graduate school is not a prize or award, however prestigious the institution may be. By definition, the individuals competing for the studentships are individuals who have not even completed their university training, let alone become established figures in the field. Graduate study is not a field of endeavor.

Dr. Fiona Watt states in a letter that the ICRF graduate studentship "lasts for four years rather than three," but the petitioner has also submitted a copy of the 1994 letter awarding him the studentship. This letter, from Christopher Pearson, ICRF's head of Personnel, states "[t]his is a three year fixed-term Studentship." Unlike Dr. Watt's letter, Mr. Pearson's letter was not prepared especially for the purpose of assisting with the petitioner's petition.

The second claimed award is a long-term fellowship from the Human Frontier Science Program ("HFSP"). Counsel asserts that the petitioner was among the 159 candidates accepted from an applicant pool of 682, indicating that the odds of acceptance are greater than one in five. HFSP materials in the record do not refer to the fellowship as an award for excellence in the field. Rather, the materials state "[t]he aim of the Long-Term Fellowship program is to provide

opportunities for talented young scientists to obtain training in the world's best laboratories and to enhance the mobility of young scientists between countries." The fellowship is not a reward for past work, but a source of funding to cover future training expenses. The petitioner cannot artificially limit his field to "young researchers" as distinct from university professors and others who conduct the same research, but who have completed their training and now work autonomously rather than under direct supervision.

The third claimed award is a Berry Fellowship, "established solely to support postdoctoral scholars who have excellent records of research experience." Recipients are limited to postdoctoral researchers still at the very beginning of their careers. Although counsel has claimed that this award, and the two others named above, "are not limited to the individual school making the awards," documents in the record flatly contradict this assertion. The Berry Fellowship is available only to students at Stanford University School of Medicine. A committee of Stanford professors selects the awardees "from any of the 25 departments at the School of Medicine."

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 that citations of the petitioner's articles satisfy this criterion. The fact that another researcher's scholarly article, or an agency's report, contains a citation of the petitioner's work does not make that article "about" the petitioner, any more than the petitioner's own articles are about F. Grinnell, S.K. Akiyama, or any of the myriad other authors cited in the petitioner's work. These citations establish the impact and significance of the petitioner's work, but a brief mention of the petitioner's work does not make the petitioner a principal subject of the citing article or report.

The director denied the petition, explaining at length the finding that the petitioner has not satisfied sufficient criteria to establish eligibility. The director observed that association with a prestigious institution does not automatically confer acclaim on postdoctoral researchers who train there.

On appeal, counsel faults the "Director's misinterpretation of the immigration regulations as well as the bias against young scholars/scientists, such as petitioner, and prejudicial view toward work done at the early stage of their professional career." The director had observed that "virtually all individuals who have done graduate or postgraduate work in a scientific field will be able to present evidence of authorship of scientific articles." This reference to the petitioner's postdoctoral status was in reference to his published work, a criterion which the director found the petitioner to have met. Thus, the finding was clearly favorable to the petitioner rather than prejudicial.

Indeed, the petitioner's own evidence often highlights the petitioner's relative lack of experience. His claimed awards are all for postdoctoral researchers, graduate students, and "young researchers." The witnesses who attest to the importance of his work are individuals who worked with or supervised him at Stanford and ICRF, indicating that his reputation resides largely with

his collaborators and mentors. Many of the petitioner's witnesses list accomplishments which dwarf the petitioner's own achievements; they are journal editors, sit on national or international committees, and are members of associations (such as the National Academy of Sciences) which actually do require outstanding achievements of their members. When we compare the petitioner's record against those of his superiors, it is difficult to conclude that the petitioner is one of the most accomplished figures in his field (unless his "field" is so narrowly defined as to exclude anyone outside of the laboratories where he has worked).

The remainder of counsel's brief consists primarily of repetitions and variations of previous arguments and claims. Counsel notes that the director has acknowledged the petitioner's satisfaction of the criteria pertaining to authorship of articles and judging the work of others, although as noted above, almost all of the petitioner's judging work was at the direct request of his doctoral supervisor.

The petitioner has perhaps accomplished more than an average postdoctoral researcher at a comparable career stage, but the evidence in the record does not show that the petitioner has risen to a level of national or international acclaim placing him at the very top of the field. Of deep concern is the submission of purported SDB bylaws which definitely do not conform to the bylaws available at SDB's own web site (a site first brought to the Service's attention by the petitioner's submission of printouts therefrom). The credibility issues arising from this serious discrepancy cannot be overlooked.

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.