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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



File: [Redacted]

Office: Nebraska Service Center Date: 7 JAN 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: 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 --

(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. We reiterate, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner seeks classification as an alien with extraordinary ability as a research associate at the Howard Hughes Medical Institute ("HHMI") at the University of Chicago. 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 states that he was nominated for an Indian National Science Academy Award. The petitioner does not claim to have won the award, but he asserts that the nomination itself demonstrates the quality of his research. Witnesses refer to the award as a "Young Scientist award," which from its name would appear to exclude the most established and experienced scientists from consideration. We cannot conclude from the available evidence that national acclaim arises from the petitioner's nomination for this award.

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 does not establish that he was a member of any association at the time he filed the petition. The petitioner states that he has "been invited to become a member [of] the 'Cell Stress Society International.'" The invitation in question is an electronic mail message, which states in part "[i]t is easy to join us. . . . If at all possible, we would . . . urge even students to become full members." The only stated criterion for membership is payment of annual dues.

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 submits evidence that his research has been cited in publications by other scientists. Citation of the petitioner's work, however, does not establish that the articles containing the citations are "about" the petitioner or his work. Rather, the citations demonstrate that the petitioner's work served as a resource for another article that addressed the same general area of interest. Citations of this kind are most useful when measuring the impact of the petitioner's own work, covered by a separate criterion further below.

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 that he has "so far judged a total of about nine manuscripts submitted for publication to very prestigious science journals such as *Nature*, *Cell*, etc." The petitioner also reviewed a grant proposal submitted to the U.S. Department of Agriculture.

It is clear from the record that the requests for the petitioner to evaluate these proposals and manuscripts do not come from the field at large. The petitioner's postdoctoral advisor, Prof. Susan Lindquist, states that it is she who receives these requests. Prof. Lindquist explains "I seek assistance from the most competent people in my lab" and therefore she passes many of the requests on to the petitioner. Prof. Lindquist identifies only one review request (from Cell Stress and Chaperones) sent directly to the petitioner.

That Prof. Lindquist refers so many review requests to the petitioner (and asks him to critique other writings originating from her laboratory) speaks well of Prof. Lindquist's opinion of the petitioner, but it does not establish that the beneficiary has earned a wider reputation. The petitioner must establish acclaim on his own merits, rather than on the basis of his professional relationship with a highly-regarded researcher such as Prof. Lindquist.

Regarding the USDA grant proposal, referenced above, another of the petitioner's former professors (Dr. Nalam Madhusudhana Rao) appears to have referred that proposal to the petitioner for review. His activity as a judge of the work of others appears to derive from his established ties to those who select such judges, rather than any major national or international reputation in his own right.

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

The petitioner discusses "mad cow disease" and similar diseases, explaining that they are caused by prions (rogue proteins which propagate by reconfiguring some of the host's proteins into more prions) and that there is no known cure for prion-caused diseases. The petitioner discusses his work in this area:

I have been carrying out my research work . . . on the biology of a prion-like phenomenon in yeast and the role of the molecular chaperone, Hsp104 in this process. My findings describe for the first time the mechanism of the prion-like phenomenon in the test tube (currently being considered for publication in the journal *Science*). . . . I have also identified several proteins that depend on Hsp104 for recovery after a severe heat shock in yeast cells. This work is being

prepared for other major publications. Presently I am carrying out experiments to demonstrate the relationship between the prion-like mechanisms and the mode of action of Hsp104.

The petitioner observes that the results of the above studies have yet to be published. Therefore, it is not clear how widely these findings are known in the field. The petitioner's own opinion of his work cannot suffice to establish the major significance of his contributions.

The petitioner submits published material regarding bovine spongiform encephalopathy ("BSE"), popularly called "mad cow disease." This material demonstrates the seriousness of the problem, and some of it mentions Prof. Lindquist, but it does not discuss the petitioner at all and therefore it cannot satisfy the criterion. Working to address a major problem does not inherently convey major importance on one's efforts. The finding must rest on the significance of specific findings, rather than on the petitioner's choice of research specialty.

To establish how others view his work, the petitioner submits several witness letters. The petitioner's supervisor, Prof. Susan Lindquist, is a member of the highly prestigious National Academy of Sciences, and serves on the faculty of the University of Chicago as well as working as an investigator at HHMI at that university (HHMI also has facilities at other universities). She states:

[The petitioner's] outstanding scientific ability has been amply demonstrated by his research publications in many internationally respected journals. . . . In 1999, he was nominated for the Young Scientist award from the Indian National Science Academy, New Delhi. In my opinion, this is a truly remarkable achievement. . . .

His current approach has yielded answers to many long-standing questions and I am quite certain that his work will be published in very prestigious journals. The projects that [the petitioner] is involved in require an expertise in a variety of fields and I have no doubt that he is the best-suited candidate for this position in my laboratory.

Prof. Lindquist asserts "I am confident that these results [from recent experiments] will be of very high impact in the field of prions and protein aggregation." She adds that the results were still "currently under consideration for publication" and thus apparently had yet to be disseminated. Prof. Lindquist states that the petitioner's presentations at conference presentations have been "received very well by the scientific community," but she does not elaborate or show that the petitioner is among the best known or most respected figures in his field at a national or international level. Certainly, researchers are following the findings emerging from Prof. Lindquist's laboratory, but the record

shows that this work (such as the study of prions in yeast) was underway before the petitioner arrived there.

While Prof. Lindquist's statement is not without weight, it remains that the petitioner works closely with her and therefore her statements are not first-hand evidence that the petitioner's reputation extends beyond the laboratory where he works. The petitioner submits letters from faculty members at several other universities and research facilities in various countries. Several of these individuals have collaborated with the petitioner or known him for years, and state in essence that the petitioner is a well-qualified scientist whose presence is beneficial to Prof. Lindquist's laboratory. Some of the witnesses discuss the overall problem of BSE, which is not in dispute, and the reputation of Prof. Lindquist and her laboratory. The *curricula vitae* of these researchers (particularly that of Prof. Lindquist) demonstrate records of achievement which appear to dwarf that of the petitioner (who, as a postdoctoral research associate, is still essentially a trainee rather than a full-fledged researcher in his own right).

The overall impression that arises from these letters is that the petitioner is a highly qualified researcher, working for a professor who enjoys considerable prestige in the field. The letters assert that the petitioner is working on an important, ongoing project, but they credit him with no specific contributions of major importance to the field, nor do they demonstrate that the petitioner is one of the best known or most highly acclaimed figures in his field. Participation in an ongoing project is not a major contribution in its own right; it is clear from the repeated use of conditional terms (such as "could" and "may") in the letters that the project's findings still lie in the future. Expectations of valuable results are not evidence of existing contributions.

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

The petitioner indicates that five of his articles have been published, with two more submitted for consideration as of the filing date. 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.

The petitioner states that "many citations" of his work have appeared in articles by other researchers. The record contains eight articles featuring such citations. The petitioner has not shown that this citation record ranks the petitioner's publications as among the most influential in the field.

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

The petitioner states that he satisfies this criterion by showing his work at meetings and conferences. Scientific meetings are not artistic exhibitions. Presentations of this kind are intended to disseminate highly technical information to a specialized audience, and as such are more akin to scholarly publications than artistic presentations.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner earns \$38,000 per year, which, he observes, "is about 50% higher than the national average" of \$25,250 per year for postdoctoral researchers in biochemistry and molecular biology (the cited figure is actually the median rather than the average). Postdoctoral researchers, however, do not constitute a field unto themselves. The petitioner, to satisfy this criterion, must show that he is among the highest paid individuals working in his field. The same documentation that provided the above median wage for postdoctoral researchers indicates that the median wage for biochemists and molecular biologists in "business/industry" is \$53,000. Because this is a median figure, by definition half of the workers in the category earn that much or more. The evidence, therefore, plainly shows that most privately employed biochemists and molecular biologists working in the U.S. earn substantially more than \$38,000 per year.

On September 5, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish extraordinary ability. The director clearly set forth the criteria outlined in section 203(b)(1)(A) of the Act, and specified that the Service has defined "extraordinary ability" as "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."

In response to this letter, the petitioner asserts that his work has "important and exciting" implications in the field of nanotechnology, specifically "creating protein-based molecular machines."

In a newly-submitted letter, Professor Norbert F. Scherer of the University of Chicago states that the petitioner's "research work . . . has proven invaluable" in studying "the diversity of structural motifs that exist in biology and the associated self-assembly and self-organization properties in a multi-disciplinary, multi-investigator environment to design and fabricate new physical materials with new functionality." Citing the petitioner's Science paper, Prof. Scherer states that the petitioner's "work has had a major impact in this field" because it "addresses basic biological questions such as protein aggregation . . . and provides avenues for the development of novel 'nano-devices.'" The petitioner's initial evidence contained no mention of nanotechnology. A press release regarding the University of Chicago's multi-disciplinary project identifies Prof. Lindquist but does not mention the petitioner.

Prof. Scherer and other witnesses discuss developments that are "likely" to arise from the petitioner's work. Of these witnesses, Prof. Scherer is the only one to mention nanotechnology, and his letter is the only one written subsequent to the petition's filing date. The other letters (written in February and March of 2000)¹ discuss the potential future impact of the petitioner's work on health care. Conjectural assertions regarding what may eventually result from the petitioner's work do not constitute evidence of major contributions or establish that the petitioner is already widely regarded as a top figure in his field.

The petitioner observes that his previously-mentioned article, submitted for publication in Science, has now been published in that prestigious journal. While we do not deny the impact of that important journal, or that the article may contribute to future recognition of the petitioner, it remains that the article had not yet been published as of the filing date and it cannot retroactively establish acclaim as of the 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 states that the Science article has attracted attention throughout the scientific community, and he submits several published reports discussing the article. The petitioner contends that these reports constitute published material about his work. We note that the record contains a press release from HHMI itself which appears to have been the source for most of the published reports. None of the articles (including HHMI's own press release) mention the petitioner at all. Thus, the articles

¹The wording and timing of these letters suggest that they may originally have been intended to support a request for a "national interest waiver" in conjunction with a lower-priority immigrant visa petition, which may never have been filed.

(even if they had been published before the petition's filing date) are not "about the alien" as the pertinent regulation demands. The articles cannot contribute to the petitioner's acclaim in the field if his name is not listed; a researcher who had never heard of the petitioner could read such an article and still have never heard of the petitioner.

The petitioner submits evidence pertaining to membership in various professional associations. As with the Science article, this evidence dates from after the petition's June 2000 filing date. The petitioner was notified of his admission to the American Society for Biochemistry and Molecular Biology ("ASBMB") in a letter dated October 4, 2000. The American Association for the Advancement of Science ("AAAS"), in a document dated September 8, 2000, has invited the petitioner to become a member.

The petitioner's application for membership in the American Society for Cell Biology ("ASCB") is dated September 27, 2000, three weeks after the director requested further evidence. This timing is consistent with the petitioner's having applied for this membership in response to that request. 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 Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and Matter of Katigbak, supra. Even then, there is no evidence that the petitioner was actually admitted to this society; the very act of applying is not demonstrative of national acclaim.

There is no evidence that any of the above associations require outstanding achievements of their members. As noted above, the AAAS has already sent the petitioner a membership certificate before he even submitted membership documentation. The membership criteria listed on the ASBMB application form are:

1. The applicant should normally hold a doctoral degree.
2. The applicant must have published, since the receipt of a doctoral degree, at least one paper in a refereed journal devoted to biochemistry and molecular biology.
3. The applicant must be nominated by one Regular member of the Society.

For ASCB membership, "[t]he applicants must be sponsored by a regular or post-doctoral member in good standing and must hold a Ph.D., M.D., or an equivalent degree, or must have equivalent experience." The ASCB form also indicates that "[m]embership in the Society is open to scientists who share the Society's purposes to promote and develop the field of cell biology and who have educational or research experience in cell biology or an allied field." The petitioner has not shown that degrees and publications are regarded as outstanding achievements, rather than more or less routine activities, in his field. An example of an association that satisfies the regulatory language would be the U.S. National

Academy of Sciences, which admits only a few dozen new members each year, carefully selected on the basis of their accomplishments rather than automatically qualifying by holding a certain degree or publishing a set number of articles.

The petitioner repeats his prior claim that he has been invited to become a member of the Cell Stress Society International, but there is no evidence regarding that society's membership requirements, or that the petitioner has accepted the invitation and thus become a member as the regulation requires.

The director, in denying the petition, acknowledged the petitioner's accomplishments, but found that while the petitioner has been successful as a scientist, the record does not show that the petitioner has earned sustained national or international acclaim as one of the very top researchers in his field.

On appeal, the petitioner argues that the director disregarded "several pieces of crucial evidence." The petitioner states that his Science article is significant because that journal "has been THE top most scientific journal for all fields of science." As we have already discussed, this article had not been published (or apparently even accepted for publication) at the time the petitioner filed his petition. Whatever recognition the petitioner may have earned as a result of the publication of that article, such recognition did not yet exist at the time of filing which is the controlling date. Even if the date of the article were not a critical issue, the petitioner has not established the impact of that article. There is no evidence of heavy citation by other researchers. While Science is certainly a highly respected journal with a high overall impact rating, it does not follow that significant, sustained acclaim automatically or inevitably results from writing an article published there.

The petitioner states that he has submitted recommendation letters from "highly competent scientists of very high standing from all over the world." We take these letters under advisement, but to qualify for this highly restrictive visa classification, the petitioner must not merely show that his work is admired by "scientists of very high standing"; he himself must show comparable standing. His mentor, Prof. Susan Lindquist, has a list of honors and achievements that significantly overshadows the petitioner's own. Whatever Prof. Lindquist's honest opinion of the petitioner's work, an objective reading of the evidence suggests that she herself can make a much stronger case than the petitioner for being a figure at the very top of the field.

The regulatory criteria are intended to set forth objective means by which an alien's acclaim, and the significance of the alien's work, may be judged. While witness letters can be a useful aid, the opinions of a few witnesses selected by the petitioner do not necessarily represent the consensus throughout the field.

The petitioner repeats prior arguments regarding his activity as a judge of the work of others (which has been shown to result almost entirely from his close affiliation with professors in a position to choose such judges) and his memberships in professional associations (which did not apply at the time of filing, and which do not fulfill the plain wording of the relevant regulatory criterion). The petitioner's assertion that "[m]embership in these societies is a privilege of being an excellent scientist" because "only persons with a doctoral degree are eligible for membership" is not persuasive. While it is no small achievement to devote years to the pursuit of a doctoral degree, that degree is the expected outcome of a course of study rather than a rare honor that attracts national attention.

The petitioner repeats several previous arguments in varying degrees of detail. These arguments may show that the petitioner is highly accomplished as a postdoctoral research associate, but in such a position he remains essentially a trainee, performing a supporting role in another researcher's laboratory. It cannot suffice for the petitioner simply to show that he has had greater success than other postdoctoral researchers, because most of the people working in the petitioner's field are established, full-fledged researchers who have already progressed past and above the postdoctoral level. The petitioner, in order to qualify, must demonstrate that he stands above the vast majority of all others in his field, including tenured professors and department heads.

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a cell biologist 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 has amassed some impressive achievements, but 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.