U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

JAN 11 2002

File: [redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner: [redacted]
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 which 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 which 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 which 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. 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 theologian. 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 director stated that the petitioner "meets several points of the evidentiary list" and listed, as examples, the evidence relating to three criteria: the publication of scholarly articles, published material about the petitioner, and judging the work of others. The director then, however, concluded that the petitioner did not enjoy national acclaim as a theologian. It would be nonsensical for the director to conclude that the petitioner was eligible under the regulations by meeting three of the regulatory criteria but that the petition was not approvable. Thus, a more rational interpretation of the director's decision is that the petitioner submitted documentation which *related to* or addressed three criteria, but that the evidence itself did not demonstrate national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence which addresses at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim.

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.*

The record reflects that the petitioner is a member of the Society of Biblical Literature (SBL), the North American Patristic Society (NAPS), and the American Academy of Religion (AAR). The petitioner is also an associate member of the Catholic Biblical Association (CBA). The letter confirming his membership in CBA asserts that since he has obtained his Ph.D. he will likely be elected to active membership at the next annual meeting.

The record contains no information on the membership requirements for SBL, NAPS, or AAR, although the record does reflect that SBL has 7,000 members and AAR has 8,000 members. The number of members in NAPS is not documented in the record. While the petitioner argues on appeal that active membership in CBA requires "a major contribution," the letter from CBA indicating that the petitioner will be elected to active membership based on his degree suggests that CBA has only educational requirements. Professional experience and academic degrees are not outstanding achievements. Regardless, at the time of filing, the petitioner was only an associate member, which he concedes requires no special achievements. The record lacks evidence that any of the associations of which the petitioner was a member at the time of filing require outstanding achievements of its members. Thus, the petitioner does not meet this criterion.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The petitioner submitted an article about himself and the analysis in his dissertation published in the Faith Section of the *South Bend Tribune*. The petitioner has not submitted any evidence that the *South Bend Tribune* is major media. For example, the petitioner has not demonstrated that it has

national circulation or a reputation outside of South Bend. Therefore, the petitioner has not demonstrated that he meets this criterion.

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

The record reflects that Cross Cultural Publications, Inc., located in Notre Dame, Indiana, appointed the petitioner to its editorial board for five years as of September 1, 1999. In addition, on January 8, 2000, the petitioner was invited to be on the International Advisory Board of a journal, *International Policy Review*. The petitioner also serves as a consultant to the Center for Christian Studies, Inc., in South Bend, Indiana, advising the Center with regard to courses and the research work of their members.

Two of these organizations are local and the petitioner has not established that his selection to perform review functions for those organizations was based on his national reputation. The petitioner has also not established the criteria used by the *International Policy Review* to determine their list of invitees. Thus, it is not clear that this evidence demonstrates the petitioner's national or international acclaim. Even if we were to conclude, however, that the petitioner minimally met this criterion, it is only one criterion.

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

The petitioner asserts that his dissertation is a contribution of major significance in his field. He submitted a copy of the 300-page document; letters from the his dissertation advisors; and a summary of the dissertation downloaded from the Internet at www.umi.com/dissertations. Gregory Sterling writes:

> [The petitioner] wrote his dissertation on a famous and problematic text in the New Testament. He was able to use a body of overlooked texts to explicate a very difficult text. He is in the process of finding a suitable venue of publication for his work.
>
> . . .
>
> [The petitioner] has already made a contribution to the University of Notre Dame and will continue to make contributions to other institutions and to the students he assists.

Harold W. Attridge writes:

> [The petitioner's] dissertation made a significant contribution to the field of New Testament scholarship by bringing to bear the results of [a] recent study of ancient cursing customs on the interpretation of a difficult passage in the writings of St.

> Paul. [The petitioner] thus displayed uncommon erudition in the history of ancient religion, as well as exegetical skill and ingenuity in the interpretation of a Biblical text.

As stated above, each criterion must be evaluated as to whether the evidence submitted in support of that criterion demonstrates sustained national or international acclaim. Letters from the petitioner's own advisors are not evidence that the petitioner's dissertation, which has yet to be published and, therefore, has not been widely read and cited, constitutes a major contribution which has garnered the petitioner national or international acclaim. Even Professor Sterling does not claim that the petitioner has influenced his field. Rather, he claims that the petitioner has contributed to his university.

Professor Attridge also states:

> [The petitioner] has already achieved international recognition with his publication in the European journal, New Testament Studies, and he will no doubt continue to develop a high scholarly profile.

Professor Attridge, however, does not explain how the petitioner's work published in *New Testament Studies* constituted a major contribution to the field.

In response to the director's request for additional evidence, the petitioner submitted new letters. Dr. Paul P. Parker, Chair and Associate Professor at Elmhurst College writes:

> Prior to [the petitioner's] reception of the Ph.D. degree in Theology (New Testament and the Early Church) from the University of Notre Dame in August of 1999, our Department of Theology and Religion (Elmhurst College) had heard about his studies on the resurrection of Jesus. On the strength of his research we invited him to give a lecture to our theology students and faculty on the questions surrounding Jesus' resurrection. . . . Our Department found his lecture highly professional, theologically sound, and exemplary of the best of contemporary critical scholarship.

Reverend Robert Smith, Academic Dean at the Seminary of the Immaculate Conception, confirms that his institution invited the petitioner to give a lecture to students and faculty based on his contributions to theology. A final letter from the Reverend William C. Graham, an associate professor at Caldwell College, thanks the petitioner for his lecture at that institution, but advises him that he was not selected for the job for which he interviewed. On appeal, the petitioner submits a letter from Dr. Gerald M. Boodoo confirming that the petitioner was invited to Xavier University to give a lecture.

The petitioner has not established the significance of being requested to lecture at other universities. Dr. Parker refers to the custom of paying only travel, room and board, suggesting it is not uncommon for universities to invite Ph.D. students at other institutions to lecture. The record does

not establish that the lecture at Caldwell College was any more than part of an unsuccessful attempt by the petitioner to get a job at that institution.

A review of the record reveals that the petitioner has not demonstrated that he has made major contributions to the field of theology such that he has attained national or international acclaim for those contributions.

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

As discussed above, the petitioner's dissertation had not been published at the time of filing, although University Press, Inc. recently agreed to publish the 300-page dissertation as a book. At the time of filing, however, the petitioner had published another article, "The Meaning of ΠΡΟΕΓΡΆΦΗ in the Context of Galatians 3.1," in *New Testament Studies*. 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 submitted a letter to the petitioner from Michael Gorman, a dean at the Ecumenical Institute of Theology, expressing his intent to cite the petitioner's article in a chapter of his forthcoming book, *Cruciformity: Paul's Narrative Spirituality of the Cross*. One citation by an independent theologian is not evidence that the petitioner's article has brought him national or international acclaim.

The record also contains scientific articles authored by the petitioner. As the petitioner seeks classification as an extraordinary theologian, his scientific articles written during his prior career are not relevant.[1]

On appeal, the petitioner submits evidence that he presented another paper at a conference and has had another article accepted for publication. In addition, the petitioner submitted a letter from the editor of *Vine and Branches*, asserting that the petitioner writes a regular column for that publication. It is not clear that the latter publication is a professional or major trade publication. Nor is it clear that the petitioner was writing columns for this publication at the time of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future

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[1] On appeal, the petitioner claims to be an extraordinary professor. That claim will be discussed below.

date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Evidence of publication after the date of filing is not evidence of eligibility at the time of filing.

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

On appeal, the petitioner submits a letter from John C. Cavadini, asserting that the petitioner's courses have been popular at Notre Dame and that the petitioner earned many majors for the theology department. Not every popular professor can be said to play a leading or critical role for their institution such that he is one of the very few at the top of his field who has sustained national acclaim. In a subsequent submission, the petitioner asserts that he is now a full professor at Notre Dame Seminary in New Orleans. Not every full professor serves a leading or critical role for the university where they teach. Regardless, the petitioner was not working there at the time of filing.

On appeal, the petitioner argues that he is an extraordinary professor and submits a lengthy letter from John C. Cavadini evaluating the petitioner as a professor. The distinction between professor and theologian does not appear particularly helpful to the petitioner. Whether the petitioner seeks classification as extraordinary theologian or professor, he must demonstrate national or international acclaim. The record reflects no such acclaim for any reason. Regardless, we will consider the distinction.

The petitioner must demonstrate that he meets at least three of the regulatory criteria. In general, the evidence submitted which relates to the criteria discussed above reflects on the petitioner's abilities as a theologian. For example, the petitioner relies on his memberships in theological, not educational associations. The article in the *South Bend Tribune* relates to the petitioner's work in theology, not his abilities as an instructor. The petitioner does not claim to be a judge of other professors, but of other theology researchers. The petitioner claims that he has influenced the field of theology with his dissertation, not the field of education. The petitioner's articles are theological articles. They do not address educational techniques.

Had the petitioner demonstrated that he served a leading or critical role for a distinguished university, such evidence could demonstrate his abilities as a theologian or a professor. As stated above, a professor does not serve a leading or critical role for his university simply by doing his job. This argument is even more plain if the petitioner wishes to be compared with other professors in all fields instead of other theologians. There are numerous distinguished universities and each one employs many professors. Obviously, every professor cannot demonstrate that he is one of the very few top professors simply based on his employment as a professor at a distinguished university. The petitioner does not meet this criterion as a theologian or professor.

The only other evidence regarding the petitioner's abilities specifically as a professor is Mr. Cavadini's letter. In his letter, Mr. Cavadini first concludes that since universities with higher entrance requirements have lower freshmen retention rates and graduation rates, the University of Notre Dame's relatively high ranking as a University must be credited to the faculty. Mr. Cavadini

then compares the petitioner to other Notre Dame faculty using the *Teacher and Course Evaluation* method, concluding he ranks among the top 25% of professors at the University of Notre Dame. In his final conclusion, Mr. Cavadini states that even if the petitioner were only in the top half of professors at Notre Dame, since Notre Dame (according to Mr. Cavadini) employs professors in the top percentage of the profession, the petitioner must be among the top .5% of professors.

Mr. Cavadini's evaluation is based on an evaluation tool used to determine competency of instructors, and is not evidence of whether the instructor has sustained national or international acclaim as a professor, the issue to be determined in these proceedings. The evaluation does not specifically address any of the above criteria and is simply a somewhat questionable use of statistics to reach what is ultimately Mr. Cavadini's subjective opinion. Opinions cannot replace the petitioner's burden to meet at least three of the regulatory criteria.

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 theologian 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 theologian, 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.