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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: Nebraska Service Center Date: JAN 14 2002

IN RE: Petitioner:
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]

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 in the sciences. The director determined the petitioner had not established that he has earned sustained national or international acclaim.

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). These criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a postdoctoral research fellow at Saint Louis University Hospital. Counsel states that the petitioner "is one of the top two or three experts in the field of blood clot formation." The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish

sustained national or international acclaim. 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 satisfies this criterion because he has received several American Heart Association predoctoral and postdoctoral fellowships, as well as a Finn Wold Travel Grant to attend a meeting of the Protein Society. The petitioner notes that competition for the fellowships and travel grant is intense.

The petitioner provides documentation showing that the fellowship recipients are chosen by peer review. The same documentation indicates that the objective of the postdoctoral fellowship is not to recognize excellence in the past accomplishments of researchers. Rather, the objective is "[t]o help a trainee initiate a career in CV [cardiovascular] research while obtaining significant research results." The predoctoral fellowship is intended "[t]o help students initiate careers in cardiovascular research by providing research assistance and training."

Predoctoral and postdoctoral fellowships provide financing for a researcher's ongoing training. Thus, by definition, established researchers who have completed their training are excluded from consideration for these fellowships. The petitioner cannot place himself at the top of his field by artificially excluding tenured professors, department heads, and other experienced researchers, and limiting his "field" to individuals who, like the petitioner, are still undergoing training.

Also, the funds amount not to an award for excellence, but the source of the salary for the holder of the fellowship, intended as future remuneration for work that had not yet been performed as of the date the fellowship was awarded. A letter from an American Heart Association official states that "[e]ach subsequent year of funding is contingent upon review of an interim progress report," confirming that the funding finances ongoing work, rather than rewarding past achievements.

The petitioner's travel grant amounts to $500, intended to cover the petitioner's travel expenses to attend a conference. The petitioner has not shown that this award is nationally recognized as a significant award for excellence in the field. Documentation in the record lists the petitioner as one of sixteen "Student Awardees," who received travel awards along with eleven "Postdoctoral Awardees" and four "Junior Faculty Awardees." Thus, 31 travel awards were presented regarding this single conference, out of "over 176 applications," indicating that roughly one applicant in six received an award. We cannot conclude that this

travel award signifies national acclaim or places the petitioner at the top of his field.

> *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 states that he is a member of Sigma Xi, an international honor society. The record indicates that, as of the petition's August 1999 filing date, the petitioner was not, in fact, a member of that organization. A letter, dated June 11, 1999, states that the petitioner has been "nominated for admission . . . and it has been essentially agreed that he will be accepted for full membership . . . in December 1999."

The petitioner notes that several Sigma Xi members have won the Nobel Prize, and others have been inducted into the U.S. National Academy of Sciences. The Nobel Prize would, alone, qualify its recipient as an alien of extraordinary ability, and the National Academy of Sciences is certainly an association that requires outstanding achievements of its members as judged by recognized national experts. It does not follow, however, that all Sigma Xi members are of the same caliber or have achieved such levels of acclaim.

The record does not show that Sigma Xi members are chosen by recognized national or international experts, as the plain wording of the regulation requires. Rather, members appear to be chosen by local chapters. Documentation in the record indicates that full membership is contingent on "noteworthy achievements in research," but the same documentation states "[t]here are more than 80,000 Sigma Xi members in over 500 chapters." It is not clear that an organization can reach such a size[1] while remaining exclusive enough to qualify under the regulatory 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 submits evidence that other scientists have cited his research in their publications. Citation of the petitioner's work, however, does not establish that the articles containing the

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[1]Each year, Sigma Xi initiates 5,000 new members, which is roughly twice the entire membership of the National Academy of Sciences.

citations are "about" the petitioner or his work. These citations are better understood as a gauge of the field's reaction to the petitioner's own writings, covered by a separate criterion further below.

The petitioner has submitted several newspaper and magazine articles which address, in general, the importance of cardiovascular research as it pertains to stroke and heart attacks. These articles do not mention the petitioner or his research. The petitioner has not shown that his findings have been found to be so significant that they warrant media coverage. The petitioner's own submission proves that the findings of other researchers have earned such coverage, and therefore this requirement is not unrealistic.

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 letters from five researchers, who state that they have solicited the petitioner's opinion on their written work. Three of these researchers are, or were, the petitioner's colleagues at Saint Louis University. The other two state that they have known the petitioner since the 1980s, when the petitioner was an undergraduate and then a graduate student at the All-India Institute of Medical Sciences. Reviewing the work of co-workers and long-standing acquaintances in this manner does not establish wider acclaim. The very act of expressing an opinion on the work of colleagues does not cause national acclaim, or reflect existing acclaim; we must consider the context. In this instance, the petitioner has not shown that researchers approach only nationally acclaimed figures for opinions and suggestions regarding their manuscripts, or that he has ever been asked to judge the work of any researcher who is not closely associated with him. This criterion, like all of the regulatory criteria, is intended to be highly restrictive, and this restriction becomes meaningless if an alien can satisfy this criterion simply by arranging to critique manuscripts written by co-workers and former classmates.

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

The petitioner states:

> I solved a long standing 'mystery' in the field of blood coagulation by unambiguously discovering the binding site for clotting factor VIIIa on clotting factor IXa protein. This had consumed significant international scientific effort since the

early 1980s. This finding has established me as one of the distinguished investigators in the field.

To establish the significance of his contributions, the petitioner submits several documents labeled as exhibit F. Review of exhibit F shows that all of these documents, without exception, consist of general background documents about the importance of cardiovascular research. The documents contain no mention at all of the petitioner's specific contributions. The fact that cardiovascular research, as a whole, is important does not establish that the contributions of any single researcher are similarly important. To hold otherwise would lead to the self-contradictory conclusion that all cardiovascular researchers are among the top cardiovascular researchers.

In addition to the documents in exhibit F, the petitioner has submitted letters from several witnesses. The majority of the witnesses have ties to Saint Louis University, the petitioner's supervisor, or the petitioner himself.

Professor S. Paul Bajaj, who supervises the petitioner's current postdoctoral work at Saint Louis University, states that the petitioner's work with certain blood clotting factors "is of fundamental significance," while the petitioner's findings regarding "the effects of sodium on coagulation enzymes" are "unique." Prof. Bajaj asserts that the petitioner "has distinguished himself as an outstanding young biochemist," and that the petitioner "has the energy, ambition, and creativity required to be a leader in the field," but he does not indicate that the petitioner already is such a leader.

Professor Thomas S. Edgington of the Scripps Research Institute states that the petitioner "is a remarkably accomplished young investigator of immense potential," whose work "has the very great potential to elucidate and develop molecular paths to new preventive therapies" for bleeding and clotting disorders. Prof. Edgington expresses "confidence that he will be highly successful." Prof. Edgington does not indicate that the petitioner is already a highly successful researcher, or that the potential of his work has been fulfilled to any significant extent.

Another faculty member at the Scripps Research Institute, associate professor Dr. Wolfram Ruf, asserts that the petitioner "has made important contributions to the understanding of how coagulation enzymes function at the molecular level." Dr. Ruf states that the petitioner "defined critical determinants for the activity of the enzyme thrombin," and "defined important aspects of the interaction of Factor IXa with Factor VIIIa," proteins involved in hemophilia.

Some of these researchers list accomplishments which appear to dwarf the petitioner's own record of achievement. While the

petitioner is clearly responsible for some original contributions in his field of endeavor, the record does not persuasively show that the petitioner's achievements have won him national or international recognition as a top researcher. His reputation appears to be focused largely (although not confined entirely) within Saint Louis University.

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 four published articles, three of which appeared in the Journal of Biological Chemistry; the fourth appeared in Biochemistry. The petitioner submits evidence to show that the Journal of Biological Chemistry is the single most heavily-cited scientific journal. We do not dispute the journal's overall impact, but it does not necessarily follow that the petitioner's articles are among the most heavily cited. A citation index lists ten citations of the petitioner's articles (nine citations of one article, one of another), and the petitioner submits copies of additional citing articles. The petitioner has, as of the petition's filing date, documented fewer than 20 citations of his published work. This figure demonstrates that the petitioner's work is not unnoticed in the field, but it does not stand out against the many other publications listed in the brief excerpts of the citation index in the record. Another author shows 32 citations for only two articles (15 and 17 respectively) during the period covered by that edition of the citation index. The most influential articles are, over time, cited hundreds of times.

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

The petitioner states that his "work has been displayed at . . . international meetings." Scientific gatherings are not artistic exhibitions, and the petitioner cannot cause this criterion to be applicable simply by omitting the word "artistic." Conference presentations are intended not to display the petitioner's work to the general public, but to disseminate highly technical information to a specialized audience. In this sense, such presentations are more akin to scholarly publications than to artistic displays.

The petitioner appears to have abandoned his claim to have satisfied this criterion; subsequent correspondence makes no mention of the "display" of his work.

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 states that St. Louis University has offered him indefinite employment with an annual salary of $37,000. The petitioner states that this amount "is 40% more than [the] recommended salary." The "recommended salary" figure quoted by the petitioner refers to stipends granted by the National Institutes of Health. Related documentation shows that the National Institutes of Health stipend for a postdoctoral fellow with seven years of experience is $41,268 per year, considerably higher than the $37,000 offered to the petitioner. The petitioner must show not that he is among the highest-paid first-year postdoctoral fellows, but rather the highest-paid figures in the field of cardiovascular research, including first-year fellows, seventh-year fellows, tenured professors, and department heads.

A postdoctoral fellowship is not a field of endeavor in its own right, but a stepping stone toward a full-time research position (as shown by the aforementioned American Heart Association documents which refer to the postdoctoral fellows as "trainees").

On May 17, 2000, the director informed the petitioner that the documentation submitted with the petition was not sufficient to establish the beneficiary as an alien of 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, counsel asserts that the petitioner's "research has significantly advanced the development of drug therapies designed to cure and prevent diseases caused by abnormal blood clot formation," although the record does not identify any existing new drug made possible by the petitioner's research.

Many of the documents submitted in response to the director's notice are copies of previously submitted documents. We will discuss new submissions here. A Sigma Xi membership nomination form confirms that candidates for membership may choose to be considered by the local chapter rather than by the central Committee on Qualifications and Membership. Sigma Xi documentation shows that the organization requires "noteworthy achievement" of its members. Sigma Xi defines "noteworthy achievement" as "publication, patents, written reports or a thesis or dissertation." Because a written thesis or dissertation is a standard requirement for a graduate degree, and publication is "expected" of postdoctoral researchers,[2] membership in the 80,000-

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[2]See page 5 of the Report and Recommendations, The Association of American Universities' Committee on Postdoctoral Education, March 31, 1998.

member Sigma Xi does not appear to be beyond the reach of all but the very top researchers, nor does such membership appear to bestow significant acclaim.

The petitioner submits copies of new articles which contain citations of the petitioner's research. One of these articles contains several citations of the petitioner's work, but the citing article is by Prof. Bajaj, who collaborated on the cited articles. These new citations therefore represent self-citation by Prof. Bajaj rather than evidence of widespread impact. Self-citation is common and accepted practice, but it does not demonstrate that the petitioner's work has had influence outside of his own circle of collaborators.

The new citing articles were published after the petition's filing date and therefore cannot retroactively establish that the petitioner was eligible as of that 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 submits several new witness letters. For instance, Dr. Anna Naumova, assistant professor at McGill University, states "I have not worked with [the petitioner], however I have read his works and find them excellent and of particular importance for several fields of biological and medical sciences." Dr. Naumova states that the petitioner has "big potential" and that the petitioner "will contribute to the progress of . . . science" if the petition is approved.

Dr. Shabnam Tangri, staff scientist at Epimmune, describes some of the petitioner's research projects and states that, as a result of the petitioner's studies, "the pharmaceutical and biotechnology industr[ies] are in a better position to design and develop therapeutic drugs for stroke and heart attack."

Counsel notes that the witnesses offering these letters represent several different countries and biotechnology companies. This assertion is somewhat misleading. The majority of the authors of these newly submitted letters appear to have close or long-standing ties to the petitioner, through Saint Louis University or other interactions early in the petitioner's professional training. For example, counsel notes that one letter is from Japan; but the Japanese witness had been a visiting scientist at Saint Louis University and therefore his direct knowledge of the petitioner's work is not evidence that the petitioner's acclaim has traveled to the scientific community in Japan. As another example, Dr. Tangri states that he "met [the petitioner] in 1998 at the International

Symposium of the Protein Society,"[3] the record shows that both the petitioner and Dr. Tangri were studying for their master's degrees at the All India Institute of Medical Sciences in the late 1980s.

The director denied the petition, stating that while the petitioner has had some success in his field, the record does not demonstrate a sustained pattern of achievement and acclaim to place the petitioner at the top of his field.

On appeal, the petitioner observes that he received fellowship awards "year after year," thus establishing sustained success. As we have already observed, these fellowships are for students and for postdoctoral trainees, with established scientists automatically excluded from consideration. At most, these awards demonstrate that the petitioner is a highly regarded trainee.

The petitioner asserts that he has submitted letters from witnesses with no direct connection to him, who state that the petitioner's research findings are outstanding. The structure of the regulations (reflecting the statutory demand for "extensive documentation") gives greater weight to objective, independent documentation than to letters reflecting the opinions of witnesses whom the petitioner himself has selected. Objective evidence of extraordinary ability would, arguably, come into existence as a direct result of a given alien's acclaim, regardless of whether or not the alien seeks immigration benefits. Witness letters, on the other hand, exist not because the petitioner is widely known, but because the petitioner has solicited them. While the letters submitted are certainly not without weight, they cannot establish eligibility when the objective evidence of record does not likewise support such a finding. Also, witness references to "promise" and "potential" and other similar attestations regarding the petitioner's possible future achievements are speculation, rather than evidence of existing acclaim. The high expectations of these witnesses may well come to fruition at some future point in time, but the record as a whole does not indicate that the petitioner has already become one of the best-known figures in his field.

The petitioner stresses that he is responsible for "a 'DISCOVERY' rather than a mere finding" that is recognized "all over the world." The petitioner has submitted documentation to show that some scientific discoveries become the subject of newspaper articles or are otherwise singled out by the scientific community.

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[3]Dr. Tangri states that the petitioner "was one of twelve, out of 700 participants at the Symposium, to receive the Society's Travel Grant Award." This figure is demonstrably incorrect; as discussed above, Protein Society documentation shows that the petitioner was one of sixteen predoctoral recipients and one of 31 recipients overall.

The petitioner has not established this to be the case with his work. Citation alone is not a sign of special recognition; the petitioner's own published articles each contain dozens of cited references. By citing these articles, the petitioner is not presenting a litany of significant innovations; rather, he is providing due credit for the work of others upon which he has built. The record contains an article which contains 71 citations, two of which pertain to the petitioner's work. In another article in the record, the petitioner's work is the subject of one out of 70 citations. The petitioner has not shown that the citations of his work are qualitatively different from the 138 other citations in the same two articles; he has merely illustrated which of his specific findings led to the citations.

The record shows that the petitioner, while working towards completing his postdoctoral training, has earned the respect of his colleagues at Saint Louis University and some researchers elsewhere. Citation of the petitioner's work shows that other researchers find his work to be of value, and if this trend continues the petitioner will be able to point to a particularly influential body of work. The petitioner stands at the beginning of what could be a fruitful and illustrious career, but the claim that he is already at the top of his field is clearly premature.

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 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 indicates that the petitioner shows talent and promise in his field of research, but is not persuasive that the petitioner's achievements set him significantly above others (including established scientists) 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.