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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: EAC 00 012 53119 Office: Vermont Service Center Date: 25 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 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, Vermont 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 researcher in the Department of Radiology at the University of Pennsylvania. 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 received several fellowships and a Young Scientist Award from India's Council of Scientific and Industrial Research. The record shows that these fellowships and awards amounted to monthly stipends, supporting the petitioner's graduate studies. The record contains nothing to show that the petitioner received awards for past achievements in the field, as opposed to guarantees of funding for work which, at the time, had not yet been done. The stipends amount, in essence, to remuneration for the petitioner's ongoing research endeavors, and being paid for one's work is not an award for excellence.

The petitioner states that he "was recipient of **Young Researcher award from ICMC**," the International Cryogenic Materials Conference. The record shows that this award was a \$500 travel grant to defray the expenses associated with attending the conference. The petitioner later received a similar grant from another entity, after the petition had been filed. The petitioner has not established what national or international prestige attaches to such grants, nor has he otherwise shown how the travel grant compares to the highest awards and prizes in his field.

In response to a request for further evidence, the petitioner has asserted that his postdoctoral position at the University of Pennsylvania is, itself, an honor because of the prestige of the laboratory at which he has worked. To refer to temporary postdoctoral employment as a prize or award requires unacceptably broad definitions of those terms. The petitioner has not demonstrated that the very act of working as a postdoctoral researcher at a given laboratory earns national attention for a given researcher.

*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 claims that he satisfies this criterion through membership in the International Society for Magnetic Resonance in Medicine ("ISMRM"), but the record contains no evidence to show that ISMRM's membership criteria meet the above requirements.

In a subsequent submission, the petitioner submits a membership invitation from the American Association for the Advancement of Science ("AAAS") and membership information from the Osteoarthritis Research Society International ("OARSI"). The AAAS certificate bears the legend "Use this certificate until your permanent membership documents arrive. Valid ONLY for the next 60 days." For reasons unexplained, the petitioner has obscured the second sentence with correction fluid. The certificate appears to be a provisional document, contingent on the petitioner's submission of dues. There is no evidence that the petitioner was an AAAS member when he filed the petition.

Documents in the record show that the AAAS has "more than 138,000 members," and that "[a]nyone may join AAAS simply by paying membership dues." The record proves conclusively that AAAS membership does not require outstanding achievements of its members; it requires only payment of dues, which is not an outstanding achievement by any reasonable standard.

The OARSI invited the petitioner to join, in a letter dated July 31, 2000. Clearly, the petitioner was not an OARSI member when he filed the petition in October 1999. The petitioner submits some information about OARSI but nothing to show the association's membership requirements.

*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 "I have been a member of review committees to judge the research work of others in my related field. I have also been serving as a reviewer of scientific papers for publication in 'Journal of Pure & Applied Physics.'" The petitioner submits three letters to substantiate his claim. [REDACTED] editor-in-chief of the Journal of Pure and Applied Physics, states that the petitioner "has been a reviewer for this journal since 1994." In 1994, the petitioner was a doctoral student at Osmania University, where [REDACTED] is also a professor. The petitioner's work for the journal appears to stem from his existing close relationship with [REDACTED] rather than from any wider acclaim in the field.

Two other journals have since invited the petitioner to act as a peer reviewer, but the letters informing the petitioner of his nomination are dated months after the petition's filing date. There is no evidence that the petitioner had reviewed papers for these publications as of the filing date, and therefore this evidence cannot establish the petitioner's eligibility as of that 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.

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

The petitioner states that he has "made unique and outstanding contributions in the field of science in general and **condensed matter Physics** in particular. My research activity will definitely be helpful to provide the basic information regarding the mechanical properties of different types of superconductors" (emphasis in original). The petitioner states that his current project at the University of Pennsylvania could allow for noninvasive diagnosis of early-stage osteoarthritis using magnetic resonance imaging ("MRI"), which in turn could allow for earlier and thus more effective treatment. Regarding this project, the petitioner states "we developed a novel technique i.e. **interleaved <sup>1</sup>H and <sup>23</sup>Na imaging of articular cartilage during compression.**"

The petitioner submits several witness letters. Dr. Kenneth C. Goretta of Argonne National Laboratory states:

I have come to know about [the petitioner] mainly through his internationally recognized scientific publications. . . .

[The petitioner's] research focus has been on effects of porosity on superconducting properties. . . . Additionally, [the petitioner] has developed [a] number of empirical and theoretical models to predict the temperature dependence of elastic moduli (that is, the inherent stiffness) of these superconductors. This information is critical to design and implementation for all superconductor applications. . . . His work is extensively quoted by a number of scientists and is viewed to be unimpeachable.

Dr. Goretta states his belief that the petitioner "has demonstrated more productivity and evinces more promise than have the vast majority of researchers who have nominally similar qualifications and experience," but he does not state how he believes the petitioner compares to the most established figures in the field of endeavor. To qualify for this highly restrictive visa classification, the petitioner must be at the top not only of his peer group with "nominally similar qualifications and experience," but all workers in the field, including tenured professors, department heads, officials of national associations, and Nobel Prize winners.

Dr. Goretta refers several times to a waiver of the labor certification process, which is a reference to a different

immigrant visa classification than the one sought in this proceeding. These comments would appear to suggest that the letter was prepared for submission with another visa petition, seeking that classification, but on his Form I-140 petition the petitioner indicates that no other petition has been filed on his behalf.

[REDACTED] visiting research associate at the National High Magnetic Field Laboratory, states that the petitioner's contributions in the area of superconductors "are not only of extraordinary [sic] but also have widespread implications for science and technology." [REDACTED] states that the petitioner's work on early detection of osteoarthritis is "relevant and would be of major importance to US health care and American economy."

Other witnesses offer similar assertions, stating that the petitioner's study of superconductors and his later work with MRI detection of osteoarthritis has attracted significant attention. The witnesses all indicate that they have personally known the petitioner for some time, in many cases since 1991 when the petitioner was a student at Osmania University. The assertions regarding the petitioner's MRI work are worded in terms of future benefits expected to result from the petitioner's work, rather than ways in which the petitioner has already had a demonstrable influence.

The letters do not provide first-hand evidence that the petitioner has won significant recognition outside of his own circle of collaborators and mentors.

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

At the time of filing, the petitioner had written or co-written approximately sixteen articles and presentations that had already been published or presented; subsequent submissions show additional works. The petitioner asserts that other researchers have "extensively" cited his published work. As of the filing date, the petitioner identified a total of 15 citations of his articles (including several self-citations by the petitioner or his co-authors), but does not offer any evidence to establish that this citation rate ranks him among the most widely-cited scientists in his field. The petitioner's subsequent submission of three reprint requests does not establish that a greater demand exists for the petitioner's work than for that of almost everyone else in his field.

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

The petitioner has claimed that his scholarly presentations satisfy this criterion. Scientific conferences are not artistic exhibitions or showcases; presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience.

The director denied the petition, stating that the record establishes that the petitioner is an experienced and dedicated researcher, but it does not show that the petitioner has earned sustained national or international acclaim as a top researcher in his field.

On appeal, the petitioner maintains that various documents submitted previously suffice to establish extraordinary ability. We have addressed these documents already, above, and need not revisit them here because the petitioner offers no new arguments as to how the documents establish eligibility.

The petitioner submits various new documents that did not exist at the time he filed the petition, such as a review article in the Journal of Investigative Radiology that cites his work. Even if this evidence were persuasive evidence of extraordinary ability or sustained acclaim, which it does not appear to be, such evidence cannot retroactively establish eligibility as of the filing date. See Matter of Katigbak, supra.

The petitioner states that he was appointed to the editorial board of the Journal of Magnetic Resonance Imaging. The petitioner submits a "fax" message from the journal's editor-in-chief, requesting that the petitioner review a manuscript submitted for publication in the journal. There is no evidence that the petitioner is a member of the journal's editorial board, or that serving as a peer reviewer of a manuscript constitutes appointment to that board.

The petitioner claims, on appeal, to have satisfied a previously unclaimed criterion:

*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 asserts that he "was awarded the International Travel fellowship with high remuneration (\$4000)." A travel grant is not remuneration for services. According to the documents submitted on appeal (which do not specify the amount of the award), the grant covered half of the petitioner's airfare to travel to an international conference. The stated purpose of the grant was "in order to sharpen [the petitioner's] understanding of the research area." This last phrase suggests that the grant was viewed as

furthering the petitioner's professional training, rather than recognizing the petitioner's established leadership in the field.

The final new document submitted on appeal is a letter from [REDACTED] who supervises the petitioner's work at the University of Pennsylvania. [REDACTED] states that the petitioner's "unique talents and expertise far exceed those of the majority of his colleagues who are having similar qualifications and experience in the field." This standard falls well below the statutory and regulatory threshold for extraordinary ability. The petitioner must be at the top of his entire field, not merely that subset of his field with "similar qualifications and experience." [REDACTED] describes himself as "one of the leading experts in the field of nuclear magnetic resonance imaging (MRI) in the United States." He does not state that the petitioner is also one of the nation's leading experts, which he must be to qualify for this highly restrictive visa classification. The petitioner must be nationally or internationally acclaimed and at the top of his field; merely working under the authority of an acclaimed figure cannot suffice. While [REDACTED] is clearly impressed by the petitioner's talents, and regards the petitioner as one of his most outstanding researchers, there is no indication that [REDACTED] regards the petitioner as having a reputation approaching his own, nor does the record show that the petitioner has earned such a reputation at a national or international level.

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 in his field 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.