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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

[redacted]

File: WAC-00-075-52334 Office: California Service Center Date: 30 JAN 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (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 she 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 scientist. 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, she 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 director concluded that the petitioner's membership in the American Society for Reproductive Medicine (ASRM) did not serve to meet this criterion because while ASRM might have a prestigious reputation, the petitioner had not established that every member was at the top of her field. On appeal, counsel wrongly asserts that the director conceded that the organization required outstanding achievements of its members but simply refused to acknowledge that the petitioner's membership served to meet this criterion. As stated above, the director merely acknowledged that ASRM had a distinguished reputation. The director did not discuss the membership requirements for ASRM.

The petitioner submits a certificate verifying her active membership in ASRM. The record also includes a letter from Dottie Beatty, Membership Secretary for ASRM who indicates that active members are selected during a three-month ballot process. She also states:

> Members must demonstrate the high ethical principles of the medical profession, evince an interest in reproductive medicine and biology, have outstanding achievement in the field and adhere to the objectives of the Society.

The website information, however, which the petitioner also provides, confirms that active members must go through the ballot process but only states:

> Members must demonstrate the high ethical principles of the medical profession, evince an interest in reproductive medicine and biology, and adhere to the objectives of the Society.

The website makes no reference to "outstanding achievements." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Without a resolution of the actual requirements for ASRM, we cannot conclude that it requires outstanding achievements of its members. Moreover, we must give more weight to the official website and information which goes out to all prospective members than one letter written on behalf of an individual for a specific purpose. Finally, Ms. Beatty does not provide any elaboration of what ASRM considers "outstanding achievements." For example a certain number of publications or academic achievements might be considered "outstanding" by ASRM. Publication is inherent to the profession, however, and academic achievements are not achievements in a field of endeavor. The website further reflects that ASRM has 10,500 members, which does not indicate that the association is exclusive.

The record also includes evidence that the petitioner is a member of the European Association for

the Study of Diabetes (EASD). The membership letter, however, indicates that applicants for membership need only demonstrate "involvement" in clinical research on diabetes or a related topic.

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

Dr. S. Ristic, a clinical research physician at Eli Lilly and Company writes:

> [The petitioner] has recently completed a research project on the use of new insulin, Humalog, in gestational diabetes. This research was published in the leading scientific journal and got a lot of attention at several international congresses where [the petitioner] successfully presented it. Through her work on Humalog, [the petitioner] had many contacts with the research group of Eli Lilly Company.

Dr. Borislav Lazarevic, the petitioner's thesis mentor at the Belgrade University Clinic, writes:

> [The petitioner] has already made a large number of significant, original contributions over a wide range of topics, from metabolic alterations of pregnancy, to the breakthrough in nutritional medical management of insulin impaired or resistant states.

Dr. Lazarevic does not elaborate on the significance of these contributions. Professor Mezic, an engineering professor at University of California, Santa Barbara, indicates that he has collaborated with the petitioner for two years. He writes:

> [The petitioner] and I first started talking about the problem of prediction of birthweight of babies from heart rate variability measurements in the context of an experiment that she was already doing. She explained the concepts and results that she worked towards with perfect clarity. (I should point out that I have no formal education in the field of medicine). Then I suggested a couple of concepts from thermodynamics and [the petitioner] was a good keen listener with obvious understanding of the material which is principally a subject of engineering.
>
> . . .
>
> Another project that we work on is design of insulin pens. Again, the problem was explained to me by [the petitioner] in very clear terms. But beyond this, [the petitioner] had an eye for which problem would be interesting to me as an applied mathematician/engineer. This indicates her leadership abilities.
>
> [The petitioner's] contributions to the field of medicine are recognized at an international level as is witnessed by the fact that her publications appeared in top international journals.

As will be discussed below, publication in and of itself is inherent to the field of research and is not automatically evidence of sustained national or international acclaim. Lois Javanovic, Director and Chief Scientific Office at Sansum Medical Research Institute, the petitioner's employer, writes:

> [The petitioner] has singled-handedly [sic] proven that a new insulin analog, Lispro[,] is not only safe, but also emerges to be the best therapy for these high risk women. Our study is the first to investigate these new insulins in pregnancy.

As stated by the director, all of these letters are from collaborators. While such letters are important in detailing the petitioner's role in a given project, they cannot demonstrate that the petitioner has attained national or international acclaim for her contributions to her field. The director also noted that it is inherent in the field of research to publish original work, and that the publication of known information would be of little use.

On appeal counsel alleges that the director's conclusion about original work would disqualify Nobel Prize winners from this classification. First, a Nobel Prize is sufficient recognition by experts in the field of the researcher's contributions that it is considered a one-time achievement which would relieve the prize winner from meeting any other criteria. Second, a Nobel Prize winner's work has been recognized as much more than simply original. We agree with the director that the petitioner's field, like most science, is research-driven, and there would be little point in publishing research which did not add to the general pool of knowledge in the field. There are numerous scientific journals which publish hundreds of articles every year. By definition, each of these authors is not at the very top of her field. The petitioner must demonstrate that she has attained national or international acclaim based on her contributions.

Counsel also argues that the director failed to consider letters from independent experts. In response to the director's request for additional documentation, the petitioner submitted a letter from Dr. William Tamborlane, Professor and Chair of the Diabetes Research Group at Yale University. He writes:

> [The] American Journal of Perinatology published an outstanding findings [sic] that [the petitioner] has discovered evaluating different types meals [sic] and [the] postprandial glucose response to them. This findings [sic] will reduce the necessity of intensive insulin therapy in those patient[s] managed by [the] original meal composition suggested by [the petitioner].
>
> Her recent publication in the Diabetes Care is perceived as the publication of the highest scientific value. [The] Diabetes Care manuscript was the only randomized study in the world to assess the safety and efficacy of the new rapid action insulin treatment for the gestational diabetics and therefore, currently serves as the therapy guidelines.

This one letter, written with so many errors as to raise the possibility that it was written quite

carelessly, is insufficient evidence that the petitioner's contributions to her field have garnered her sustained or international acclaim. The record contains no testimonials from experts with no connection to the petitioner who testify that their own research projects have been influenced by the petitioner's contributions.

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

The record reflects that the petitioner has authored four published articles (the petitioner lists 17 on her resume), 10 abstracts (the petitioner lists 30 on her resume), and one poster. 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 record contains evidence that two of these articles have been cited, one by one independent researcher in a commentary and the other by two independent researchers. A total of three citations is not evidence that the petitioner has been widely cited. As such, her published articles are not evidence of sustained national acclaim.

On appeal, the petitioner submits newly published articles which cite the petitioner's work, including a mini-review which, based solely on the petitioner's work, concludes that Lispro is safe. These articles, however, were all published after the petition was filed, and cannot establish the petitioner's acclaim as of the date of filing.

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

In response to the director's request for additional documentation, counsel asserted that the petitioner had been hired as the clinical research manager for MiniMed. Counsel asserted that this position constituted a leading or critical role. As evidence of this job, the petitioner submitted a Form I-797 approval notice of an I-129 filed in behalf of the petitioner by MiniMed. This form does not indicate the petitioner's job title or responsibilities. The petitioner also submitted MiniMed's 1999 annual report. The company's own report is not objective evidence of the company's reputation. Regardless, the petitioner was not working for MiniMed at the time the petition was filed. Thus, her job there is not evidence of her eligibility at the time of filing.

The record includes several expert opinions regarding the petitioner's prominence in her field. The regulations, however, provide several objective criteria so that the Service need not rely on the inherently subjective opinions of experts. As discussed above, the evidence submitted to meet at

least three criteria does not demonstrate that the petitioner has attained national or international acclaim.

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 herself as a researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence indicates that the petitioner shows talent as a researcher, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.