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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: [Redacted] Office: Nebraska Service Center

Date: JUL 18 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: 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. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner is a research associate at Wayne State University ("WSU") School of Medicine, where he completed his doctorate in January 2000. The petitioner describes his work:

My research is involved in studying proteases, a large group of protein-digesting enzymes which play important roles in many pathological conditions. I focus on investigating the mechanisms by which proteases destroy the cornea during eye infections and on developing new approaches to better treatment of eye infections and prevention of blindness. I am also studying the regulation of proteases by cancer-stromal interactions on prostate cancer metastasis.

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, in 1991, China's Ministry of Public Health presented the petitioner with an Award for Advancement of Science and Technology. The petitioner presents no documentation from the Ministry to confirm or clarify the award. Dr. Daonian Lei of Beijing Medical University states:

The Award for Advancement of Science and Technology by the Ministry of Public Health is a national honor presented to the scientists who have made most significant contributions to biomedical science and technology every year. Only five major contributors or investigators could be chosen as the recipients for the award according to the regulations of the Ministry. The fact that [the petitioner] was one of the recipients for this award clearly showed his great achievement in this area.

The only contemporaneous documentation is a newspaper article entitled "1991 Annual Winning Projects of Award for Advancement of Science and Technology in Medicine and Pharmaceutics Granted by the Ministry of Public Health." The ambiguous wording of [redacted] letter suggests that "only five" researchers receive the award each year. The newspaper article, however, indicates that 120 projects received the award in 1991, with up to five scientists named for each of the 120 projects. Thus, the article shows that the petitioner is among between 500 and 600 researchers so named in 1991. The petitioner's project, "Pathological Study of Multiple Non-osteal Tissues with Chronic Fluorosis," is number 56 on the list of 120 projects. The petitioner's name is the last of five names listed (because, states [redacted] the names are in order of age). The article seems to indicate that the university, rather than the individual researchers, received the above award. If the petitioner himself received any kind of award or prize documentation from the Ministry, he has not submitted any copies or other evidence thereof. We note that, according to a biographical directory entry in the record, this prize was a "third prize." The number and significance of the prize levels is not revealed in the record.

Professor Jialiu Liu of Guiyang Medical College (where the petitioner worked from 1988 to 1992) states:

The Award for Advancement of Science and Technology by the Ministry of Public Health is the highest professional honor in the country for the researchers in basic and clinical medicine. This award is given to the scientists who have made most significant contribution [sic] to biomedical science and technology

every year. It is comparable to the National Medal of Science and the National Medal of Technology issued by the US president.

adds that “[n]ominees are chosen from hundreds of medical institutions and hospitals,” whereas the newspaper article indicates that hundreds of institutions actually received the award. If hundreds of institutions did not receive the award, then either the newspaper article or its partial translation in the record is incorrect; if that material is incorrect, then the petitioner has no reliable contemporaneous evidence of the award at all.

associate professor at WSU, states that the Award for Advancement of Science and Technology “is comparable to the National Medal of Science bestowed by the United States to outstanding scientists and engineers.” does not explain how he is sufficiently familiar with the Chinese award to offer a meaningful comparison between it and the National Medal of Science.¹ The fact that both awards are from government entities does not establish significant similarity between the awards. The petitioner has submitted nothing from the Ministry of Public Health to further establish the significance of the award or the criteria for selection of awardees.

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.

Three months before he filed the petition, the petitioner was accepted into Sigma Xi, The Scientific Research Society. The letter welcoming the beneficiary as a member states that Sigma Xi is “an organization designed to honor those who have made noteworthy contributions in research,” but it offers no specific information as to membership criteria or the member selection process, both of which must meet certain requirements spelled out in the above regulations.²

The petitioner submits a “form” letter (addressed to “Dear Member-Elect”) from the American Association for the Advancement of Science (“AAAS”). This letter states that AAAS’ “members include about 75 Nobel laureates,” but does not indicate that one must be of

¹ Since its inception in 1959, only 386 individuals have received the U.S. National Medal of Science. This figure includes recipients in the behavioral and social sciences; biological sciences; chemistry; engineering; and physical sciences, indicating that only a fraction of the 386 recipients won the award for medical or pharmaceutical research. The petitioner’s award is limited to medical and pharmaceutical research and therefore a smaller pool of eligible researchers. No more than 20 National Medals of Science have ever been awarded in a single year, whereas nearly 600 individuals were named in the Advancement of Science and Technology Awards in 1991 alone. Even taking into account population differences between the U.S. and China, the National Medal of Science is more exclusive by at least an order of magnitude than the petitioner’s award. Eighty of the 386 National Medal of Science recipients (more than one in five) have also won the Nobel Prize. The petitioner has not established the ratio of Nobel laureates (if any) among the winners of his prize. The preceding statistics, which the National Science Board has made freely available to the general public at www.nsf.gov/nsb/awards/nms/, do not support the assertion that the petitioner’s award is comparable to a National Medal of Science.

² The membership letter identifies Sigma Xi’s official web site, www.sigmaxi.org. According to this site, Sigma Xi has “nearly 75,000” members, and admits “more than 5,000 new members” every year, indicating that admission into this society is not a rare honor in the field.

comparable caliber to join the association.³ The letter also does not identify the petitioner as a member of the association; it merely invites the petitioner to join, which necessarily implies that the petitioner is not yet a member.

Because the petitioner has not submitted evidence of the membership requirements of Sigma Xi and the AAAS, much less shown that those requirements satisfy the regulation, he has not met 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 states that his "name is listed [in] Marquis Who's Who in America" and that he has been invited to submit biographical information for inclusion in Who's Who in Science and Engineering. The petitioner's listing is one of over a dozen on page 1353 of Volume 1 of a multi-volume series. The complete tome appears to include tens of thousands of such listings, and nothing in particular distinguishes the petitioner's listing from the others. The criteria for selection are not clear; Marquis promotional material indicates that "[o]ften individuals are considered on the basis of their professional positions alone."

The letter from the publisher of *Who's Who in Science and Engineering* makes it clear that the petitioner is merely under "consideration" for inclusion in an upcoming edition. There is no evidence that any volume including the petitioner has been published, and consideration for possible future inclusion is not evidence of published material, even setting aside the other issues attaching to reference directories such as the *Who's Who* series.

The petitioner asserts that "scientists over the world have asked for reprints of my publication on eye research." The petitioner does not explain how private requests for reprints amount to published materials in major media. The petitioner has not shown that he and his work have attracted major media attention.

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 asserts that he meets this criterion by virtue of his review of manuscripts submitted for publication in seven scholarly journals. The petitioner cites two witness letters regarding this claim.

Professor Rafael Fridman, the petitioner's doctoral thesis advisor at WSU, describes several of the journals in question and states "I have invited [the petitioner] to serve as a reviewer for several

³The membership invitation letter identifies AAAS' web site, www.aaas.org. According to this site, "[m]embership in AAAS is open to all individuals who support the goals and objectives of the Association and are willing to contribute to the achievement of those goals and objectives."

manuscripts that were sent to me for evaluation from the above-mentioned journals.” The very act of judging the work of others does not somehow cause national or international acclaim. Rather, judging is significant when it demonstrates that an individual’s reputation has reached the point where major entities solicit his or her expert opinion. Only then is work as a judge consistent with the regulatory definition of “extraordinary ability.”

It is plain from [redacted] letter that the publishers of the journals had invited Prof. Fridman, not the petitioner, to review the articles. Prof. Fridman’s personal decision to pass these articles along to the petitioner demonstrates his confidence in the petitioner’s abilities, but it does not indicate or imply that the publishers share his opinion or were even aware of the substitution before the reviews were prepared and submitted.

[redacted] a member of the petitioner’s doctoral dissertation committee at WSU and now the petitioner’s supervisor, lists four articles submitted to two journals, and states that the petitioner reviewed the manuscripts. In a separate letter, [redacted] states “[a]s a reviewer of several scientific journals, I often receive manuscripts for publication. I constantly ask [the petitioner] to review the manuscripts and to provide his opinions, which are incorporated into my comments. Thus, [the petitioner] has participated in the peer-review process that is so vital to scientific publications.” [redacted] like [redacted] is the designated reviewer of the manuscripts. Because [redacted] incorporates the petitioner’s opinions into his own comments, it is not entirely clear that the publishers are even aware of the petitioner’s input.

The record does not contain any evidence that anyone outside of Wayne State University has specifically selected the petitioner to review journal manuscripts. We do not doubt that Professors [redacted] had the utmost confidence in the petitioner’s abilities, but the actions of the faculty at the university where the petitioner works cannot reasonably be said to be *prima facie* evidence of sustained national or international acclaim. As [redacted] has observed, peer review is a “vital” and therefore routine stage of preparing scientific articles for publication. In the absence of evidence that only the elite are allowed to participate in peer review at all, we must examine the degree and extent of a given alien’s involvement in peer review. Formal appointment to the editorial board of a major international journal, for instance, carries greater weight than the preparation of an occasional anonymous peer review, especially when the review was initially requested from another researcher who, for whatever reason, made the unilateral decision to delegate the matter to someone else in the laboratory. [redacted] observe that they, themselves, are also grant reviewers for major national entities such as the National Institutes of Health; there is no indication that the petitioner has performed comparable work. Prof. Berk’s statement that he “expect[s]” the petitioner to assist him with his own grant review work does not indicate that the National Institutes of Health consider the petitioner to be an expert on a par with Prof. Berk.

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

The petitioner states:

Before coming to the United States . . . [m]y work focused on endemic fluorosis, a severe disease with chronic fluoride poisoning which affects many people. . . . Collaborating with my colleagues, I studied the mechanisms responsible for the pathological and biochemical changes in a variety of organs such as the brain, liver, kidney and thyroid. Our findings answered many relevant questions and made new criteria for early diagnosis of this disease. . . .

In the United States, I have been studying proteases and their inhibitors for their roles in prostate cancer metastasis and eye infections. The value of my research work as original discoveries is also recognized nationally and internationally.

The petitioner submits several letters discussing his work. Of the eight letters submitted, four are from members of the faculty of Wayne State University where the petitioner works. A fifth witness is from Guiyang Medical College, where the petitioner worked for four years. [REDACTED] of Beijing Medical University states "I first met [the petitioner] in 1989 and have been paying attention to his achievements in his research areas since then. [REDACTED] states that the petitioner's "findings . . . presented new concepts that significantly improved diagnostic criteria for fluorosis and also provided more solid basis for research in the area." [REDACTED] contends that the inclusion of the petitioner's name on the Award for Advancement of Science and Technology shows that the petitioner "had already reached the very top in this area" by 1991.

The petitioner observes that the remaining two witnesses are from outside the U.S. and China, and asserts that this demonstrates his international reputation. It is clear, however, that these witnesses do not know the petitioner by reputation alone. [REDACTED] president of the Cancer Research Foundation in Buenos Aires, Argentina, states that he has "known [the petitioner] for several years since he started working on a NIH supported project for prostate cancer research," and that the petitioner's "research findings have made significant contributions to the understanding of cellular and molecular mechanisms for cancer invasion and metastasis." [REDACTED] also asserts that the petitioner has presented novel findings regarding corneal inflammation.

[REDACTED] research director at the National Institute of Health and Medical Research in Paris, France, states that she and the petitioner "have . . . been conducting a collaborative work," and [REDACTED] has in fact co-authored an article with [REDACTED] of WSU. [REDACTED] states that the petitioner's work with the cornea "constitute[s] a significant contribution to fundamental issues in modern molecular pathology."

The witnesses clearly view the petitioner's work as highly significant in the field, but the record also shows that all of the witnesses, to some degree, have connections to the petitioner. These connections go back a decade or more in some cases. Without questioning the sincerity with which these witnesses discuss the importance of the petitioner's work, the record does not show that similar opinions are held at a national or international level by individuals with no such ties to the petitioner. If the petitioner's work is viewed as superior only by his supervisors, collaborators, and longtime associates, then it is difficult to conclude that he has earned national or international acclaim.

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

The petitioner observes that he has "authored more than 10 papers, and 8 meeting abstracts which were presented at national and international conferences." As with the petitioner's work as a judge, above, we must consider the petitioner's published work in the context of the regulatory definition of "extraordinary ability." Absent persuasive evidence that only those at the very top of the field are allowed to publish in the first place, we must consider whether the petitioner's published work has earned him sustained national or international acclaim.

Most of the petitioner's witnesses have provided *curricula vitae* in which they list their own publication records. The witnesses' publication histories are considerably more extensive than the petitioner's record. [REDACTED] for instance, has written 102 articles, 115 published abstracts, dozens of presentations and a number of books and book chapters. [REDACTED] has written 63 published articles as well as books, book chapters, and other materials. Thus, even within Wayne State University, the petitioner's record of "more than 10 papers, and 8 meeting abstracts" is not remarkable in terms of sheer quantity. The petitioner must establish that he is at the top of his entire field, regardless of his length of experience in that field, and therefore it is entirely appropriate to compare the petitioner to others who have had considerably more experience in the field.

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 has not demonstrated the field's reaction to his published work, for example by providing evidence that other researchers heavily cite his articles in their own published material. Such evidence would objectively establish that the petitioner's collaborators and associates are not the only ones who consider his work to be especially significant.

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

The petitioner states that he has played a "leading role in research on prostate cancer metastasis and eye infections in the laboratories of [REDACTED]. [REDACTED] lab is a leading laboratory in the field of cancer research in the United States. [REDACTED] lab is one of the biggest laboratories in the Department of Immunology and Microbiology [at] Wayne State University." The petitioner has not shown that he plays a critical role for WSU as a whole. His contention that the laboratories of [REDACTED] are, themselves, distinguished

establishments is not persuasive. The reputations of the laboratories appear to rest in large part on the individual reputations of the professors who lead them, and the petitioner has not shown, for instance, that [REDACTED] research group would enjoy collective distinction in [REDACTED] absence.

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 submits a letter from [REDACTED] offering the petitioner "a post-doctoral position. . . . The position will be for one year from the starting date and the salary will be \$30,000 plus fringes." The petitioner does not explain why, if he is one of the top researchers in the country (which he must be to qualify for this immigrant classification), he is offered a one-year postdoctoral training position rather than a tenure-track appointment.

The petitioner also submits an "Actual Wage Worksheet" from WSU, indicating that a particular postdoctoral fellow earns \$27,000 per year, whereas three research associates earn, respectively, \$28,013, \$30,000, and \$32,013. The petitioner states "[w]hen I started working as a research associate, my salary was . . . \$5,000 higher than the average and \$2,000 higher than the maximum of the prevailing wage." The petitioner asserts that all of the four researchers discussed above "started working with salary \$27,000 or lower," and therefore he is "being paid much higher salary" than other postdoctoral fellows and research associates at WSU. Some of the figures on which the petitioner relies are entirely unsubstantiated, or at best ambiguously implied, by the wage information provided with the petition.

The petitioner, above, measures his salary against the standard of first-year research associates at Wayne State University. The petitioner's field, however, is not limited to first-year research associates at WSU. The petitioner, to meet this criterion, must establish that he is among the highest-paid researchers in his particular field. That field includes first-year researchers, associate professors, tenured full professors, department heads, and senior researchers in private industry, not only at Wayne State University but across the country. Even among the four other researchers named, two of them earn salaries equal to or greater than the petitioner's own salary.

The director denied the petition, stating that the evidence submitted with the petition does not establish sustained acclaim or extraordinary ability. On appeal, the petitioner asserts that he has "provided sufficient and solid evidence" that he is eligible for the classification sought. The petitioner restates many arguments that we have already addressed, such as the assertion that the Award for Advancement of Science and Technology from China's Ministry of Public Health "is the highest professional honor in the country for the researchers in basic and clinical medicine and comparable to the National Medal of Science." An award presented to up to 600 researchers each year cannot realistically be compared to the much rarer honor of the National Medal of Science, and the absence of any documentation at all from the Ministry of Public Health leaves many questions about the award unanswered.

The petitioner asserts that his research "findings have led to new approaches to treatment of patients with prostate cancer and eye infections." The petitioner has submitted no direct

evidence to show that his findings have had a national influence in treating those disorders. The petitioner does not explain what documentation he has seen that would inform him of that level of influence, and if he has seen no such documentation then his claim of major influence would appear to be nothing more than a presumption. The petitioner has not shown, for instance, that major medical journals have reported on the growing use of the petitioner's findings in treating those diseases, or statistical information showing that cure rates or other indicia of successful treatment have increased significantly because of the petitioner's findings.

The petitioner argues that he has submitted letters from "renowned experts from different continents." Leaving aside the petitioner's ties with these witnesses (e.g. he has not shown that anyone in France, apart from his collaborator in Paris, considers him to be a top researcher), we note that many of these witnesses have, themselves, demonstrated records of accomplishment which dwarf the petitioner's own, both in terms of quantity and in terms of major recognition. While these individuals clearly hold high opinions of the petitioner's work, it is equally clear that the petitioner is in the early stages of his research career, and that as a research associate with a one-year appointment he is far from the top of the research hierarchy at Wayne State University, much less on a national or international level.

The petitioner has chosen to pursue an extremely restrictive immigrant classification, which demands that he show himself to be at the very top of his field. This standard requires comparison not only to other first-year researchers at WSU or other postdoctoral research associates with whom certain professors have worked, but with all researchers at all professional levels in his field throughout the United States if not the world, including Nobel laureates, members of the U.S. National Academy of Sciences, and other top figures in the field. Many of the petitioner's key claims are either unsupported or else rely on incorrect assumptions (such as the petitioner's assumption that he need compare his salary only with other first-year researchers at one single university).

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 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 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.