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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 22 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:

[Redacted]

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 sustained and the petition will be approved.

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 for that visa classification.

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).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed 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 scientific information analyst at the Ohio State University. The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a

major, internationally recognized award. The director acknowledged that the petitioner had met two of these criteria:

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

*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 submitted letters from highly-placed officials in Russian academia, who attest to the significance of the petitioner's contributions and his published work. U.S. witnesses have corroborated these assertions. Because the director did not contest this evidence, we need not discuss it here at length.

The petitioner had claimed to have met two other criteria, but the director found the petitioner's evidence to be insufficient in those areas. The other criteria claimed are:

*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 submits a photocopied membership certificate from the New York Academy of Sciences. The petitioner does not submit any documentation from the Academy to establish that it requires outstanding achievements of its members, rather than simple payment of dues. Absent such documentation, we cannot find that the petitioner has satisfied this criterion.

In response to a request by the director for additional information, counsel notes the petitioner's previous submission of documentation from the New York Academy of Sciences, and asserts that, according to the petitioner's published biography in *Who's Who in the World*, the petitioner is also a member of the Russian Foundation for Fundamental Research, the Russian Ministry of Science and Technology, and the Russian Biochemical Society. We note materials in the record which indicate that the individuals listed in *Who's Who* write their own biographies. Thus, the *Who's Who* listing is simply a published version of the petitioner's own claim rather than documentary evidence of such memberships. Also, the petitioner has submitted nothing from any of the named entities to establish that their membership requirements meet the wording of the regulation.

On appeal, counsel states "[t]he Director erred by failing to find that the petitioner is a member 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, based on the evidence provided." Counsel does not elaborate on his bare assertion that the petitioner has satisfied this requirement. Considering that the record does not contain any evidence at all regarding the membership requirements of the associations to which the petitioner belongs, we cannot concur with counsel's assertion that "the evidence provided" contradicts the director's finding.

*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 that two witness letters establish that he has judged the work of others. [REDACTED] of Moscow State University describes the duties of reviewers there:

Academic goals of the Scientific Councils existing at each Faculty are to review theses of scientists and to confer scientific degrees of Candidate of Sciences (equal to Ph.D.) and Doctor of Sciences (the highest scientific degree in Russia). The procedure of theses reviewing includes a report of a candidate, public speeches of Reviewers supplemented by written of the reviews [sic] and an open discussion followed by ballot. Reviewers are selected from the most proficient and well-known scientists who have made contributions of major importance to the field of science they work in. . . .

In October 1998 [the petitioner] has been approved as an Official Reviewer at the Scientific Council of Biological Faculty of the Moscow State University as he meets all the high criteria for a Reviewer of the Council.

[REDACTED] of the Institute of Protein Research at the Russian Academy of Sciences states that the Institute's Scientific Council has twice recommended the petitioner's appointment as a reviewer, as described above.

It is routine for a professor to evaluate the work of his or her own students. In this instance, however, the petitioner was not a faculty member of Moscow State University. Rather, he was brought in from outside the university specifically for the purpose of evaluating doctoral-level work. The above witnesses have specified that the reviewers are chosen based on their reputations in the scientific community. The petitioner has therefore satisfied this criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has met the necessary regulatory criteria to establish sustained national acclaim. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.