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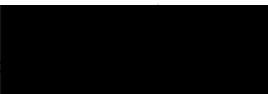


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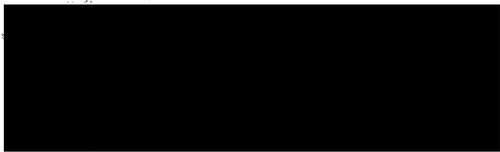
Date: JUL 30 2002

IN RE: Petitioner:
Beneficiary:



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:



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, [REDACTED] 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

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(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 assistant at Loma Linda University School of Medicine. 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 did not initially claim receipt of national or international prizes or awards. In response to a Service request for further evidence, however, counsel states that the petitioner "has received a 'Second Award for Advancement of Science and Technology' from Shanghai Science and Technology Commission." This award, from a local rather than national authority, does not appear to be a national award. The petitioner submits a letter from Professor [REDACTED] [REDACTED] Medical University, who asserts that the award "issued by Shanghai City is recognized as a lesser national significant award, just below the national significance." While this statement is grammatically imperfect, Prof. [REDACTED] appears to indicate that the award ranks just below a national award in terms of importance. It is not clear that the award is available nationally, as opposed to being limited to researchers in the Shanghai area.

Counsel notes that the petitioner "received a 1998 Annual Excellent Paper Prize . . . from Journal of China Cancer Research in January 2000." Documentation in the record indicates that the prize is limited to papers published in that journal. The petitioner's article was one of nine to receive the prize in 1998. The record does not establish the total number of articles that appeared in the journal during that year.

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.

Counsel asserts that the petitioner satisfies this criterion as a member of the American Association for Cancer Research ("AACR") and the American Association for the Advancement of Science ("AAAS"). Actual documentation from both associations shows that the petitioner is an associate member, rather than a full member, of AACR. The document from AAAS does not show that the petitioner is a member of that association. Instead, it shows that the petitioner has been invited to become a member. There is no evidence that the petitioner accepted the invitation, which is in the form of a computer-printed bulk mailing. The petitioner has not submitted any evidence to show that either AACR or AAAS requires outstanding achievement of its members, as counsel expressly and repeatedly claims.¹

¹ According to www.aacr.org, "Associate membership is open to graduate students, medical students and residents, and clinical and postdoctoral fellows who are enrolled in educational or training programs that could lead to careers in cancer research. Scientists in training who already have a substantial record of publications may wish to apply for Active membership." Pursuing ongoing training "that could lead to careers in cancer research" is not an outstanding achievement because every cancer researcher has such training. It would appear that AACR does not consider the petitioner's publication record to be "substantial" enough to qualify him for active membership. According to www.aaas.org, "[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." We cannot realistically find that supporting the goals of AAAS is an outstanding achievement, or that there is a panel of nationally or internationally recognized experts at AAAS, reviewing membership applications to see which applicants support those goals.

In subsequent communications, counsel no longer lists this criterion among those that the petitioner has purportedly satisfied. Therefore, the petitioner appears to have abandoned this particular claim.

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.

Counsel states that the petitioner's "research has been reported by major newspapers in China." Counsel cites articles from ██████████ *Daily*, *Health News* and *Liberation Daily*. Counsel asserts that all of these publications are among the most circulated newspapers in China. According to materials submitted by the petitioner, ██████████ *Daily* and *Liberation Daily* circulate in "East China" rather than the entire nation. None of the translations submitted with the petition include the petitioner's name. An article about a project in which the petitioner participated is not "about the alien," as required, if the alien is not even identified in the article. Such an article cannot contribute to an individual's acclaim.

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

Counsel states that the petitioner's "research received a wide attention [sic] from peers in his field" who have recommended approval of the petition. Counsel states that the petitioner "has developed the first animal model of breast cancer demonstrating how the production of a protein known as IGF-II permits the rapid growth of breast cancer tumors and allows their growth independent of estrogen." Counsel states that the petitioner's work "found a wide range of responses from America, China, Germany, Poland, Taiwan, Brazil, Japan, Croatia, France and India." Counsel refers to postcards and electronic mail messages from researchers in those countries. Many of the messages are requests for copies of the petitioner's work. These requests establish interest in the petitioner's area of research, but they do not establish that the international community believes the petitioner's research to be more important than other research in the field. The very fact that these individuals are requesting copies of the articles suggests that they have not read the articles yet – if they had them in their possession, then it would be unnecessary to request the articles from the petitioner. Other messages request samples of cell lines that the petitioner has developed. The petitioner has not shown that only the top researchers receive such requests, or at least a comparable volume of such requests.

The petitioner submits several witness letters discussing his work. Most of these letters are from faculty members at Shanghai Medical School, where the petitioner studied and worked from 1995 to 1999, and Loma Linda University School of Medicine where the petitioner has worked since 1999. Letters from these individuals cannot show first-hand that the petitioner's work is considered to be of major importance outside of the universities where the petitioner has worked and studied. Witnesses offer vague and general comments such as the assertion that "the significance of [the petitioner's] new discovery was widely acknowledged," but the record contains no direct evidence to show how widely, or by whom, the work was acknowledged in this way.

The only witness who works outside of the above two institutions is [REDACTED] an associate professor at Boston University School of Medicine. [REDACTED] does not specify how he is aware of the petitioner's work, but he knows that "many investigators have requested [the petitioner's] cell line for their metastatic studies, and [the petitioner] has applied for a patent on this cell line." [REDACTED] is also aware of manuscripts that the petitioner has submitted for publication, but which have not yet actually appeared in print. Given [REDACTED] knowledge of these details, it does not appear that he knows the petitioner by reputation alone. [REDACTED] states that the petitioner "was the first person [to have] successfully established a human liver cancer cell line with high metastatic potential," and that the petitioner "has developed and used a mouse model of human breast cancer to examine the effects of insulin-like growth factor II (IGF-II) on the growth and metastasis of breast cancer." [REDACTED] states that the petitioner's "findings will provide important information" but does not indicate what effect the findings have already had. Assertions regarding what will, in the future, result from the petitioner's work are necessarily speculative.

Counsel observes that the petitioner "has been offered the position as a postdoctoral fellow in the Department of Physiology/Pharmacology, [REDACTED] University correspondence shows that this is a one-year temporary position. Counsel does not explain why an individual who is purportedly at the very top of his field is being offered a temporary postdoctoral position instead of a tenured professorship.

Subsequently, after the director requested an advisory opinion from "recognized major . . . 'Medical Research' organizations," the petitioner has submitted a letter from Professor [REDACTED] chairman of the Liver Cancer Institute at Shanghai Medical University. [REDACTED] states that he has known the petitioner "for more than seven years when he worked at Shanghai Medical University, especially when he became a Ph.D. candidate in Oncology under my supervision in 1995." Clearly [REDACTED] familiarity with the petitioner's work does not reflect sustained national acclaim. We note also that [REDACTED] lists his own credentials:

I have edited books in the area of oncology and more than 400 professional journal papers. I had been president of Shanghai Medical University from 1987 to 1994. I am currently a member of Chinese Academy [of] Engineering (the highest academic honor in China). . . . I am a regional editor of [REDACTED]

[REDACTED] As chairman, I presided over the 1st, 2nd, 3rd and 4th International Symposia on Liver Cancer & Hepatitis. I have chaired or co-chaired the liver cancer session of 15th and 16th International Cancer Congress.

[REDACTED] expertise in his field is not in question. Indeed, his own accomplishments appear vastly to outweigh the petitioner's own. This disparity raises further questions as to how the petitioner, a temporary postdoctoral researcher with roughly ten published articles to his credit, can be considered one of the most accomplished, recognized or acclaimed figures in his field of endeavor. The body of [REDACTED] letter largely mirrors statements previously made on the petitioner's behalf.

Another letter submitted along with [REDACTED] letter is from Professor [REDACTED]. Like Prof. [REDACTED] has worked with the petitioner. Prof. [REDACTED] letter consists largely of general statements attesting to the excellence of the petitioner's work and the importance of his field of inquiry.

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

The petitioner submits copies of six articles and materials from professional conferences. Such materials would carry greater weight if accompanied by evidence that few researchers in the same field publish their work, or that the petitioner's published work has been more influential than most published articles in the field.

Beyond the regulatory criteria, counsel places emphasis on factors outside of the regulations, and which have no evident bearing on acclaim in the field. For example, counsel notes that the petitioner "is a holder of an advanced degree," hardly a rare achievement among researchers, and that the petitioner "has more than 3 years of experience in his field of endeavor," again an attribute that would appear to apply to the majority of his colleagues.

The director denied the petition, stating that the evidence submitted does not establish sustained acclaim or any significant reputation outside of the petitioner's own circle of close colleagues. The director stated that the petitioner's fellowships and student awards do not place him at the top of his entire field. The director noted the complete absence of evidence that the associations to which the petitioner belongs require outstanding achievement, and the director observed that the translated newspaper articles do not identify the petitioner. The director asserted that the petitioner's published work "has satisfied this criteri[on]."

On appeal, the petitioner submits a brief from counsel and supplementary exhibits pertaining to prior submissions. In the "Statement of the Facts" portion of the brief, counsel states "Petitioner submitted documents to prove . . . he is a member of professional organizations requiring outstanding achievements." The director has correctly found that the petitioner's evidence does not show that the organizations require outstanding achievements. Counsel cannot rebut this finding simply by making a contrary claim and labeling it as a "fact." The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Counsel, in the appellate brief, offers no other response to the director's finding with regard to the petitioner's memberships in associations.

Counsel states that the petitioner has been the subject of major media coverage. Regarding the previously submitted newspaper articles, counsel states "[t]he newspaper reports DID SPECIFY PETITIONER'S NAME AS THE MAIN ACCOMPLISHER of the outstanding research work. The translator made a terrible mistake to omit the name of the main accomplisher." The petitioner submits new translations of the articles. As we have noted above, two of the three newspapers are not circulated nationally and therefore cannot convey national acclaim. All three of the articles identify the petitioner as a student working under the supervision of professors at

the medical school, and all three articles discuss the same project. The petitioner has, thus, submitted one nationally published article featuring his name, which identifies him as a subordinate research student. This one article does not establish a pattern of sustained media attention, nor does it indicate that the media regards the petitioner as a leading figure in his field.

With regard to major accomplishments, counsel cites evidence already submitted and considered. Counsel does not address the director's finding that the petitioner has not shown that researchers outside of his own circle consider him to be a leader in his field, or the director's observation that the petitioner, as a temporary postdoctoral associate, appears to rank rather low in the scientific hierarchy.

Counsel similarly cites previous evidence when discussing the petitioner's awards. As we have already noted, one of those awards is admittedly a regional one, a step below a national award, and the petitioner has not established that his "Excellent Paper" award is among the most prestigious in China.

The evidence of record, as a whole, establishes at best a short burst of attention regarding one of the petitioner's research projects in 1998. Whatever recognition the petitioner received as a result of that work does not appear to have been sustained since the petitioner's arrival in the United States. His employment as a postdoctoral researcher, paid by a stipend, does not appear to be indicative of great stature in the field of endeavor. For the most part, counsel has answered the director's grounds for denial simply by maintaining that the petitioner has met several of the regulatory criteria. These assertions carry no weight, and in some instances are entirely groundless (such as the claim that AAAS requires outstanding achievements of its members). On balance, while the scientific community has not entirely ignored the petitioner's work, we cannot conclude that the petitioner has earned sustained national or international acclaim as one who is among the small percentage at the very top of his field.

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.