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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-01-129-53011 Office: California Service Center Date: JUN 17 2002

IN RE: Petitioner: [redacted]
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:

[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, 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 receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Initially, prior counsel asserted that the petitioner met this criterion because her work was supported with research grants from The [redacted] of Sweden, and [redacted] As evidence of these grants, the petitioner highlighted the notations on her articles which reflect that the work reported in the articles was supported by these grants.

In response to the director's request for evidence regarding the significance of these grants, the petitioner submitted a letter from her thesis supervisor [redacted] He asserts that the petitioner was chosen for the research team due to her multidisciplinary background. He notes that the grants were not awarded by the University, but from external sources and that [redacted] provides the largest funding of cancer research in Sweden.

The director, after providing a discussion of the one-time achievement standard, concluded that the petitioner had not established these grants were the highest honors available in her field. On appeal, counsel asserts that the research grants are prestigious and refers to two new expert letters which affirm this proposition.

The director's discussion regarding this criteria is confusing. This criterion is clearly a lesser standard than the one-time achievement standard, or there would be no need to require two additional criteria. Nevertheless, we concur that research grants cannot serve to meet this criterion.

Research grants simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously, the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant, even if competitive, is principally designed to fund future research, and not to honor or recognize past achievement. As such, the petitioner does not meet this criterion.

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 submitted evidence of membership in the following association[redacted] the [redacted] (part of th[redacted] of the [redacted] and [redacted]

The petitioner failed to submit evidence of the membership requirements for these associations, although the letter [redacted] suggests that it is open to anyone "interested in science and

technology." The director concluded that the petitioner had not demonstrated that these organizations require outstanding achievements and counsel does not challenge this conclusion on appeal. We concur with the director.

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.

While prior counsel never asserted that the petitioner met this criterion, the director noted that articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. As such, they cannot be considered published material about the petitioner. Counsel does not challenge this conclusion on appeal and we concur with the director.

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

Prior counsel, counsel and the director have all failed to address this criterion specifically, yet the record contains evidence which warrants discussion. Initially, the petitioner submitted two letters of reference [redacted] the petitioner's thesis supervisor at [redacted]

> [The petitioner] has been working in our research group since 1989 and her research was early focussed on the development and application of a fluorometric microculture cytotoxicity assa[redacted]with emphasis on the testing of solid tumor cells from patients. [redacted]hesis was successfully defended during spring 1997.
>
> [The petitioner] has during her Ph[.]D[.] study period developed into an innovative, energetic and competent post-doc and has acquired a great deal of theoretical as well as practical skills within the field of experimental pharmacology of anticancer drugs. [The petitioner] has been a major contributor to the development of the [redacted]a method which is now extensively used both in our preclinical and clinical oncology research projects. Her scientific work has been characterized by dedication, carefulness an[d] skill.

In a second letter submitted in response to the director's request for additional documentatio[redacted]

> Our research team has been involved in developing cell culture drug resistance testing to test a patient's own cancer cells in the laboratory to drugs that may be used to treat the patient's cancer. The idea is to identify which drugs are more likely to work and which are less likely to work. By avoiding the latter and choosing from among the former, the patient's probability of benefiting from the chemotherapy may be improved. [The petitioner's] background and insights proved invaluable for

the development of the [redacted] a type of cellculture drug resistance test. With [the petitioner's] contributions, we were able to adopt the [redacted] for chemosensitivity testing of tumor cells from patients with ovarian carcinoma. [redacted] proved to be a rapid and simple method that seems to report clinically relevant cytotoxic drug sensitivity data in ovarian carcinomas. This method is now extensively used both in preclinical and clinical oncology research projects. In the future, this method may contribute to optimizing chemotherapy by assisting in individualized drug selection and new drug development. [The petitioner] was an important member of our scientific staff. She was uniquely outstanding among the staff in her combination of technical knowhow and dedication to the project.

[redacted]

Medical Director of the [redacted] asserts that he met the petitioner on two trips to visit a collaborating scientist [redacted] 1995 and 1997. He further asserts that she visited his laboratory for a week in June 1998. [redacted] indicates that he was impressed with her "fine body of work." The majority of his letter, however, is devoted to the lack of similarly trained researchers in the United States. This argument is relevant only to labor certification cases and falls under the jurisdiction of the [redacted] It is not a consideration for the type of classification sought by the petitioner and does not reflect on the petitioner's personal national or international acclaim.

On appeal, counsel asserts that the petitioner was the lead scientist working on the development [redacted] and that this method is "now utilized in laboratories and hospitals throughout the world." Counsel further asserts that the petitioner is now submitting letters from recognized experts "who are clearly independent" of the petitioner.

The petitioner submitted letters [redacted] an associate professor of neurology at Pécs University where the petitioner obtained her initial medical degree [redacted] one of the petitioner's co-authors [redacted] another one of the petitioner's co-authors; and two co-workers at [redacted] These references are not independent of the petitioner as claimed by counsel.

[redacted] discusses the importance of testing cancer drugs on the patient's cancer cells prior to treatment. He does not claim to use [redacted] is own research. [redacted] asserts tha[redacted] has proven to be an "immense success" both for treatment of patients and the evaluation of new cancer drugs. [redacted] provides similar information. The record does not include letters from hospital administrators or the [redacted] has been widely adopted by hospitals. Even the letters from [redacted] he self-described "undisputed leader in the diagnostic testing and medical information business" do not indicate that they provid[redacted] services or that such services are widely in demand. Rather [redacted] a scientist with [redacted] merely asserts that the petitioner assisted with the company's development of [redacted] As the petitioner did not work

[redacted] until after the petition was filed, her work there cannot be considered evidence of her eligibility at the time of filing.

Despite counsel's claim to the contrary, the above letters are all from the petitioner's collaborators and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim.

Moreover, even the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

While a petitioner need not meet every criterion, it can be expected that a revolutionary test for determining the optimum cancer treatment being widely adopted in hospitals would generate some coverage in the major media. No such evidence is in the record. Even if such evidence were not primarily [redacted] and did not rise to level that would meet the "published materials about the alien" criterion, such evidence would immensely bolster the petitioner's claim to have developed a revolutionary diagnostic tool.

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

The petitioner submitted evidence that she has authored 20 published articles and four abstracts. The director concluded that the petitioner met this criterion.

The [redacted] 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 several of the petitioner's articles have been cited, with the most citations for one article numbering 33, only five of which are self-citations. The citations for this article, published in 1995, continue up until 2001. Some of the petitioner's other articles have been cited 26 and 27 times. This consistent record of moderate citation is minimally sufficient to support the director's finding that the petitioner meets this criterion.

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

The petitioner claims to have played a leading or critical role [redacted]. The director concluded that the petitioner had not adequately demonstrated that she met this criterion, noting that the petitioner was [redacted] candidate at the time. On appeal, counsel argues that the evidence establishes that the petitioner was a leading scientist for a cancer research team [redacted] and played a critical role in the developme[redacted] While [redacted] may have a distinguished reputation, we cannot conclude that every Ph.D. candidate researcher who plays an important role in a distinguished [redacted] laboratory plays a leading or critical role for th[redacted] a whole. Playing a leading role in a single project in a single laboratory is insufficient to meet this criterion. The petitioner's work [redacted] better addressed under the "contribution" criterion discussed above. In light of the above, we concur with the director that the petitioner does not meet this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Initially, the petitioner submitted an employment letter dated March 22, 1999, confirming her salary of $70,000. In response to the director's request for additional documentation, prior counsel asserted that the prevailing wage for an experienced medical scientist according to the Department of Labor is $51,501. The petitioner also submitted a letter from [redacted] offering the petitioner a position for $2115.39 bi-weekly. The letter notes that Scientists [redacted] are paid between $1576,80 and $2627.20 bi-weekly and that the petitioner's salary is "at the prevailing rate for peers with her level of experience."

The director concluded that the petitioner met this criterion. We do not find that the record supports this finding. Prior counsel provided no support for her assertion regarding the prevailing wage for "experienced" medical scientists. It is unknown, for example, how many years of experience prior counsel considered "experienced." Moreover, simply earning a salary above the prevailing wage is insufficient. The petitioner must earn a high salary as compared with the most experienced and high level scientists nationally in order to demonstrate that she is one of the very few at the top of her field.

In response to the director's request for additional documentation, prior counsel attempted to portray the letter fro[redacted] as evidence that the petitioner is highly paid given her lack of tenure [redacted] The letter, however, is dated after the date of filing and cannot establish the petitioner's eligibility at that time. Moreover, the petitioner must earn a high salary as compared with all others in her field, including those at the very top. An alien cannot meet this criterion by demonstrating that she is earning a high salary for those at her level. Finally, as quoted above, the letter itself states that the petitioner is being paid the prevailing rate for peers at her level of experience.

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.