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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.
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Washington, D.C. 20536

18 JUN 2002

File: EAC-01-224-57574 Office: Vermont Service Center Date:

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: 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, Vermont 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.

On appeal, the petitioner acknowledges that his references have reached a higher level of accomplishment in his field than he has. He notes that they have been practicing in the field for many more years than he has. He also requests that, if the evidence does not establish his eligibility for the classification sought, that he be considered for a lesser classification.

While the law and the regulations do not require a certain amount of time in one's field for this classification, an alien with less experience than many of the top experts in the field has a difficult burden. He must demonstrate that his acclaim in the field is comparable with the very few at the top of the field, including the most experienced experts in the field. Regarding the petitioner's request to amend the petition to seek a lesser classification, it is acknowledged that the director's request for additional documentation appears to indicate that he would have allowed the petitioner to amend the petition at that time. This office, however, serves a review function. On appeal, a petitioner cannot seek to have the evidence evaluated by this office under multiple classifications or even a single new classification not considered by the director in his underlying decision. As such, we will review the evidence of record as it pertains to the classification initially sought by the petitioner.

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.

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, 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 submitted a "Letter of Award" from the World Health Organization advising the petitioner of the approval of his application for a research training grant. The objectives of the training were "to learn techniques used for the elucidation of the molecular mechanism of erythrocyte invasion by Plasmodium Falciparum" at Rockefeller University.

A training grant cannot be considered a national or internationally recognized award that reflects national or international acclaim. A research grant is awarded based on anticipation of future results as opposed to rewarding past achievement. Moreover, the petitioner has not established that he competed with the top experts in the field for this training research grant. If the top experts in the field do not compete for an "award," it cannot be considered evidence that the awardee is one of the very few at the top of his field.

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 that he is an "associate member (trainee)" of the Canadian Society of Atherosclerosis Thrombosis and Vascular Biology (CSATVB). The petitioner did not submit any evidence of the membership requirements for this association. Regardless, the petitioner does not appear to be a full member of CSATVB but a trainee. Trainee membership, even in an exclusive organization, is not evidence that the member has national or international acclaim.

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 submitted a brief article about the petitioner's research with [REDACTED] the newsletter for the University of Toronto's Department of Laboratory Medicine and Pathobiology. School publications cannot be considered major media. The article asserts that the results of the petitioner's study were featured on CBC Newsworld. While the article further states that the television show pictured the petitioner in his laboratory, the petitioner has not established that the story was primarily about the petitioner or that CBC Newsworld is major media.

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

The petitioner submitted several reference letters initially and in response to the director's request for additional documentation. [REDACTED] senior research associate at Columbia University in whose laboratory the petitioner worked at Rockefeller University, writes that the petitioner is a serious and productive researcher with good initiative. She concludes that the petitioner became a "competent" researcher during his time at Rockefeller University and has applied his skills well since he has moved on. She does not identify any specific contribution of major significance.

[REDACTED] the petitioner's supervisor at the University of Toronto, writes:

[The petitioner's] research on the importance of smooth muscle cell interactions with collagen in the extracellular matrix has been very productive, and is of great potential for the understanding of atherosclerosis. He is currently studying the arterial response to injury in transgenic mice lacking certain types of collagen or collagen receptors. Information on the functions of these components should eventually lead to better treatment for atherosclerosis.

[The petitioner's] significant findings include the discovery that a novel collagen receptor, the discoidin domain receptor tyrosine kinase (DDR), is upregulated after injury, and functions to facilitate cell proliferation and migration. He has developed techniques to injure the arteries in mice lacking the DDR gene, and has shown a significant decrease [in] lesion formation in these mice. This work was published earlier this year in the Journal of Clinical Investigation, a very high impact publication. In earlier work, [the petitioner] discovered that the specialized type VIII collagen functions to stimulate smooth muscle cell migration which may contribute to lesion development in injured vessels. This work was published in the American Journal of Pathology in 2000. He has also published numerous abstracts and has presented his work at the annual meeting of Canadian Cardiovascular Society (1999), AGA (2000), and FASEB (Experimental Biology, 2001). In addition, we recently co-authored a review article for Trends in Cardiovascular

Medicine. His area of research is timely and cutting edge. He has helped to develop expertise within my lab group in the areas of molecular biology and gene transfection. I am very impressed with his ability to take on a problem and come up with the intellectual and technical resources to solve it. [The petitioner] has rapidly taken a leading role in my lab and contributes ideas and critical thinking to all of our projects.

[REDACTED] a colleague of [REDACTED] at the University of Toronto, writes:

[The petitioner's] research achievements demonstrate a remarkable career path that began with grass-roots efforts to eliminate malaria in rural China. The significance of his contributions is clearly evident from his award by the World Health Organization that enabled him to pursue advanced research studies abroad in North America. Wisely, [the petitioner] chose to learn molecular biology techniques at [REDACTED] 1992 as the field of molecular biology research was still in its infancy. With this expertise, he has made significant contributions to research relating to lung disease and coronary heart disease. [The petitioner] has contributed original research in discovering novel compounds that decrease the inflammatory processes associated with occupational lung disease. Most recently, [the petitioner's] study, "The discoidin domain receptor tyrosine kinase DDR1 in arterial wound repair[.]" was accorded additional recognition as a novel and important research finding by [REDACTED] Science Editor, of the top-tier medical research journal, *Journal of Clinical Investigation*

It can be argued 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. [REDACTED] former colleague of the petitioner's at the University of Toronto, writes:

[The petitioner] is a hard-working scientist who always can find a right method for his own projects and has provided several exciting original ideas for other groups during our journal club and lab meetings. His recent research results are highly significant, which demonstrate that a novel collagen receptor plays a key role in the formation of neointima after arterial injury by using gene knock-out technique.

[REDACTED] Director of Education for the Department of Laboratory Medicine and Pathobiology at the University of Toronto, chronicles the petitioner's career and provides general praise of the petitioner's abilities. He asserts that the petitioner has made important contributions to the laboratories where he has worked.

[REDACTED] a former collaborator of the petitioner's, provides similar information to that quoted above, asserting that the petitioner's articles are likely to be widely cited in the future. An expectation of future citations is not evidence that the petitioner's work is already recognized in the field as having made a contribution of major significance to the field.

[REDACTED] of the [REDACTED] Institute for Biomedical Research, a former collaborator of the petitioner's, asserts that the petitioner has exceptional micro-surgery skills and that very few scientists would "be equally well trained and knowledgeable to reach experimental results comparable to [the petitioner's] achievements" with arterial injury in vivo in knockout mice.

While the petitioner asserted in responses to the director's request for additional documentation that two of his reference letters were from independent experts, the above letters are all from the petitioner's collaborators, immediate colleagues, or high level faculty where the petitioner performs his research. 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, 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.

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 he has authored four published articles. 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 no evidence that independent experts have cited the petitioner's work. As stated above, the expectations of a collaborator that their work will be widely cited in the future is not evidence that the petitioner has already attained national acclaim.

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

The petitioner's supervisor claims that he has played a leading or critical role for her laboratory. While the University of Toronto may have a distinguished reputation, we cannot conclude that every post doctoral researcher or research associate who plays an important role in a distinguished University's laboratory plays a leading or critical role for the University as a whole.

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 biologist 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 indicates that the petitioner shows talent as a biologist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.