

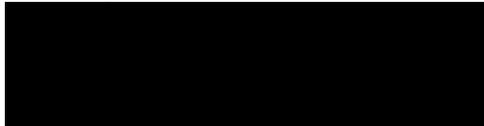


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U.S. Department of Justice
Immigration and Naturalization Service

Administrative data referred to
appears clearly unwarranted
in view of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-99-030-52114 Office: California Service Center Date: 12 MAR 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: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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

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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 when evaluating the evidence submitted for each criterion 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.

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.

In her cover letter for the petition, the petitioner claimed to have "served as the judge of others in the academic field." The record, however, only includes evidence of her position as a visiting professor, her published articles, and articles which cite her work. The petitioner fails to clarify how she has judged the work of others and the record does not support her claim. There is no evidence, for example, that the petitioner, based on her national acclaim, was selected to serve as a referee for a prestigious journal or to evaluate grant proposals for a foundation or government agency. If the petitioner is relying on her teaching activities, such "judging" of her students' work is inherent in the job of teaching and cannot demonstrate national acclaim. In light of the above, the petitioner has not demonstrated that she meets this criterion.

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

The petitioner submits 11 articles by independent researchers which cite her own work. The petitioner asserts that these articles are representative of the over 350 articles which cite her work. The petitioner, however, did not submit copies of pages from a citation index or a printout from a citation database confirming that her work has been cited 350 times. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The single letter submitted initially in support of the petition, beyond the confirmation of her appointment as a visiting professor, is from Professor Oliver Chadwick who jointly teaches a soil chemistry class with the petitioner. Professor Chadwick, a geologist, indicates that the petitioner provided the necessary chemistry expertise for the course. He fails to explain, however, how the petitioner has influenced the field of biogeochemistry beyond the University of California. On appeal, the petitioner submits letters from Dr. Ivan Berlin, an associate professor at Pitié-Salpêtrière University Hospital in Paris who collaborated with the petitioner from 1985 to 1996, and Professor Pierre Coriat, Chairman of the Department of Anesthesiology at the Pitié-Salpêtrière Hospital. Dr. Berlin states that the petitioner's laboratory was unique in France, "using radioenzymatic measurement for determination of plasma catecholamines which, to my knowledge, is the most sensitive and accurate method in this field." Dr. Berlin does not, however, indicate that the petitioner herself developed this method or that other laboratories have adopted her techniques. Professor Coriat states:

In my opinion, [the petitioner] is one of the foremost scientists in the field of the response of the sympathetic nervous system to critical situations such as anesthesia and organe [sic] failure. Between 1985 and 1997, I participated, as other staff members of the department and other physicians of the hospital, in the studies carried out by [the petitioner] to investigate the role of alpha and beta

adrenergic systems in blood pressure regulation in patients under anesthesia suffering from cardiovascular disease and in patients experiencing single or multi-organ failure admitted to [the] intensive care unit. I can attest that [the petitioner] was performing the highest quality clinical research. She is perfectly mastering very sophisticated biological techniques namely radio-enzymatic measurements.

Professor Coriat does not specify, however, what contributions resulted from the petitioner's research at his institution. He does not provide examples of other laboratories which have incorporated her findings into their own projects, of any treatments in clinical trials as a result of the petitioner's research, or any new medical techniques developed by the petitioner being adopted nationally or internationally.

Finally, the petitioner submits a letter from David J. Chapman, Dean of the Mathematical, Life and Physical Sciences at the University of California, Santa Barbara. While Professor Chapman praises the petitioner's ability to apply her skills as an interdisciplinary scientist, he fails to explain how the petitioner has contributed in a significant way to her field of biochemistry or even biogeochemistry beyond the University of California.

It is noted that all of the above letters are from the petitioner's collaborators and immediate colleagues. While such letters are useful in detailing a petitioner's role in various projects, they cannot by themselves establish national or international acclaim. By definition, national acclaim requires notoriety outside one's immediate circle of colleagues.

In light of the above, the petitioner has not demonstrated that she has made contributions to her field of such significance that she has sustained 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 submitted 10 published articles she claims are representative of the 44 articles she has authored. As stated above, the petitioner's personal assertion that she has authored 34 articles not in the record is insufficient. Without evidence, such as the front page of each article or a printout from a database listing all of her articles, the petitioner cannot establish the total number of articles she has authored. Regardless, 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 claims that 350 articles cite her work, but provides evidence of only 11. Eleven citations over thirty years is not evidence that her work is widely cited.

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 biochemist 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 biochemist, 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.