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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



File: SRC 99 272 53281 Office: Vermont Service Center Date: 19 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:
[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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

We note that the petitioner filed the petition with the Texas Service Center. For reasons not clear from the record, the petition was transferred to the Vermont Service Center before any apparent adjudicative action, and in this decision the term "the director" shall refer to the director of the Vermont Service Center, rather than the Texas Service Center.

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 he has sustained national or international acclaim at the very top level.

The petitioner seeks classification as an alien with extraordinary ability as a research associate in cardiovascular 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 submits evidence showing that he received various scholarships (some of which were loans) to offset the cost of his education. Counsel states that the petitioner "was one of only 119 candidates" to receive a [REDACTED] only eight of whom received the scholarship in furtherance of medical studies. Counsel states that the petitioner was "one of only approximately 125 applicants selected" for the [REDACTED]. The "119 candidates" figure for the Tata scholarship derives from a newspaper article in the record; there is no cited source for the "125 applicants" claim for the [REDACTED].

As evidence of the above, the petitioner submits a letter from the director of the endowment, who refers to the Tata scholarship as a "loan" of 35,000 Indian rupees. The [REDACTED] was an outright grant of 25,000 rupees. The letter does not state the number of applicants for either prize, nor does it state that the prizes recognize excellence in the field.

The above scholarships are, by nature, presented not to established researchers with active professional careers, but rather students pursuing further training and education. Graduate study is not a field of endeavor and therefore we cannot artificially restrict the petitioner's "field" to exclude all those researchers who have finished their education and therefore do not compete for graduate scholarships. Also, we are not persuaded that to obtain student loans is a rare mark of acclaim or extraordinary ability.

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.

In 1994, the petitioner became an affiliate member of the American College of Chest Physicians ("ACCP"). ACCP documentation in the record states:

Candidates applying for Affiliate Membership shall have completed a postgraduate medical or osteopathic residency, and must give evidence of intent to obtain certification in a cardiopulmonary or closely related specialty . . . and to pursue a career in cardiovascular or pulmonary medicine or surgery, or one of the closely related specialties. Candidates applying for Affiliate Membership shall, at the time of candidacy, be enrolled in a formal training program in a chest specialty in the United States . . . or . . . in Canada.

The above requirements do not constitute outstanding achievements. Indeed, the requirement that candidates "shall, at the time of candidacy, be enrolled in a formal training program" indicates that established physicians are ineligible. The ACCP requirements further indicate that Affiliate Membership is temporary, to last no longer than "24 months postcompletion of his/her training."

Counsel states that the petitioner is also a member of the College of Physicians and Surgeons of India. The record contains no evidence to corroborate this claim or to establish that organization's membership requirements.

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 "was invited to participate in the News Conference during the 43rd Annual Scientific Session in Atlanta," and that the petitioner was interviewed during that conference. Counsel does not state what published materials, if any, resulted from this press conference and interview, nor does the record contain such materials. An interview does not constitute "published materials" nor does it prove that such materials exist.

Counsel states that the petitioner "was also mentioned in a recent book by eminent [REDACTED]

The book, however, (entitled Triggering of Acute Coronary Syndromes: Implications for Prevention) is said to have included a chapter by the petitioner; [REDACTED] wrote the foreword, and mentioned the petitioner's chapter in the context of discussing the context of the book. The foreword, as a whole, is not devoted exclusively or primarily to the petitioner's work. In any event, the record at this time does not appear to contain any excerpt from this book. In later correspondence, the petitioner's curriculum vitae (which does list a different book chapter) does not list a chapter in any book written or edited by [REDACTED]

In 1991, All India Radio interviewed the petitioner for 15 minutes on the topic of rheumatism. The petitioner claims to have earned sustained acclaim through his cardiovascular studies; rheumatism is

a disorder of the joints. This interview, like a handful of articles that the petitioner wrote about arthritis in the early 1990s, does not show that the petitioner has earned acclaim for his cardiovascular work.

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

The petitioner has submitted several witness letters. [REDACTED] Lipinska, director of the research laboratory at the Institute for Prevention of Cardiovascular Disease at Beth Israel Deaconess Medical Center ("BIDMC"), Harvard Medical School, states:

[The petitioner] has made important contributions to the study of coronary artery disease, especially to our understanding of hemostatic factors in the etiology of coronary artery disease. He has personally designed, directed and reported several major studies in this area. He has also done pioneering work [in] the field of echocardiography and in patients having atrial septal aneurysms.

[The petitioner] is the first scientist to show the beneficial effect of moderate doses of alcohol on hemostatic parameters and clotting. . . . By demonstrating this effect, he discovered an important mechanism of the beneficial effect of moderate doses of alcohol. He also convincingly demonstrated that this beneficial effect . . . was lost when the alcohol consumption increased. . . .

[The petitioner] has also done pioneering work in the field of echocardiography. He, along with [REDACTED] was the first one to show the relatively benign nature of atrial septal aneurysm. They also suggested aspirin as a therapy for prevention of possible strokes in these patients. *Aspirin Update*, a pharmaceutical periodical, reported this as an important finding.

Other BIDMC and Harvard officials describe the above projects and others. [REDACTED] the petitioner's supervisor and associate director of Noninvasive Cardiology at BIDMC, states that the petitioner's "publications are a reference source for physicians around the world."

[REDACTED] director of the [REDACTED] at the University of Kentucky, states that the petitioner's "work in the area of coronary artery disease has gained him both national and international recognition through publications." Counsel asserts that [REDACTED] won the [REDACTED] in 1985" but does not explain how this is relevant to [REDACTED] professional opinion

as a cardiologist.¹ Before moving to Kentucky, [REDACTED] was at Harvard University (where the BIDMC is based), where he co-authored several research papers with a number of the BIDMC researchers and Harvard faculty members who have offered letters on the petitioner's behalf (such as, for example, [REDACTED]). These published papers appeared in 1995 and 1996; the petitioner worked with many of the same people from 1992 to 1995. Therefore, while we do not challenge [REDACTED] reputation or professional competence, his letter on the petitioner's behalf does not establish that the petitioner has earned significant acclaim outside of Harvard and the BIDMC.

Many of the witness letters indeed offer high praise for the petitioner's achievements, but the witnesses all have demonstrable connections with the petitioner or the institutions where he has worked. Thus, the letters are not first-hand evidence of a national reputation that transcends those researchers who are closely connected with his work.

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

The record establishes the petitioner's authorship of several articles in respected journals as well as conference presentations. To establish the influence of these articles, the petitioner submits printouts from citation indices. The petitioner has documented a total of six citations of his published work, four of which are self-citations by the petitioner, leaving two independent citations. The indices indicate that several of the petitioner's articles have not been cited at all.

The petitioner also wrote popular (non-scholarly) articles about rheumatoid arthritis for 2001 magazine in 1991 and coronary angioplasty for an unidentified publication in 1990.

The petitioner has clearly authored scholarly articles in major trade publications, but the weight of this evidence is diminished by the lack of direct evidence that these articles have influenced the field. Witness statements to the effect that researchers rely on these publications cannot suffice to establish such influence, when the petitioner's own evidence from citation indices fails to support those claims.

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

¹The 1985 Nobel Peace Prize was, in fact, awarded to International Physicians for the Prevention of Nuclear War Inc., an organization co-founded by Dr. Muller and six other physicians.

Counsel states that the petitioner "played a critical role in the activities of the Institute for the Prevention of Cardiovascular Disease, an affiliate of the Harvard Medical School." While the petitioner led individual studies, as shown by his primary authorship of some research papers, there is no evidence that the petitioner held a leading role for the institute as a whole, or for Harvard Medical School. A particular project within the institute is not, itself, a distinguished establishment.

[REDACTED] identified above, states that the petitioner "was actively involved in the performance of assays of hemostatic parameters from the Framingham Heart Study. This is one of the most prestigious and successful studies that the National Institute of Health has now supported for 50 years." Counsel asserts that this letter shows the petitioner's critical role in the Framingham Heart Study. The record contains no evidence from leaders of the study (which has no apparent affiliation with Harvard University) to show that the petitioner made contributions any more significant than those of countless researchers who have been involved in the study over the past half century. The petitioner's use of data from a long-established study does not establish that the petitioner was a leading or critical figure in that study.

The director instructed the petitioner to submit further evidence to establish eligibility. The director made several specific observations about the petitioner's initial evidence, such as the assertion that student awards do not place the petitioner at the top of the field, and that the letters are from the petitioner's mentors and collaborators.

In response, counsel first discusses the medical and emotional toll of cardiovascular disease. The Service does not dispute that this ailment is one of the major health problems confronting medical science today, but this fact has nothing to do with whether or not the petitioner has earned sustained national or international acclaim for his work in the field.

Counsel, discussing the petitioner's academic scholarships, notes that the Tata scholarship is not limited to students at a particular school, but is rather open to students from all over India. Counsel observes that India's population, at the time the petitioner won the scholarship, was over 846 million. This figure is misleadingly high because there were not 846 million applicants for the scholarship. Only a fraction of India's population was in the petitioner's age group; only a fraction of that group was actively pursuing a graduate degree; and only a small fraction of that group was studying in the petitioner's field. In any event, the Tata scholarship is merely a loan, and even then it is inherently unavailable to India's most established and accomplished researchers; to qualify for it, one's professional training must still be incomplete.

Counsel cites the director's use of the term "research assistant," which counsel deems to be demeaning of the petitioner's abilities. Counsel states that the petitioner's "original J-1 petition, as approved by [the] Service, designates the Petitioner as a 'Research Fellow.'" The J-1 petition documentation is not in the record. The petitioner himself used the term "research associate" on the relevant Form I-140 visa petition. In any event, counsel has not established that the director's use of the word "assistant" instead of "fellow" prevented the immediate approval of the petition.

Counsel uses similar logic to condemn the director's assertion that the petitioner's work has appeared in "several" journals; counsel contends that fourteen journals have carried the petitioner's articles, and fourteen is more than "several." Counsel makes this argument with the evident presumption that, had the director used a word other than "several," the petition would more likely have been approved.

Also in regard to the petitioner's published and presented work, counsel discusses the various journals that have carried the petitioner's articles, and the means by which one may gauge an article's importance. Among these factors, counsel fails even to mention third-party citations even though such citations offer direct proof that other researchers have relied upon a given researcher's work, and the most heavily cited articles often earn extra recognition for that very reason. With regard to the reputations of the journals printing the petitioner's work, we cannot ignore that a number of the petitioner's frequent co-authors are, themselves, respected and established figures in the field.

Counsel repeats the earlier argument that the petitioner has had a major impact through the Framingham Heart Study, but the record contains nothing from any official of that study to affirm that the study's principals consider the petitioner's work to have been of special significance. There is no evidence that the petitioner directly participated in this study; rather, he appears to have made measurements using data obtained for the study. Thus, while the study furthered the petitioner's research, we have no direct evidence that the petitioner's work had any influence on the study.

In response to the director's finding that the petitioner had not won major prizes, counsel states that, while the petitioner's "recognition may not have taken the form of a plaque or trophy," he "as received a prize that is much more coveted--a purse" in the form of research grants. The petitioner has not shown that only the very top researchers receive grant funding. Rather, grants appear to be a major source of research funding. Also, such grants are used to finance research which has not begun or is still underway; they do not constitute recognition for excellence in prior research.

The director noted that the petitioner had not commanded particularly high remuneration for his work, as might be expected

of someone at the top of his field. Counsel asserts that this is the case only because the petitioner had to return to India to fulfill his foreign residency requirement as a J-1 exchange visitor. This argument is seriously weakened by prior claims to the effect that the petitioner is also nationally acclaimed in India; it does not explain why, after returning to India, the petitioner does not appear to have commanded a higher salary than other researchers in India. Also, the fact that the petitioner voluntarily agreed to a two-year foreign residency requirement as a condition of a nonimmigrant visa does not relieve him of standard evidentiary requirements, or compel the Service to accept that he would have been highly paid by now had the Service waived that requirement.

The petitioner submits a copy of an article from Aspirin Research Update, apparently the same article which [REDACTED] had mentioned as appearing in "Aspirin Update." The initial submission had referred to this article but it was not submitted at that time. The article itself, initially promoted as published material about the alien, does not mention the petitioner by name at all. His name appears only in a bibliographic citation at the end of the article. This article, therefore, is not "about the alien" in any meaningful sense, nor does it imply that the petitioner played a major role in the findings reported in the article.

The petitioner submits additional witness letters, mostly from collaborators and witnesses in the Boston area. Several witnesses state that the petitioner's "publications have . . . been extensively quoted in the scientific literature," but the record contains no first-hand evidence to support this claim. The citation indices submitted by the petitioner indicate that some of the petitioner's articles have never been cited, and that all but two of the documented citations were made by the petitioner himself. While self-citation of one's prior work is common and accepted practice, it is not evidence of acclaim or widespread influence. A number of the newly-submitted letters, while not identical, share noticeable similarities.

While the regulations allow only a one-time response to a request for further evidence, counsel subsequently supplemented the record with a copy of a published article co-written by the petitioner and (among others) [REDACTED]. Counsel states that the article shows that the petitioner "satisfies all requirements . . . that must be considered when evaluating a request for a national interest waiver." The national interest waiver (and a precedent decision cited by counsel) apply to a different visa classification that has no bearing on the petition at hand.

The director denied the petition, stating that the petitioner is an accomplished physician and researcher but that the evidence of record does not establish national or international acclaim or place him at the top of his field.

On appeal, the petitioner repeats and modifies several prior claims. He states that he was one of only 125 winners of a scholarship from the J.N. Tata endowment (a figure which differs slightly from the 119 figure provided earlier), and that he was "the only one of these 125 to get the [redacted] Scholarship." The petitioner offers no corroboration for these claims, which differ from counsel's earlier claims.

The petitioner claims that the director "does concede that I satisfy" the criterion pertaining to memberships in associations. The director, however, made no such concession. The director stated that although the petitioner's "membership confirms your high level of competence and expertise, it is not an honor that clearly distinguishes you from your peers."

The petitioner contends that he has been the subject of major media coverage, between the above-mentioned All India Radio interview in 1991 and an article in a March 1994 newsletter which reported the petitioner's presentation at a professional conference. The petitioner claims that the newsletter has a circulation of 32,500 copies but he neither supports this claim nor establishes that this circulation figure is especially high in the field. The petitioner has not established a sustained pattern of media coverage, or that he has received more such coverage than almost anyone else in his field.

The petitioner asserts on appeal that he has submitted letters from impartial sources "who have no connection with my work." As one example, the petitioner names Dr. Lipinska, who stated "I have known [the petitioner] since 1992 when he came to our institute as a research fellow." The petitioner does not explain how the director of the laboratory where he worked has "no connection with [his] work" there.

The petitioner's other example is [redacted] a professor at the University of Oklahoma, where the petitioner was a research fellow in 1995-1996. The record contains a published paper co-authored by the petitioner and [redacted]. This proven collaboration flatly contradicts the petitioner's claim that [redacted] has "no connection with [his] work," and casts doubt on the credibility of the petitioner's many unsubstantiated claims. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner notes that he has written a book chapter, and he contends that "[i]t is only the authorities in the field that write books or chapters in the book." The petitioner adds that Dr.

Braunwald states, in his foreword, that "the authors of this book are the leading experts in their field." As we noted above, the record does not contain [REDACTED] foreword. The petitioner has documented only one book chapter in the record, in a book not written or edited by [REDACTED] and the petitioner has submitted only a fragment of the book's table of contents which does not identify the author of the foreword.

The petitioner maintains that he has played a leading or critical role for Harvard Medical School, Oklahoma University, and the National Institutes of Health. In the first two instances, the petitioner led specific projects but there is no indication that he exercised control over the schools as a whole or that his work was any more important school-wide than that of other project leaders. Regarding the National Institutes of Health (which orchestrated the Framingham Heart Study), there is no evidence that the petitioner has done anything on behalf of that entity. His involvement with the Framingham Heart Study appears to be limited to analyzing data which other researchers had obtained as part of that study.

The petitioner claims on appeal to have satisfied previously unclaimed 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.

The petitioner states that he chaired a symposium and moderated a seminar at a conference in 2001. The petitioner offers no supporting evidence, and his work in 2001 cannot establish his eligibility for a November 1999 filing date. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner contends that his participation in scientific conferences meets this criterion. Scientific conferences, however, are not artistic exhibitions or showcases. Presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience.

The petitioner, on appeal, repeats counsel's prior argument that he would have been in a position to earn a high salary, but for the foreign residency requirement attaching to his J-1 nonimmigrant visa. The petitioner does not explain how his former nonimmigrant status in the United States would prevent him from earning, in his native India, a salary that is high by Indian standards.

The petitioner left the United States following the completion of his work at Harvard and the University of Oklahoma. His date of departure appears to have been in the summer of 1996; he claims no work in the U.S. after that date. He filed this immigrant visa petition in November 1999. The record is virtually silent as to the petitioner's achievements during the more than three years between the petitioner's departure from the U.S. and the filing of the petition. Therefore, even if we were to find that the petitioner did achieve some level of acclaim in the United States up until mid-1996, there is no indication that the petitioner had sustained that acclaim, in the U.S., India, or elsewhere, through the late 1999 filing of the petition.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a cardiovascular 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 indicates that the petitioner has participated in important studies at prestigious institutions, but 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.