

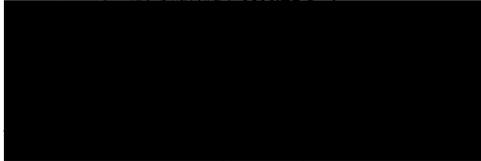


BA

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: [Redacted] Office: Nebraska Service Center

Date: MAY 02 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:



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

Counsel states that the petitioner "is one of the most respected dermatologists and venereologists in his country," i.e. the United Arab Emirates ("UAE"). 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 record contains a certificate from "the Cultural and Scientific Association," which acknowledges the petitioner's "participation in the best research on THE UAE (APPLIED SCIENTIFIC RESEARCHES) and the winning of THE FIRST POSITION on the research of DERMATOLOGICAL DISEASES in the UAE." The significance of this certificate is not clear. The petitioner did not originally claim to have won any national or international awards, and the certificate is not among the documents shown on the evidence list in the record.

Also omitted from the evidence list is documentation showing that the petitioner won Dermatology Photographic Awards in 1995 and 1996 from Leo Pharmaceutical Products. As above, the petitioner does not establish the national or international significance of this award.

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 asserts that he satisfies this criterion through his membership in nine associations. The petitioner places special emphasis on three of the associations: the American Academy of Dermatology ("AAD"), the New York Academy of Sciences ("NYAS"), and the International Society of Dermatology ("ISD"). The petitioner has submitted no evidence that any of these associations require outstanding achievements as a condition of membership. The petitioner's unsupported assertion that "admission to them clearly satisfies this prong of the test" cannot take the place of such evidence.¹ Therefore, the petitioner has failed to meet this criterion.

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.

¹ The membership requirements of the three named associations are readily available to the general public over the Internet. Review of these associations' official web sites indicates that membership is not, in fact, contingent on outstanding achievement. The petitioner is a nonresident fellow of the AAD, the bylaws for which (www.aad.org/bylaws.html, article III, section 2b) state "[a]ny dermatologist in good standing as a teacher or in research work or with three years of full-time experience in the field of dermatology and who resides in any country other than the United States of America or Canada shall be eligible to be a Non-resident Fellow." NYAS membership is "[o]pen to students and to all active professional scientists, physicians, and other individuals who share the Academy's interests" (www.nyas.org/about/benefits.html). "Any dermatologist, resident, medical student, fellow, or scientist who is interested in understanding skin diseases in various parts of the world and how to help patients suffering from these illnesses can join ISD" (www.intsocdermatol.org/membership.html). It is not an outstanding achievement to work as a dermatologist, to accumulate three years of experience in that field, or to maintain "good standing" in one's profession.

The petitioner states that, from 1997 to 1999, he "served as a co-interviewer for the [UAE] Ministry of Health to interview licensing applicants for prospective dermatologists." The record shows that the petitioner and one other dermatologist interviewed 12 candidates in December 1996, five candidates in December 1998, and 11 more in May 1999. The petitioner and his partner then determined whether each individual candidate was fit or unfit to practice dermatology. The petitioner was also the consultant dermatologist on the Referees Committee for Health magazine, published by the UAE Ministry of Health, and he also participated as a judge in the Cultural and Scientific Association's 1994 competition to determine the "Best Research in Applied Scientific Studies."

The petitioner claims to have "judged the Al-Owais competition for studies and innovation, and evaluated the article 'The Environmental and Psychological Factors on Allergic Diseases in the Country'" but the record contains nothing to support these claims.

While the evidence varies in significance, overall the documentation submitted is sufficient to establish that the petitioner has acted as a judge of the work of others at a nationally significant level.

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

The petitioner has written over 20 published articles as well as conference presentations. The record contains no independent evidence to establish which of the petitioner's publications, if any, have appeared in major national or international publications. The record also fails to establish the extent to which the petitioner's published and presented work has gained the attention not only of editors and publishers but practitioners in the field at large.

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

Counsel claims that the petitioner's presentations at international conferences satisfy this criterion. Scientific conferences 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.

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

The petitioner has served as head of the Department of Dermatology at Mafraq Hospital, Abu Dhabi, since 1988, and in 1997, he was appointed to that hospital's eight-member Drug Committee, which, he states, was "charged with the duty to evaluate the use and safety of proposed new drugs in the UAE." The record contains no official documentation to confirm the nature of the Drug Committee's role.

Counsel asserts that the petitioner further satisfies this criterion through his previously mentioned role "as one of only two evaluators empowered to determine whether candidates are fit or unfit to practice medicine in his country." Given that all doctors must be licensed, and that someone must render a decision on every licensing application, we are not persuaded that the individuals rendering these decisions perform a leading or critical, rather than a routine, role.

Beyond the above criteria, the petitioner states that he has also chaired a number of seminars since 1989. The petitioner acknowledges that this work does not pertain to any of the regulatory criteria, but contends that nevertheless it establishes his stature in the field. Most of these events took place under the sponsorship of pharmaceutical companies.

The petitioner also submits several letters. These letters, dated several years before the filing of the petition, amount to little more than letters of reference, verifying the petitioner's employment and training and attesting to his professional competence. While the writers of these letters clearly hold high opinions of the petitioner's talents as a dermatologist, the letters do not establish that the petitioner is acclaimed as an expert at the very top of the field of dermatology. Also, because these individuals have worked directly with the petitioner, their statements cannot establish first-hand that the petitioner has earned a reputation beyond his own circle of colleagues, mentors and supervisors.

The director instructed the petitioner to submit additional evidence, stating that the initial submission did not establish sustained acclaim or extraordinary ability. The director informed the petitioner that he "must submit all of the evidence at one time. Submission of only part of the evidence requested will be considered a request for a decision based upon the record." In response, counsel argues that the petitioner's previous submission is sufficient to establish eligibility. Counsel also contends that the petitioner "is *not* required to show that he possesses extraordinary ability in each [of the] individual criteria" (emphasis in original). Nevertheless, the evidence must be of a caliber consistent with sustained national or international acclaim. Evidence that nominally falls under one of the criteria may not demonstrate such acclaim.

To offer a hypothetical example, one criterion pertains to published material about the alien with regard to the alien's work. If a physician is found liable for negligence or malpractice in a highly-publicized malpractice lawsuit, media coverage of the trial and verdict which described the plaintiff's claims would constitute published material about the physician, relating to his work in the field. It would, however, be untenable to claim that this media coverage establishes that the physician is one of the very best in the field. (We stress that this example is hypothetical and is not meant in any way to imply that the petitioner has been the subject of litigation in this way.) To offer another example, a researcher who has published only one article, but who can show over one hundred independent citations of that article, has demonstrated widespread impact in the field more persuasively than a researcher who has published dozens of articles that the wider community appears to have ignored. While extreme, these examples serve to establish that we must consider the content and context of the evidence submitted, rather than simply counting the number of criteria that the petitioner claims to have satisfied.

The petitioner submits two letters with his response to the director's notice. [REDACTED] a dermatologist practicing in Beverly Hills, California, states:

My philosophy and methods are practiced all over the world by many plastic surgeons, dermatologists, and there are many centers in many countries where my treatment is being practiced. . . .

[The petitioner] is one of the most brilliant minds in the field of Dermatology. He has involved himself extensively in teaching and research, lectured in numerous places, wrote a chapter about skin diseases that was published in Global Dermatology textbook, and was instrumental in my work on dark skin research. This has benefited people with dark skin all over the world. He currently works with me in my visitation to the United Arab Emirates in the field of skin health restoration.

[REDACTED] like the previous witnesses, has collaborated directly with the petitioner and therefore his letter is not direct evidence of a reputation beyond those collaborators. The record contains no concrete evidence to establish specifically how people "all over the world" have benefited from the petitioner's work.

[REDACTED] chair of the Department of Dermatology at the University of Cincinnati Medical Center, states "I am somewhat familiar with [the petitioner's] experience and expertise. He has interest and expertise in the area of immune skin diseases, especially blistering diseases. . . . He is also experienced and has contributed in many other areas within the field of dermatology." [REDACTED] assertion is too vague to carry significant weight. It cannot suffice simply to establish that a U.S. researcher is "somewhat familiar" with the petitioner's work, or that the petitioner "has contributed" to his field. An individual can make contributions without earning sustained national or international acclaim as one of the very top figures in the field.

The petitioner submits copies of promotional materials from a pharmaceutical company, featuring photographs credited to several dermatologists including one photograph by the petitioner. There is no explanation as to how the use of the petitioner's photograph in an advertisement establishes that the petitioner is acclaimed as a top dermatologist.

Despite the director's instruction to submit all of the requested evidence at once, the petitioner followed the above submission with another witness letter, from [REDACTED] Harvard School of Medicine [REDACTED] states that the petitioner "has written several important and landmark manuscripts, which have had a significant impact," and that the petitioner has done "critical and cornerstone work that places him amongst the small percentage of investigators that define the field and make the most meaningful contributions to the field." [REDACTED] does not identify specifically these contributions or show how the petitioner has affected the practice of dermatology at a national or international level. [REDACTED] states that the petitioner is a leading researcher because "[t]here are no investigators in that region [the Middle East] doing research on"

the autoimmune blistering diseases that the petitioner studies. [REDACTED] asserts that the petitioner's research is valuable precisely because it takes place in the Middle East, but then argues that it is important for the petitioner to take up residence in the United States, which would appear to halt (or at least handicap) the petitioner's research activities in the Middle East.

The director denied the petition, acknowledging that "the petitioner has achieved a degree of recognition within the profession of dermatology," and that the petitioner has met the criteria pertaining to published work and judging the work of others, but that "the record taken as a whole . . . does not support" a finding of eligibility. On appeal, the petitioner submits arguments from counsel and additional witness letters.

Counsel offers several arguments on appeal for which the record offers little or no support. For instance, counsel states that the petitioner has "documented [his] membership in professional organizations which require outstanding achievements of their members. These associations include the American Academy of Dermatology, the New York Academy of Sciences, and the International Society of Dermatology." At no point in this proceeding has the petitioner actually offered any evidence regarding the membership requirements of any of the associations to which he belongs; counsel simply declares that the petitioner's evidence "clearly satisfies" the regulatory requirement.

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). 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's assertions are simply and demonstrably false regarding the membership requirements of these named associations, further highlighting the crucial importance of relying on first-hand documentary evidence rather than unsupported and subjective claims. If counsel did not in fact know the associations' membership requirements, then counsel was in no position to attest that the associations require outstanding achievement. If, on the other hand, counsel did know the membership requirements, then it is difficult to reconcile counsel's statements with that information or to justify counsel's representations thereof. 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).

Some of the letters submitted on appeal are copies of previously submitted letters. One new letter is from [REDACTED] consultant and head of Dermatology at Jazeira Hospital in the UAE. [REDACTED] states that he and the petitioner "worked with each other on [an] almost daily basis," and that the petitioner "has been internationally recognized as one of the effective professionals in his field of specialty worldwide." The only specific example of this recognition is the petitioner's listing in a 1999 Who's Who directory which is, itself, absent from the record.

Several other letters are from representatives of pharmaceutical companies, indicating that the petitioner assisted with clinical trials of various drugs produced by those companies. New drugs are routinely subjected to clinical trials, and these companies do not indicate that only the UAE's top physicians participate in such trials. The record is entirely devoid of evidence to show that the petitioner is one of a handful of individuals responsible for approving new drugs for use in the UAE.

The petitioner has documented a long and fruitful career, and shown that he has earned the respect of many of his peers. Some witnesses place him at the top of his field, but the record does not contain the "extensive documentation" that the statute demands to support such a finding. Several of the claims made by and on behalf of the petitioner are unsubstantiated or even simply untrue, and therefore any evidence purporting to support the petitioner's claim must withstand the closest scrutiny. We find that the petitioner has, on balance, failed to establish that he is nationally or internationally acclaimed as one of the very top dermatologists in the UAE or elsewhere.

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 dermatologist 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 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.