

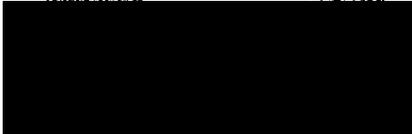


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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identification data deleted to
prevent clearly unwarranted



File: EAC-00-205-50162 Office: Vermont Service Center Date: 03 MAY 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, 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, counsel argues that the director erred in finding that the petitioner was "talented" but not extraordinary. Counsel notes that the petitioner is licensed in more than one country, is a published author, has educated his peers and has performed groundbreaking research. Counsel asserts that in addition to the letter submitted with the appeal, he will submit additional evidence within 30 days. Counsel dated the appeal May 14, 2001. As of this date, nearly 11 months later, this office has received no additional information. As such, the appeal will be adjudicated on the evidence of record.

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 doctor. 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 submitted evidence that counsel characterizes as follows:

- A degree relating to an area of Extraordinary Ability,
- Membership in a professional association,
- Recognition for his achievements by his peers,
- Publications in respected journals,
- Contributions of scholarly articles to textbooks, and
- Has overseen and evaluated the work of his fellow physicians.

The first three "requirements," however, relate to the criteria for exceptional ability set forth in 8 C.F.R. 204.5(k)(2), a separate, less restrictive classification. The fourth and fifth "requirements" both relate to a single criterion for the correct classification, 8 C.F.R. 204.5(h)(3)(vi). As such, counsel only claimed that the petitioner meets two of the criteria for the classification he seeks, not the three required for eligibility. Nevertheless, we will consider the evidence as it might relate to the criteria for the classification sought by the petitioner under 8 C.F.R. 204.5(h)(3).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

While not specifically claiming that the petitioner's licenses constitute awards, counsel emphasizes that the petitioner is licensed to practice medicine in two countries. A license is required to practice medicine and cannot be considered evidence of extraordinary ability. Rather, it is evidence of the minimal competence necessary to practice in the field, albeit in two countries. That the petitioner is certified in ophthalmology as well as general medicine simply reveals that the petitioner is competent in two specialties. In response to the director's request for additional documentation, the petitioner submitted a certificate of appreciation for voluntary teaching contributions from the State University of New York, Stony Brook. This certificate represents purely local recognition. We concur with the director that the record contains no evidence of lesser nationally or internationally recognized awards or prizes.

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 record contains a certificate from the Eye Research Centre, Madras, confirming the petitioner's status as a fellow of that institution. The petitioner also lists on his resume memberships in the American College of Physicians, the American Medical Association, the American Society of

Internal Medicine, the American Society for Microbiology, the Association of Professionals in Infection Control and Epidemiology, the Infection Disease Society of America, the Indian Medical Association, and the Long Island Infectious Diseases Society. The petitioner has not submitted evidence of these memberships. Moreover, the record contains no evidence regarding the membership requirements for these societies, other than fellow employee Dr. Natalie Klein's unsupported assertion that they require outstanding achievements. Memberships based on dues payments, academic achievements, professional experience or recommendations from colleagues are insufficient for this criterion. The petitioner has not established that he is a member of an association that requires outstanding achievements of its general membership.

In response to the director's request for additional documentation, the petitioner submitted three copies of the *Monitor*, listing the petitioner as an infectious disease fellow of the 40th Annual Conference on Antimicrobial Agents and Chemotherapy (ICAAC). The record contains no documentation regarding the significance of this position other than that the fellows contribute to the articles in the *Monitor*.

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.

As quoted above, counsel asserts that the petitioner has "overseen and evaluated the work of his fellow physicians." The evidence submitted to address each criterion must reflect national or international acclaim. The record contains a board review course announcement for Winthrop University listing the petitioner as a member of the faculty. Specifically, the petitioner is listed as the instructor for Medical Ophthalmology. Duties inherent to one's job cannot be considered evidence of national or international acclaim. Evaluating students is inherent in the job of teaching. We cannot conclude that every teacher and graduate teaching assistant who evaluates students has national or international acclaim.

██████████ who appears to have never worked with the petitioner, asserts that he has "used his extraordinary clinical skills in premier research and treatment centers, where among other things, he has judged and evaluated the work of others. ██████████ who works with the petitioner, reiterates this claim but provides no additional details. Without an explanation of exactly what work the petitioner judged or evaluated or how he was selected for this position, the petitioner cannot establish that he 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 initially submitted three brief reference letters. In a 1994 letter, Dr. Farooq Agzal, a consultant ophthalmic surgeon at King Fahd Specialist Hospital in Saudi Arabia, provides general praise of the petitioner and asserts that he has "great potential." In a 1996 letter, Dr. Alpati Ravindra, Chairman and Program Director of the Department of Internal Medicine at Winthrop University Hospital, provides general praise of the petitioner's work as a research associate at that institution. Beth Schwartz, a clinical research associate at Pharmacia & Upjohn, asserts that the

petitioner is a "sub-investigator" responsible for the screening and enrollment of study participants in an investigation of the drug Linezolid and that he is "considered a dedicated and valued investigator." These letters fail to identify any specific contributions made by the petitioner.

In response to the director's request for additional documentation, the petitioner submitted additional reference letters. [REDACTED] an associate professor at the University of Alabama, Birmingham, claims to have known the petitioner in an unspecified capacity for the past decade. [REDACTED] asserts that the petitioner's publications on West Nile Encephalitis, a disease unknown in the United States until recently, reflects his "acumen and dedication to patient care." [REDACTED] also asserts that the petitioner's knowledge in two distinct areas of medicine, ophthalmology and infectious disease, is unique and useful in treating AIDS victims who sometimes develop visual problems which, if undiagnosed, can cause blindness.

[REDACTED] the Associate Director of Infectious Disease at Winthrop University Hospital, writes that the petitioner's diagnostic abilities have contributed to medicine. While diagnostic ability is certainly vital to being a good physician, it is not clear how the ability to diagnose contributes to the field of medicine as a whole. While the petitioner has co-authored published articles presenting case studies which assist in future diagnoses, the petitioner has not provided evidence that these articles have been widely cited or otherwise influential.¹ Dr. Klein also praises the petitioner's ability to work under pressure and notes that he has authored published material. While she claims that the petitioner won "several accolades" for his five chapters in textbooks on infectious diseases, the record contains no evidence of this claim such as evidence that the books are widely cited or letters from independent practitioners in the field explaining how their own projects have been influenced by the petitioner's work.

[REDACTED] Vice-Chairman of the Department of Medicine at Winthrop University Hospital, also provides general praise of the petitioner. [REDACTED] asserts that the petitioner's "clinical acumen was invaluable in dealing with a large series of patients that were admitted to Winthrop University Hospital" showing symptoms of West Nile Encephalitis.

With the exception of the letter from [REDACTED] the above letters are all from the petitioner's immediate circle of colleagues. While such letters are useful in providing the details of the petitioner's role in various projects, they cannot establish that the petitioner's contributions are viewed nationally as significant. [REDACTED] fails to explain how he came to know the petitioner and does not identify any specific contributions made by the petitioner. National acclaim by definition requires that the petitioner is known beyond his circle of colleagues. A single letter from an old friend does not reflect that the petitioner has sustained national acclaim beyond his circle of colleagues.

¹ For example, the record does not contain letters from high level officials at independent hospitals attesting to their reliance on the petitioner's articles to diagnose West Nile Encephalitis or other diseases.

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

Initially, the petitioner submitted an article of case studies of patients with West Nile Encephalitis. The article is not paginated and has no journal name on it. In response to the director's request for additional documentation, the petitioner submitted a paginated version (starting at page 191) which has no date or journal name. As such, there is no evidence that the article had been published as of the date of filing or that it was published in a prestigious journal. The petitioner also submitted a letter providing the specifics for a requested article regarding infections in Uremia. As with the West Nile Encephalitis article, there is no evidence this article was published, much less written, as of the date of filing. In addition, the petitioner appears to have contributed to three issues of the *Monitor* and authored additional published case studies. These articles were all published after the date of filing and cannot be considered evidence of the petitioner's eligibility as of that date. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner did submit evidence that he authored an article on Piperacillin-tazobactam published in the November/December 1999 issue of *Antibiotics for Clinicians* (of which Dr. Cunha is the Editor-in-Chief), an article on *Roseomonas gilardii* and breast cancer published in the 1999 issue of the *Clinical Microbiology Newsletter*, an article on Multi-valvular Endocarditis published in the February 2000 issue of *Infectious Disease Practice for Clinicians*, and an article on the role of aspirin in cataract surgery published in the March 1985 issue of the *Indian Journal of Ophthalmology*. In response to the director's request for additional documentation, the petitioner submitted evidence that he had authored three "chapters" for an Internet "textbook," www.emedicine.com. The record contains no evidence that would allow us to evaluate the influential nature of this Internet site in general or the petitioner's contributions specifically.

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 the petitioner's articles have been widely cited (or, indeed, cited at all) or other evidence of their influence, such as letters from high-level officials at independent hospitals confirming their reliance on the petitioner's work.

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 doctor 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 doctor, 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.