

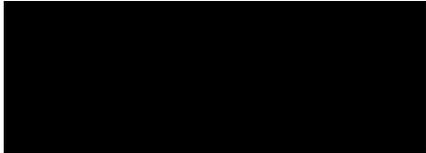


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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC-00-237-50456

Office: Vermont Service Center

Date: MAY 13 2002

IN RE: Petitioner:  
Beneficiary:



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.

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 evidence that he received a RNA Society Fellowship in 1997. On appeal, counsel asserts that the director failed to consider this award. While the petitioner submitted information regarding the RNA Society in general, the petitioner did not submit any official information regarding the fellowship itself such as the basis of the fellowship or the pool of candidates. The petitioner also received the Graduate School Dissertation Fellowship from the University of Minnesota in 1998. This award was limited to University of Minnesota students and cannot be considered a national or international award.

In addition, academic study is not a field of endeavor, but training for a future field of endeavor. As such, fellowships based on academic achievement cannot be considered awards in a field of endeavor. Moreover, only students compete for such awards. As the petitioner has not established that he competed with national or international experienced experts in the field, the awards cannot be considered evidence of the petitioner's national or international acclaim.

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

Karin Musier-Forsyth, an associate professor at the University of Minnesota, asserts that the petitioner was the top researcher in the department and compares favorably with "his top peers" at MIT and Cornell. Dr. Musier-Forsyth further asserts that the petitioner is "well-recognized" nationally and internationally, has attended national and international meetings, and has authored articles which "have had a high impact in the field of AIDS research." Finally, Dr. Musier-Forsyth writes:

[The petitioner] is an expert in all aspects of molecular biology and is well versed in protein biochemistry and in various bioorganic and biophysical techniques. He has applied his expertise to understand the molecular interactions between key proteins and nucleic acids (RNA) involved in the life cycle of the virus (HIV) that causes AIDS. Researchers with this expertise are in high demand, especially in the pharmaceutical industry, because of the broad applications to human health. [The petitioner's] expertise has already been highly sought after, as evidenced by the numerous job offers that he was receiving following his work at Minnesota. He chose to work with Dr. Vikas Sukhatme, a world-renowned cancer researcher at Harvard medical school. At Harvard, [the petitioner] is carrying out experiments to understand the molecular basis of cancer. [The petitioner] has already made extraordinary contributions to the field of HIV and cancer research, two of the leading causes of death in the United States, and I have no doubt that he will continue to do so.

Dr. Musier-Forsyth provides general praise and discusses the area of the petitioner's research, but fails to identify any specific contribution which has had a major impact in the field.

Dr. Vikas Sukhatme, in whose laboratory the petitioner works at Beth Israel Deaconess Medical Center, asserts that he chose the petitioner from a pool of 100 applicants. Dr. Sukhatme further notes that the petitioner has had two articles published in the *Proceedings of the National Academy of Sciences*, a rare accomplishment for someone at the petitioner's stage in his career. Regarding the petitioner's work at Beth Israel, Dr. Sukhatme writes:

In particular, since [the petitioner] has come here, his research has helped enormously in several ways. First, he has been interested in trying to define the portion of the endostatin molecule (currently one of the most active anti-angiogenic proteins discovered) that is important for its anti-angiogenic effect. Since this molecule is a protein it cannot be administered orally. If a small active moiety of endostatin could be defined, in principle one could create a non-protein compound that structurally and chemically mimicked the active portion. Obviously this would be of enormous pharmaceutical value since it could be administered in the form of an orally administered pill. Moreover, [the petitioner's] expertise in chemical modifications could be particularly useful since this drug could then be modified to increase its efficacy, e.g., by increasing the half-life in the serum or by improving its bioavailability. [The petitioner] indeed has the necessary knowledge in protein chemistry, molecular cloning and biomolecule modifications to carry out such an investigation through specific mutations and conjugations of the endostatin molecule.

A second area in which [the petitioner's] work is already progressing well is to understand how endostatin interacts at the cell surface of endothelial, that is, blood vessel cells[,] and relays a signal to the interior of the cell to either stop dividing[,] to undergo programmed cell death or to stop migrating, all processes important in angiogenesis. Since the organization of the signaling process inside the cell differs in different types of tissue, characterization of how signals triggered by endostatin are executed inside the cell would also help in the development of other novel tissue-specific anti-angiogenic molecules that possess similar functions. Similarly, defining these signaling pathways would also help in arriving at a rational combination of drugs that would work either additively or synergistically. Dissection of such cellular signaling pathways requires detailed analysis of interactions among key molecules and [the petitioner's] expertise in biophysical characterizations of biomolecules is obviously uniquely suited for this area of research.

While Dr. Sukhatme discusses the potential benefits of the petitioner's work, should he succeed, he fails to identify any specific major accomplishment so far.

The above letters are both from the petitioner's collaborators. 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.

The petitioner also submitted a second letter from Dr. Musier-Forsyth asserting that the petitioner presented his research at 10 different conferences and the positive reviews of the referees for one of the petitioner's articles published in the *Proceedings of the National Academy of Sciences*. On appeal, the petitioner submits 12 articles which cite his work.

The record shows that the petitioner is respected by his colleagues and is making progress in his field of endeavor. While the petitioner's research clearly has practical applications, it can be argued that most research, in order to receive funding, must present some potential benefit to the general pool of scientific knowledge. The record does not establish that the petitioner's work up to the date of filing represents a groundbreaking advance in AIDS or cancer research beyond the obvious potential of all research aimed at ultimately treating these diseases. For example, the record does not reflect that the petitioner's work has led to new treatments or even clinical trials of new treatments for AIDS or cancer. In addition, the record does not contain letters from independent researchers in the field discussing how their own research has been impacted by the petitioner's work as presented at the conferences or published in journals. Dr. Sukhatme asserts that, should the petitioner's project produce successful results, such results would interest the pharmaceutical industry. Progress on a project that may one day attract the interest of the pharmaceutical industry is insufficient evidence of a major contribution to the field.

*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, two of which were published in the *Proceedings of the National Academy of Sciences*. 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.

Initially, the petitioner did not submit any evidence that his articles had been cited. On appeal, counsel argues that the director failed to consider the prestige of the journal in which the petitioner's work appeared and the petitioner submits evidence that 12 independent experts have cited the petitioner's work. While it may be unusual for someone at the petitioner's stage in his career to be published in the highly prestigious *Proceedings of the National Academy of Sciences*,

mere publication in this journal is not evidence of national or international acclaim. The record contains no explanation from the Academy member who sponsored his articles explaining how he or she became aware of the petitioner's work. Moreover, while the number of citations certainly indicates that the petitioner's work is gaining recognition in the field, twelve citations does not reflect that the petitioner's work is so widely cited as to reflect national or international acclaim as one of the top researchers in the field.

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 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 shows talent as a researcher, 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.