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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

[Redacted]

File: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: NOV 18 2002

IN RE: Petitioner:  
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, 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

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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.

The petitioner seeks employment as a senior process engineer at the James R. Randall Research Center, Archer Daniels Midland Company ("ADM"). The Form I-140 petition indicates that the petitioner conducts "research into the development of nutraceutical products for providing novel and beneficial dietary and health supplements to an aging population." Counsel states that the petitioner "is recognized internationally as a researcher of extraordinary ability and is consistently ranked among the top 1-2% of scientists in his field."

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.*

Under this criterion, counsel cites the petitioner's "academic credentials." A degree, regardless of the prestige of the university or college, is not a prize or award for excellence in the field. Rather, it is the expected outcome of a course of study.

Counsel cites five specific awards, all of which are student awards such as scholarships or travel grants. By their very nature, these awards are available only to individuals who are still studying and thus have yet to fully enter into their professions. The most experienced and established scientists are not considered for these awards. Also, college study is not an occupation or a field of endeavor. It is training for future entry into such a field. Finally, all of these awards were presented by individual universities to their own students. Such awards are not national or international if one must attend one particular university to qualify. The awards appear to be minor and there is no evidence that any of these awards attracted national or international attention.

*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.*

Counsel states that the petitioner meets this criterion as a member of Gamma Sigma Delta and Alpha Epsilon. A Gamma Sigma Delta brochure in the record states "[e]lection to membership in Gamma Sigma Delta is conducted by the faculty at the local chapter level." Alpha Epsilon's constitution indicates that Alpha Epsilon also selects its members at the chapter level. Selection by local faculty does not conform to the regulatory reference to "recognized national or international experts." If members are selected at any level lower than the national level, then we cannot infer national acclaim from the membership selection. Finally, Gamma Sigma Delta's membership requirements for graduate students (which the petitioner was at the time of his nomination) consist of a high grade point average and "great potential for future leadership," neither of which constitute outstanding achievements in the field of endeavor. Alpha Epsilon is apparently a society primarily for students; its constitution distinguishes between "alumni members" and "active members." The latter are "undergraduates and graduate students enrolled in Agricultural Engineering" who meet certain scholastic requirements and have the proper character and work ethic. If the only active members are students who have yet to complete their professional training, thus excluding established scientists, then Alpha Epsilon's members cannot be considered to represent the top of the field.

We emphasize again that graduate study is not a field of endeavor. While a graduate student certainly could make a major discovery in the course of his or her research, the burden is on the

alien to establish the significance of such a discovery. A high grade point average, the favorable attention of one's professors, and the capacity to work with others who share one's interests are not presumptive evidence that the student's work is seen as important outside the walls of that one university. The honor societies' standards of membership fall well below the standards of, for instance, the U.S. National Academy of Sciences, which admits only a handful of new members each year, based on each member's record of accomplishment rather than on speculative assessments of their potential. Membership in an honor society is, like a degree with high honors, a coveted honor for students and graduate students, but it falls short of being evidence of sustained national acclaim that places an individual at the very top of the field.

The petitioner is also a member of three professional societies: the Institute of Food Technologists, the American Oil Chemists Society, and the American Association of Cereal Chemists. The record contains no documentation to establish what requirements prospective members must meet to join these societies. Payment of dues, employment in a given field, or a fixed level of education, training and/or experience are not outstanding achievements.

*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.*

Counsel states that the petitioner "has reviewed manuscripts for international journals," and provides the titles of four such journals. The only evidence provided to support this assertion is a letter from Professor Munir Cheryan, leader of the petitioner's research team at the University of Illinois at Urbana-Champaign. Prof. Cheryan states "I have asked [the petitioner] to referee papers for scientific journals." It is not clear whether Prof. Cheryan serves on the editorial boards of those journals, or else referred to the petitioner review requests which originally had been addressed to Prof. Cheryan. Either way, if the review requests all originated from one person, who was also the petitioner's instructor and supervisor, then the requests do not reflect acclaim at a national or international level; they reflect the opinion of one individual close to the petitioner, rather than a consensus or other showing that the petitioner's opinion and judgment are widely sought throughout the field.

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

The petitioner submits several letters and affidavits describing his work. The writers of these letters and affidavits are professors who have taught the petitioner and/or supervised his work; researchers who have repeatedly observed the petitioner's work while visiting the facilities where the petitioner was studying and/or working; former classmates; officials of ADM, where the petitioner now works; and officials of other entities in Illinois with close involvement in the petitioner's work. A reputation that is confined to one's instructors and collaborators is not national acclaim. Many witnesses discuss the "promise" of the petitioner's work or that of the nascent nutraceutical field as a whole. The letters and affidavits cannot suffice to show that other researchers in the field, with no ties to the petitioner, consider the petitioner's work to be of major significance, or even that such researchers are familiar with the petitioner's work. The record does not show that the petitioner's

work has already had a major impact on the production of nutraceuticals, biodegradable plastics, or other agricultural products.

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

Counsel identifies five exhibits as “publications” by the petitioner, all of them dated 2000 or 2001. One of the five documents is the petitioner’s Ph.D. thesis. There is no evidence that the thesis has been published at all, let alone in a major publication. The very act of creating a doctoral thesis is not indicative of acclaim, because every doctoral candidate must prepare such a thesis. Of the four remaining articles, one appears to be a proof copy; it is marked with numerous corrections, and catalog and page numbers at the top of the document are all zeros, evidently place-holders for actual numbers to be inserted later. A proof copy is prepared prior to publication. There is no evidence that this article had actually appeared in any publication as of the petition’s filing date.

The petitioner has also co-written several conference presentations, which are comparable to publications in that they disseminate technical information to a specialized audience. The significance of these presentations is not clear. As noted above, the petitioner received travel grants from the University of Illinois to attend these conferences. The existence of an established travel grant program suggests that the university’s students make such presentations with enough frequency to justify the establishment and maintenance of such a program. If these conference presentations are relatively common even among graduate students, we cannot conclude that only the very top researchers in the field make presentations at conferences.

With regard to publications, we cannot assume that every published article is of equal importance in establishing sustained acclaim. 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 of prestigious universities 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.

Counsel states that the petitioner’s “work has been cited by others and he has received requests for reprints of his work for use by other researchers.” The record contains a copy of one reprint request. There is no first-hand evidence that the researcher who requested the reprint, or anyone else, has cited the petitioner’s work. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

The director instructed the petitioner to submit additional evidence because the initial submission was not sufficient to establish eligibility. In response, the petitioner has submitted additional

evidence and statements from himself and from counsel. Counsel states that the petitioner “easily ranks with the top five individuals in his field in the world.” Counsel bases this statement on the petitioner’s own list of the top eight figures in his field, in which the petitioner has ranked himself fourth. One of the petitioner’s former professors is ranked number one.

The petitioner asserts that he has satisfied a previously unclaimed criterion:

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

The petitioner asserts that his conference presentations constitute qualifying display of his work. Aside from the fact that a scientific conference is not an artistic exhibition or showcase, conference presentations (as we have noted above) are more akin to publications than to artistic display, in that they are tailored to a specialized segment of the scientific community.

Much of the petitioner’s supplementary submission consists of letters and affidavits. The petitioner observes that “in each case, the author has described me as ‘one of that small percentage who have risen to the very top of their field of endeavor.’” The petitioner asserts that ten of the letters and affidavits are “from individuals who are ‘Outside of my circle of colleagues and acquaintances.’” One of these ten individuals is a dean at the University of Illinois at Urbana-Champaign; another is a former faculty member there, and several others met the petitioner while visiting the university laboratory where the petitioner was working at the time. Still others are officials of ADM, the petitioner’s employer. Thus, the distance between the petitioner and these witnesses appears to be less than the petitioner has implied. Most of the remaining witnesses are based in Illinois. Contrary to the petitioner’s statement, the letters do not unanimously rank the petitioner in the top one to two percent of researchers in his field; some of the letters do not address that issue at all, instead focusing on (for instance) his technical skill in the laboratory. One of the letters (misidentified by the petitioner as an affidavit) is nothing more than a request for reprints of articles. That letter also inquires about articles that the petitioner wrote in 1992. The petitioner was 18 years old in 1992, and he does not claim to have published anything prior to 2000.

Because of the unavoidable element of subjectivity that is inherent in any witness letter, the statute demands “extensive documentation” of sustained acclaim. The statutory requirement is reflected in the regulations, which call for a broad variety of objectively verifiable evidence. Letters can play a subsidiary or explanatory role in this regard, but they cannot form the foundation of a successful claim. The most important assertions in such letters are factual claims that should be subject to verification through first-hand documentary evidence. If such evidence is not in the record, such claims carry diminished weight. Previously, counsel has claimed that the petitioner’s “work has been cited by others.” If counsel is in possession of evidence to support this claim, such evidence is not in the record. If counsel has no such evidence, then it is not clear how counsel has the necessary knowledge to make the claim.

The director denied the petition, stating that much of the objective documentary evidence in the record is consistent with an active and productive researcher, but not one at the top of the field. The director made specific observations about shortcomings in the record, such as the absence of membership criteria for the professional associations named elsewhere in this decision. The

director also stated that any reputation the petitioner has earned is of such recent vintage that it cannot be considered to be sustained.

On appeal, counsel protests the director's "undisguised bias against recent graduates." We agree with counsel that acclaim is not diminished by virtue of being recently earned. The requirement for "sustained" acclaim appears to be intended not to require any particular duration of acclaim, but rather to require that the alien continues to enjoy such acclaim. Thus, an alien who earned acclaim (for example) in the early 1980s but has since faded into unproductive obscurity cannot be said to have "sustained" that level of acclaim. While we disagree with the director on this point, nevertheless the director's decision rested on other factors as well.

Counsel states that the extraordinary ability classification "applies to more than old Nobel Prize winners," and observes that "Congress allocated 40,000 visas to the First Preference classification." This does not translate into a requirement that the Service must approve 40,000 visas in the classification each year; the statute also provides for unused visas to be applied to other classifications. The denial of this one particular visa petition does not demonstrate that the Service refuses to approve petitions except for "old Nobel Prize winners."

Counsel protests the "substitution of [the Service's] own judgment for that of numerous experts in and out of [the petitioner's] field." The witnesses are indeed experts in various scientific disciplines, but the Service, rather than any outside witness, is the arbiter of eligibility for a given immigrant classification.

Counsel discusses "certain realities of academic and industrial research," regarding such issues as the low pay and temporary employment status of postdoctoral associates. Leaving aside the fact that counsel simply lists these "realities" without any supporting evidence, the factors cited by counsel cannot and do not supersede the binding regulations and policies in place for adjudicating these petitions.

Regarding those regulations, counsel's appeal contains a number of untenable arguments. For example, counsel observes that the University of Illinois' Department of Agricultural Engineering has ranked at or near the top of annual surveys conducted by *U.S. News and World Report*. Counsel contends that, given the department's reputation, "it must certainly be considered . . . a national award to be selected not only for its PhD program but also for a Post Doctoral research position in this university." Regardless of the prestige of a given university, we cannot accept that national acclaim results from admission to a doctoral or postdoctoral program at such a university, or that graduate study or postdoctoral training are nationally recognized awards.

Counsel also contends that "only a small handful" of distinguished scientists hold patents, and therefore the petitioner stands above them because he "has several patents." This is an arbitrary distinction, which relies on the assumption that all scientists seek patents while only a small number of them succeed in obtaining them. Some fields of research are not conducive to the patent process, and there is no acclaim inherent in the patent process. The U.S. Patent Office has issued millions of patents. A patent signifies the originality of an invention or innovation, but not its significance.

Counsel states that the petitioner is a member of organizations requiring outstanding achievements, stating "it is unusual for younger scientists to be elected." This assertion is not only unsupported, but utterly contradicted by the record. For several memberships, the petitioner has submitted nothing more than photocopied membership cards, which say nothing about the membership requirements. Gamma Sigma Delta and Alpha Epsilon, on the other hand, are campus-based honor societies which plainly state that they admit even undergraduate students as members. In the case of Alpha Epsilon, one is only considered an "active member" if one is still a student.

In addition to the above examples, counsel makes other arguments on appeal which have generally already been addressed. Counsel's assertions and arguments do not persuasively establish that the petitioner has met at least three of the criteria and thus established sustained national or international acclaim at the very top of his field.

We note that, according to Service records, the petitioner's employer has since filed an immigrant petition on the alien's behalf. That second petition has been approved, and the alien applied for adjustment of status in February of 2002. The Administrative Appeals Office is not in possession of the record of proceeding regarding the approved petition, and therefore we can offer no specific comment about possible differences or similarities between the two records of proceeding. We are able, however, to determine from computer records that the two petitions involved different immigrant classifications. Given that the petitioner is already the beneficiary of an approved petition, and has already filed for adjustment of status, it is not clear what further benefit the petitioner would stand to gain even if the petition now at hand were to be approved.

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 nutraceutical 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 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.