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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted]

Office: Nebraska Service Center

Date: OCT 08 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, 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a biomedical researcher. 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 that, 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.

Initially, the petitioner, an Egyptian who worked as a doctor in Kinshasa, Democratic Republic of Congo (formerly Zaire) submitted a 1986 "Certificate of Honor and Award" from the Embassy of Egypt in Kinshasa asserting that the petitioner and three other doctors "are accredited by the embassy as doctors of Honor for the embassy and the Egyptian Club in Kinshasa." While titled as a certificate of honor and award, accreditation and club membership are not awards or prizes.

In response to the director's request for additional documentation, the petitioner submitted a new letter from the Egyptian Embassy, on photocopied letterhead, asserting that the petitioner was presented the "Chavalier D'Orde [sic] National de [sic] Leopard"¹ or the Knight of the National Leopard for his "cutting edge research in the field of diabetes" in October 1986. The letter asserts:

[This award] is the highest honor that can be granted to a Citizen of Egypt, and is a major internationally recognized award for excellence in the field of endeavor granted by international experts in the medical field within our society.

The award itself is not in the record. The petitioner has not submitted objective evidence of the award's significance, such as Egyptian media coverage of the award or its recipients. Moreover, if the award is issued in Egypt, as opposed to at the Egyptian Embassy in Zaire, a letter from the organization within Egypt that issues the award would carry more weight than a letter from an employee with an unknown job at the Egyptian Embassy of Zaire. It is noted that one of the petitioner's references, Dr. Phaka Mbumba, is also a recipient of the award but does not appear to be an Egyptian national or to have worked in Egypt. Dr. Mbumba also refers to an award the petitioner received from the Zaire government. Thus, even the petitioner's own references are inconsistent regarding the source of the petitioner's award. As such, any assertions regarding the significance of the award have somewhat reduced credibility. 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, 591-92 (BIA 1988).

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.

As stated above, the petitioner submits a 1986 letter from the Egyptian Embassy in Kinshasa asserting that he was accredited by the Embassy and is a member of the Egyptian Club in Kinshasa. Accreditation generally verifies that the recipient is minimally competent for an occupation and is

¹ Dr. Mbumba's initial letter indicates that he is also a member of the Chevalier D'Ordre National du Leopard.

not evidence of national acclaim. Moreover, the letter does not provide the requirements for Egyptian Club membership.

In response to the director's request for additional documentation, the petitioner submitted a new letter from the Embassy. The letter provides:

The Egyptian Embassy Club is one open only to those who have sustained the national/international claim in [t]heir profession and members vote or judge on admission. [The petitioner] was voted [i]n as a member in October, 1986 and is a member to present date. In this capacity, he has acted as a Judge on members in the medical field, including reviewing or judging scientific researchers [w]ith respect to our standards of admission, which require international successes in the chosen field of endeavor.

The letter is from Atif Abdul Salam, who does not provide his own association with the Egyptian Embassy Club. Moreover, the letter is on photocopied Embassy letterhead with "Le Club Egyptien" typed below the letterhead. While the letter contains the language "subscribed and sworn to before me this Wednesday of 26 December, 2001," no notary seal appears upon the document. Finally, Mr. Salam does not provide sufficient information about the club. For example, it is not clear whether the club's membership is open to Egyptians other than those working in Zaire. If the Club has national prominence in Egypt, a letter from a high-ranking member of the Club in Egypt would carry more weight than a letter from an employee with an unknown position at the Egyptian Embassy in Zaire. Regardless, without the bylaws of the Club, we cannot determine the 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.

On appeal, the petitioner submits several "affidavits" purportedly from the editors of publications in Zaire. While these "affidavits" indicate that they have been sworn before an official, no notary or other seal appears upon these letters. Bele Binda of *Djandja Medical* asserts that the newspaper published five articles on the petitioner. Kasongo Wa Kapinga of *The Gazette Medical* asserts that the *Gazette* published articles about the petitioner "on many occasions; there were about four articles" and that several letters to the editor expressed excitement about the petitioner's work. Bila Kapita of *The Zaire Press* asserts that the newspaper ran "numerous interviews" with the petitioner, and "two articles and one feature" about the petitioner. Pwenenan She Kalenga of the *Press University Zaire* asserts that the paper often interviewed the petitioner and published two articles about him. All of the letters assert that all back issues and records of the papers were destroyed during the revolution.

These letters are all printed on blank paper with letterhead that appears to be printed from a computer with several fonts. The letterheads all have the same format: the name of the publication is centered at the top, the address is centered under the name of the publication, a solid line appears

under the address, and the name of the "affiant" is on the left in all capital letters with the address underneath. As stated above, none of the "affidavits" have seals indicating that they were signed in Zaire. Curiously, the petitioner submitted originals and copies of these "affidavits" both of which have original dates. The dates are all in black ink while two of the "affidavits" were signed in blue ink. The original dates on the copies indicate that the "affidavits" were not dated when they were signed and, in fact, were copied for the record prior to being dated.

In addition to the anomalies discussed above, all of the "affidavits" indicate that the petitioner was well known throughout Africa and the Middle East. As such, regardless of whether all back issues of newspapers were destroyed in Zaire, other evidence of the petitioner's acclaim should be available. Moreover, it is noted that the petitioner has submitted other documentation from Zaire dated from the 1980's, indicating that he did not leave Zaire without any of his Zairian documentation.

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 stated above, in response to the director's request for additional documentation, the petitioner submitted a letter from the Egyptian Embassy in Kinshasa confirming that the petitioner is a member of the Egyptian Embassy Club and that, as a member, he reviews and judges other prospective members for membership. As stated above, a letter from the Egyptian Embassy in Zaire is not evidence of the Club's significance in Egypt. Without the bylaws we cannot conclude that the petitioner's role with this Club is sufficient indication of his national acclaim such 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.

Dr. Phaka Mbumba, General Director of the Institut Supérieur Des Techniques Médicales (ISTM), writes:

[While working as a medical researcher, the petitioner] published a cutting edge research paper with ground breaking research in the area of diabetes mellitus, including: the effect of transitional [sic] Zairan [sic] diet on the glycemia [sic] of insulin dependent diabetes[.] Specifically, dietary research covering diabetes mellitus regarding the effect of traditional Zairan [sic] diet over the glycemia of insulin dependant [sic] patients, including research into food choices/protein carbohydrate combination diets, in particular use of indigenous fruits [sic] and vegetables, such as: high fibre [sic] plantation banana in control/reduction of blood sugar and promote satiation/control malnutrition, resulting in significantly lower dosages of insulin, and even maintenance of insulin dependent diabetics in the normal range. He was granted an award from the Zaire Government in recognition for his superlative efforts in the medical field, and was listed along with several

other physicians, with the honor designation because of his efforts in medical science.

Application of his research is global in scope, and should not be dismissed as unimportant, since use of the plantation banana as an export from Zaire could be used to treat diabetes on a worldwide level, among the urban and rural poor, since insulin is expensive, and many patients refuse to self-medicate as a result. He saved countless lives in Zaire as a result of his research, and therefore, should be regarded as a Medical Scientist of distinguished renown and ability.

Dr. Fady Fayad, an internist residing in Michigan where the petitioner now resides, claims to be a "medical colleague" of the petitioner. Dr. Fayad asserts that the petitioner's work on diabetes "is standard reading in Middle Eastern medical training." He continues:

[The petitioner's] extraordinary ability in the area of Medical Research was recognized on a national level throughout Africa and the Middle East, and the enormous impact of his studies in the area of stabilizing diabetics through the use [o]f nutrition can not be underemphasized.

Dr. Ali Fadel, another local doctor in Michigan, provides more specifics on the petitioner's work in Zaire:

That the research done for diabetic patients while in Africa on two hundred patients with insulin dependent mellitus and nutrition, specifically holistic methods of treatment, including dietary studies effect of high fibre [sic] plantain bananas in food, which helped to stabilize/gain better control of blood glucose sugar, on those patients, and make them feel less hungry so helping to reduce their caloric intake, and the glucose blood stayed in the normal zone between 50-09 ml.dcl. and remedy of the dose of insulin needed to control the blood sugar was lowered. The advantage of nutritional treatment/holistic methods helped to avoid long term complications of diabetes in the extremities, and end organs like the retina of the eye, kidneys, [and] heart. Other research included substitution of a protein carbohydrate diet for children/infants, including an enriched soybean substitute which helped to avoid nutritional diseases in children and combat infant mortality, since traditional diet was high starch/tuber similar to potatoes, and there was a high rate of infant mortality. Both of these studies are relevant to the rural/urban poor of the United States, and specifically for the geriatric population since the elderly often have limited resources for obtaining medical treatment.

Dr. Fadel continues that the petitioner's presence in the United States is in the national interest, a consideration relevant only to a lesser classification not sought with the instant petition. Carolyn Wright, a Michigan nurse, provides similar information. Tahir Hafiz Safir, General Administrator and Licensed Physical Therapist at Rehab Services, Inc., provides similar information and asserts that he often consults with the petitioner. Anne Darwish Talab, an office supervisor for the Arab

Community Center for Economic and Social Services (ACCESS) in Michigan asserts that the petitioner is an important volunteer for ACCESS. The Imam of Masjid, the American Muslim Society in Michigan, provides general praise of the petitioner's career.

Dr. Marrero-Reyes Luz, Medical Director of Fundamental Health Care, the petitioner's employer, writes at length on the importance of geriatric health care. He continues that the petitioner has been conducting research on homebound patients. While Dr. Luz insists that the petitioner is conducting research and not practicing medicine, the work being done by the petitioner appears to be monitoring and evaluating homebound patients' medical condition and reactions to medications, which Dr. Luz asserts is funded by Medicare. There is no evidence that the petitioner's data contributed or is contributing to a grant-funded study, the results of which have been or will be published.

The director concluded that while the petitioner may have contributed to his field, the record did not establish that these contributions were of major significance. On appeal, counsel refers to a non-precedent case decided by this office under a lesser classification that concluded that the petitioner in that case "had captured the attention of others in the field." Counsel asserts that the petitioner in this case has also captured the attention of others in the field. This standard is not the regulatory standard for the classification sought by the petitioner. The regulation relating to extraordinary ability, 8 C.F.R. 204.5(h)(3), requires that a petitioner demonstrate sustained national or international acclaim. Simply "capturing the attention" of others in the field is not necessarily indicative of national or international acclaim.

Counsel further argues that in both the above case and another non-precedent case decided in a lesser classification, this office sustained the appeals based solely on affidavits due to the caliber of the witnesses. Counsel argues that the caliber of the "disinterested" witnesses in the instant case is high.

The petitioner submits a new "affidavit" purportedly from Dr. Mbumba asserting that the petitioner's work was frequently cited and universally acclaimed but that "an enormous body of research and professional findings were lost/destroyed during the revolution." He further asserts that he received phone calls from other researchers interested in building on the petitioner's findings. This "affidavit" does not bear a notary seal or the ISTM seal Dr. Mbumba's previous letter bore and Dr. Mbumba's name is misspelled at the bottom of the letter. As with the other letters submitted on appeal, the letter was dated after it was copied as the date is in original ink on the original "affidavit" and the two copies.

It is noted that Dr. Fadel's letter includes blanks filled in with his date of graduation, medical school, and years of practice. In addition, several of the reference letters are on photocopied letterhead and contain similar language. All of them end "further deponent sweareth not." These anomalies suggest that while the deponents affirmed the language with their signature, they did not write the letters themselves. It is further noted that the affidavit of the Imam of Masjid is on letterhead that appears to have been photocopied several times. The signature is of similar quality. The text of the letter, however, is of high quality. Yet, the affidavit is notarized by the same notary

public who notarized all of the reference letters and contains an original signature. Curiously, the notary seals are all on separate paper. Thus, it is not entirely clear to which documents they pertain. Considering all of these issues, the credibility of the reference letters is somewhat reduced. Regardless, the ten regulatory criteria at 8 C.F.R. 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition.

The reference letters are not supported by objective evidence of the petitioner's alleged contributions to his field. While his references claim that his work is "standard reading material" in the Middle East, the petitioner has also asserted that his articles were destroyed during the civil war in Kinshasa. While a petitioner need only demonstrate national acclaim, if the petitioner's articles were standard reading material outside of Zaire as claimed, copies of these articles should still exist. If these articles are as influential as claimed, it can be assumed that these articles, published in the late 1980's, should be widely cited outside of Zaire. The record contains no evidence of citations. If the petitioner's contributions are as significant as the references claim, it can be assumed that he would be presenting his contributions at major conferences. No evidence of conference presentations exists in the record.

Moreover, the petitioner indicated on his petition that he arrived in the United States in 1991. At the time of filing, he had resided in the United States for 10 years. Yet, the petitioner has not submitted a single reference letter from a biomedical researcher in the United States outside of Michigan that has been influenced by his work. The petitioner has not established that he has influenced the standard treatment of diabetes in the United States, even among the poor and old. There is no evidence that the petitioner's work on diabetes has garnered any attention among the nation's highest diabetes experts at a national level in the United States. In fact, while the petitioner has apparently continued his research on diabetes in the United States since at least 1998 with Fundamental Health Care, there is no evidence that his work has been published or otherwise garnered national attention. Thus, any acclaim the petitioner may have enjoyed prior to 1991 does not appear to have been sustained in the United States after he came to this country.

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 a 1986 letter from Dr. Phaka Mbumba, General Director of Superior Education and Universities in Zaire, who asserts that the petitioner authored two articles, "The effect of Transitional [sic] Zairian diet on the Glycemia of Insulin Dependant Diabetics," and "The Input [sic] of Elementary Habits on the Nutritional State of Zairian Infants." The letter implies these articles were published in *The Annual of Medicine and Pharmacies of the University of Kinshasa* and *The Medical Journal of Djandja Medical*.

In response to the director's request for additional documentation, counsel asserts:

There is no copy of the original article as published in existence, since there was a civil war in Zaire, which wiped out records. [The petitioner] and his family were officially escorted onto a plane for evacuation, and were forced to leave their records and personal effects, including: luggage behind, and flee for their safety.

The assertions of counsel do not constitute evidence. Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). While the political situation in Zaire may have resulted in the destruction of some documents in that country, the petitioner's references claim that his work is well known in the Middle East and Africa. As such, it is not clear why copies of the petitioner's articles or at least published references to these articles do not exist outside of Zaire. Moreover, the petitioner has provided other documentation dated in the 1980's from Zaire. Thus, he left Zaire with some of the documentation he obtained in that country.

Regardless, while the director concluded that the petitioner "minimally" met this criterion, he noted that publication is standard practice for researchers. 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 of the community's reaction to those articles other than the assertions of several references all from researchers in Michigan and a collaborator in Zaire. There is no evidence that these articles have been cited by other independent researchers. The evidence submitted for each criterion must be evaluated as to whether it demonstrates national or international acclaim. Moreover, there is no evidence that the petitioner has published any work since the 1980's. Thus, the petitioner has not established that he has sustained any acclaim he may have enjoyed in Zaire since arriving in the United States in 1991. In light of the above, we disagree with the director's conclusion that the petitioner even "minimally" meets this criterion.

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

The poorly worded uncertified translations of foreign language documents suggest that the petitioner worked for an Egyptian funded cooperative medical research effort with the Zairian Superior Institute of Medical Techniques and that the petitioner was promoted to Chief of Service at the Institute in November 1986. The record contains little information regarding the reputation

of the Institute or the nature of the Chief of Service position with the Institute. As such, the petitioner does not meet this criterion.

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 biomedical 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 biomedical 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.