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U.S. Department of Justice
Immigration and Naturalization Service

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[Redacted]

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

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: OCT 15 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

(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 describes himself, on the petition form, as a "clinical researcher of gastrointestinal disorders." Counsel states "[t]he goal of [the petitioner's] research is to further understand the fundamental role of gastrointestinal barrier integrity in initiation of gastrointestinal inflammation and to determine the means of preventing intestinal damage."

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 received a Clinical Research Award of \$10,000 from the American College of Gastroenterology. The official letter informing the petitioner of this award indicates that the \$10,000 is not an "award" for excellence in the field of endeavor, but rather a grant to finance an ongoing research project: "The funds are restricted to usage for the specific project, investigator(s) and institution(s) stated in [the] grant proposal." The granting entity also requires periodic reports as to the progress of the research. The restrictions show that the petitioner is not free to do as he chooses with the money.

Counsel states "the fact that [the petitioner] was given a grant of \$10,000 from the prestigious American College of Gastroenterology clearly demonstrates the importance of his research and the trust put upon him in this regard." Nevertheless, the grant constitutes advance funding for ongoing research, rather than a prize for his past work. The petitioner has not shown grant funding of this kind is restricted to the very top researchers in his field, or that the awarding of the grant is contingent on excellence in the field of endeavor.

Counsel states that the petitioner won "[a] prize as the 'Best Young Investigator' at the Second Congress of Internal Medicine, August 27, 1996." The corresponding certificate states "the Congress holding board identified [the petitioner] as the best young researcher of this Congress." The letter is signed by the "Secretary of Congress, Internist Association of Fars Province." Thus, this award is at best provincial rather than national or international.

The petitioner submits translated copies of "appreciation tablets" from national Iranian authorities, but these appear to be student awards. A tablet from the president of Iran acknowledges "hard efforts in achieving knowledge." Other tablets, from the minister of Health and Medical Education, state that the petitioner "achieved the first grade in the field of internist in the 39th medical board specialty course examinations" and "the third grade in the field of digestive system in the 8th sub-specialty examinations of medical graduate course." Test scores and academic success do not establish that the petitioner ranks favorably among established medical researchers. Graduate study is not a field of endeavor, but rather advanced training for future entry into such a field.

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 submits evidence of his membership in the American Gastroenterological Association and the Chicago Society for Gastroenterology. Counsel states that both of these associations require outstanding achievements of their members, but the record offers no support for this assertion. Documentation submitted by the petitioner shows that membership in the

American Gastroenterological Association "is open to physicians, surgeons, scientists and other persons residing in North America" with a "demonstrated, continued interest in gastroenterology" and the necessary training and professional credentials. An association that is open to every trained and qualified gastroenterologist in North America does not require outstanding achievements of its members. The record is silent as to the membership requirements of the Chicago Society for Gastroenterology, and this association appears to be local rather than national or international.

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

Counsel states:

[The petitioner] has focused his research activities on the role of intestinal barrier in gastrointestinal disease. . . . [I]t deals specifically with the effect of stress on intestinal barrier function and its role in the pathogenesis of inflammatory bowel disease. . . .

The uniqueness of [the petitioner's] study and research is that it demonstrates for the first time the deleterious effect that stress has on the pathogenesis of inflammatory gastrointestinal disorders.

Four witness letters accompany the initial submission. All of these letters are from faculty members at Rush-Presbyterian-St. Luke Medical Center, where the petitioner works as a research associate. The petitioner's supervisor, Professor Ali Keshavarzian, offers the most detailed letter. He does not indicate that the petitioner has made original contributions of major significance while at Rush-Presbyterian-St. Luke; rather, Prof. Keshavarzian states "I am confident that he will obtain novel and valuable data in the next 12 months." Prof. Keshavarzian contends that the petitioner has satisfied several of the regulatory criteria at 8 C.F.R. 204.5(h)(3), but his own resume appears to indicate a much more substantial history of accomplishment than the petitioner has documented for himself. Prof. Keshavarzian does not explain why, if the petitioner is one of the top researchers in his field, he is employed as a research associate (which is normally a position for postdoctoral trainees rather than established leaders in the field).

Counsel states "[t]he Petitioner is in the process of acquiring patents for two unique and innovative medical devices," specifically a biopsy needle and a colonoscope. If the petitioner has not even yet obtained patents for these devices, it would appear to be premature to assert their major significance in the field. The petitioner submits no evidence to show that the devices are in widespread use at a national or international level, or that there is national or international interest in those devices. Anticipation of future success is not a sign of acclaim if the invention itself is virtually unknown outside of the petitioner's circle of collaborators and superiors.

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

The record contains copies of six articles that have been published in various scholarly journals. The petitioner has also prepared conference presentations. The record shows that the petitioner has prepared additional articles and submitted them for publication, but if these articles have not been published yet then clearly they are not scholarly articles in professional or major trade publications.

Of the articles that had been published as of the petition's filing date, the petitioner has not established that the journals carrying them constitute major publications, nor has the petitioner otherwise established the impact of his published work. Absent evidence that publication, in itself, is a rare feat reserved for only the very top researchers, the petitioner should show that his published work stands above almost all other such articles in terms of impact and/or recognition in the field. Such recognition can take the form of, for instance, heavy independent citation. If publication is expected or commonplace in a given field, we cannot find that everyone who publishes articles in that field is at the very top of the field or has earned sustained acclaim.

The petitioner has also written two books that are not scholarly publications, but rather guides for patients to help them understand various disorders and their treatments. The petitioner indicates that the print run for each book was 5,000 copies. The petitioner submits no evidence to show that these books are significantly more successful or influential than other patient guides.

The director instructed the petitioner to submit additional evidence to establish sustained acclaim. In response, the petitioner submits a new letter from Prof. Keshavarzian and further documentation intended to satisfy the various criteria. Counsel states "[a]part from evidence of prizes . . . already submitted, enclosed is a copy of the *Clinical Research Award*, conferred upon the beneficiary by Association of the American College of Gastroenterology . . . in March 2001." Evidence regarding this award was among the "evidence . . . already submitted" with the initial filing, and counsel had discussed that same letter at the time of the initial filing. The letter does not represent new evidence "apart from" what had already been submitted.

Prof. Keshavarzian describes the petitioner's research work, and now, several months after his initial letter, states that the petitioner has made important and novel findings in his laboratory. Prof. Keshavarzian lists publications and presentations arising from this work, all of them appearing after the petition's July 2001 filing date. The assertions of the petitioner's supervisor do not constitute documentation of sustained acclaim outside of the laboratory where the petitioner works. Grant documentation submitted with Prof. Keshavarzian's letter shows that the petitioner is not a primary investigator on the research projects in question, but rather a research associate with a five-year employment agreement (as opposed to permanent employment or tenure). This documentation suggests that the petitioner is not a key innovator on these projects, but rather is a subordinate staffer undertaking research plans developed by others, while working "under the direct and hands-on supervision" of an assistant professor. The petitioner's obvious subordinate role in this project does not substantiate the claim that the petitioner is at the top of his field. The petitioner's own curriculum vitae describes his current position as "training."

Counsel refers to the petitioner's "pending membership in the American College of Gastroenterology." The petitioner submits a letter dated November 26, 2001, indicating that the petitioner had just completed his application for membership and that a decision would be forthcoming. Obviously, the petitioner was not yet a member on November 26, 2001, and

therefore he was not a member on July 30, 2001 when he filed the petition. The petitioner cannot retroactively establish eligibility by applying for membership in an association after his petition has already been filed. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izummi¹, 22 I & N Dec. 169 (Comm. 1998), and Matter of Katighak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. We note also that the record contains no evidence that the American College of Gastroenterology requires outstanding achievement of its members, and even if such evidence was in the record, a pending application for membership does not in any way prove that the application will ultimately be approved.

The petitioner submits a copy of a U.S. Patent certificate for a colonoscope that he had invented. The patent was issued on October 30, 2001, four months after the petition's filing date. The petitioner had initially claimed to have applied for two patents; the record is silent as to the outcome of the second patent application, and counsel does not even mention the second application in response to the director's notice (even though the very act of applying for the patent had originally been represented as evidence of a major achievement).

Counsel asserts that the petitioner satisfies a previously unclaimed 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.

Counsel states that the petitioner has acted as a judge by reviewing manuscripts submitted for publication in various journals. The very act of reviewing a manuscript does not automatically confer acclaim; we must consider the circumstances under which the judging took place. For example, serving on a committee to select Nobel Prize winners carries much more weight than grading the exam papers of one's own students. In this instance, two faculty members at Rush University were asked to review a number of manuscripts. Those faculty members, in turn, gave the manuscripts to the petitioner rather than reviewing them themselves. Thus, the circumstances under which the petitioner reviewed the manuscripts do not suggest or imply any significant reputation outside of Rush University and its affiliated medical center. However sincerely these two individuals may believe the petitioner to be among the best in his field, such a reputation within a single university is not national or international acclaim. Furthermore, there is no evidence that the petitioner had performed any such reviews as of the time of filing; the review requests in the record are dated October 2001 and later, many of them after the director had requested further evidence.

The director denied the petition, stating that the evidence of record establishes that the petitioner is a prolific researcher but does not establish sustained acclaim or place him at the top of his field. The director discussed various specific shortcomings in the evidence submitted. The director concluded that the petitioner had "convincingly met" only one criterion, pertaining to

¹ The published decision misspells the name; the proper spelling is "Izumii."

publication of scholarly articles. With regard to this finding, we note that the majority of the published articles in the record were not published until after the filing date. We do note, nevertheless, assertions by the petitioner's superiors that the petitioner has produced articles at an unusually high rate.

The director also stated that the petitioner "nominally meets the criterion" pertaining to judging the work of others, by virtue of having served for one year as chair of the Department of Internal Medicine at Mazandaran University. The director noted the absence of evidence that the petitioner had served as a judge at a national or international level. To this observation, we add that there is no indication that any entity outside of Rush University has sought the petitioner's work as a judge since the petitioner arrived in the United States.

On appeal, counsel states that the appeal "brief will not address the aforementioned accepted criteria and will only focus on the three more criteria that should have been accepted by the [S]ervice." Those criteria are prizes, membership in associations and original contributions. The petitioner submits new letters intended to clarify the evidence previously submitted to satisfy those criteria.

The petitioner submits no new evidence regarding what had been represented as national prizes or awards. Counsel merely asserts that the "appreciation tablets," on their face, represent awards from national authorities. We have already discussed these tablets, which appear to be student awards, and counsel offers nothing substantial to alter our conclusions. 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).

Regarding memberships, counsel notes that the American College of Gastroenterology had previously indicated that the petitioner's application "will now be forwarded to the Credentials Committee for review and subsequent presentation to the Board of Trustees." Counsel states that the association's "multi-step review process" demonstrates that membership is not contingent merely on employment in the field. Counsel cites a new letter, indicating the petitioner's acceptance into the association. Counsel states that this letter shows that the petitioner "fully met the rigid requirements," but nothing in the record shows what those "rigid requirements" are. Counsel seems to contend that, because the association does not immediately grant membership upon receipt of an application and dues, it must therefore require outstanding achievements of its members. This argument presents a false dichotomy, and is further weakened by the lack of any documentation to specifically spell out the association's membership requirements.² It remains that the petitioner did not hold this membership until well after the petition's filing date.

² These requirements are readily available at the American College of Gastroenterology's official web site, www.acg.gi.org. The web site lists three criteria to become a member:

- Physicians or others with a graduate degree in the basic sciences, whose primary interest is in digestive diseases.
- Graduated [sic] degree received four years prior to application.
- Application support by two fellows or a fellow and a member.

None of the above are outstanding achievements in the field, and counsel's baseless insistence that "the American College of Gastroenterology . . . requires outstanding achievements of its members" raises serious questions about

Counsel acknowledges that "the record did not establish that the petitioner's work has been relied upon and cited by others to an unusually high degree," but asserts that this is because "citation indexes cannot be obtained" for the Iranian journals in which the petitioner's earlier work appeared, and because it "is somehow too soon" to expect citation of the petitioner's later work.

The petitioner submits several letters from individuals who had been asked to explain the significance of the petitioner's innovations in the field. Dr. Leo R. Fitzpatrick of Otsuka Maryland Research Institute states that the petitioner "is the beneficiary of excellent scientific training, under the general direction of Dr. Ali Keshavarzian. I have known Dr. Keshavarzian for over 10 years, and consider him to be one of the most eminent IBD researchers/clinicians in the entire world." We have previously noted that Dr. Keshavarzian's own accomplishments appear to eclipse the petitioner's own reputation, and the petitioner cannot earn sustained acclaim in his own right simply by association with Dr. Keshavarzian. Dr. Fitzpatrick also discusses the petitioner's "direct collaboration with my company." Numerous other witnesses on appeal have, likewise, collaborated with the petitioner and/or his supervisor, Dr. Keshavarzian. At best, the letters submitted on appeal show that the petitioner's collaborators consider his research and inventions to be important. The opinions of collaborators, however sincere, do not amount to sustained acclaim at a national or international level.

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 gastroenterological 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.

the accuracy of counsel's other claims in this proceeding. "Fellow" is a higher grade of membership than "member." The site also indicates a still higher class of membership, "master," which "is a rare honor reserved for individuals with most distinguished service to the College and to the field of clinical GI patient care and education." This last classification would appear to be the closest match to the regulatory criterion at 8 C.F.R. 204.5(h)(3)(ii), but the petitioner is not a "master" and only became a "member" after being told his evidence was insufficient.