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U.S. Department of Justice  
Immigration and Naturalization Service

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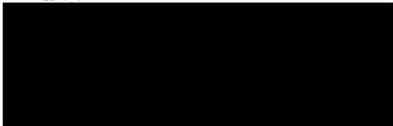
File: [Redacted] Office: NEBRASKA SERVICE CENTER

25 OCT 2002  
Date:

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:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**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 she has sustained national or international acclaim at the very top level.

Counsel states:

The Petitioner seeks an immigrant visa based on her extraordinary accomplishments as a researcher in the field of cardiovascular disease. In particular, the Petitioner has made groundbreaking discoveries through her work in a pioneer research field that attempts to understanding [sic] the regulation mechanism of smooth muscle gene during development and gene therapy for cardiovascular diseases. According to the

Petitioner's study of transgenic animal model and others, she has found that tissue specific gene delivery is much more important in searching for molecular treatment methods. . . .

[T]he Petitioner is widely acknowledged as **the authority** in her area of expertise. Her investigations have produced findings that will be felt on an *international* level.

(Emphasis in original.) 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, she 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.*

Counsel notes that several national awards are "outlined in [the petitioner's] C.V." The petitioner's *curriculum vitae* represents a list of claims, rather than documentary support for those claims. The record contains evidence of only one claimed award. Counsel states:

The most significant award earned by the Petitioner is the highly competitive Postdoctoral Fellowship Award issued by the American Heart Association (AHA). Again, this is a highly competitive two-year cash award. The Petitioner's research project . . . was funded for two fiscal years. It must be noted that the total award amount of \$70,000 was completely contingent on the Petitioner's continued successful results. If the Petitioner's research had failed, the second year of her grant award would have been withdrawn.

The record contains no evidence that the AHA fellowship is a prize or award for excellence in the field of endeavor. A postdoctoral fellowship is a period of training, in which the fellow is not considered to have fully entered the profession on an independent level. Fellowship grants fund the fellow's salary and expenses, and thus represent remuneration for services rendered rather than a prize or award. The funds are not a prize for the petitioner's past work, but funding for ongoing work; otherwise, it would not be contingent on the continued progress of the work. The grant amounts, in effect, to a contract in which the petitioner agrees to perform research work in exchange for AHA's funding. The fellowship is an amalgam of training and employment, rather than an award for excellence.

The grant was awarded not by the AHA at a national level, but by the "Midwest Affiliate." Competition for the fellowships (the documents clearly indicate that there are multiple fellowships) appears therefore to be limited to postdoctoral fellows in the Midwestern United States, excluding the most experienced researchers who have already established their careers, as

well as postdoctoral-level researchers in the coastal areas. Witnesses indicate that AHA's Midwest affiliate approves 22%, or two out of every nine, applications for these grants.

*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 "[t]he Petitioner is a member of six (6) national and international societies dedicated to the Petitioner's area of expertise." The petitioner submits evidence of three of those memberships. The record does not contain any evidence to show that any of these associations require outstanding achievements of their members; the materials submitted establish the petitioner's membership but do not state in any detail the qualifications that the petitioner had to meet to become a member. Counsel notes that one of the six associations is the American Association for the Advancement of Science ("AAAS"), and quotes AAAS documentation identifying the association as "the worlds largest general science organization . . . with more than 138,000 members." If the association is indeed the largest organization of its kind, that size would tend to indicate a relatively open membership policy rather than the highly restrictive standards embraced by, for example, the U.S. National Academy of Sciences.

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

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

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

Counsel asserts that the petitioner has satisfied the above three criteria by publishing her findings in journals and displaying her work at poster presentations at conferences. Counsel lists 21 articles and presentations, and the petitioner has submitted a "sampling" of these works.

Scientific conferences are not artistic exhibitions or showcases. Presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience. The fact that the petitioner offered a poster presentation does not make the presentation an artistic display; if anything, it suggests that the work was not deemed to be significant enough to warrant an oral presentation at the conference.

Counsel states:

Counsel acknowledges that "*publish or perish*" is the credo of the research community. However, while it is generally expected that a medical researcher

publish their findings, the Petitioner has exceeded what is normally expected. This is evidenced by the fact that the Petitioner's original work has been published in the highest-ranking peer-reviewed journals in the world, thus indicating that she is among the elite in her area of research.

An example of these journal rankings has been determined by the Journal Citation Reports and has been included with this petition for your analysis. This tool objectively determines the status and reputation of scientific journals.

The "impact factor" of a journal is determined by the citation rate of the articles therein. A frequently cited journal has more impact than a rarely cited one. Counsel fails to take the next logical step, however, specifically that a frequently cited *article* has more impact than a rarely cited one. Despite counsel's demonstrated awareness of the correlation between citation and impact, the record contains no evidence to show that the petitioner's articles have been heavily cited.

With regard to counsel's assertion that the petitioner's work amounts to original contributions of major significance, the publication of the petitioner's work does not, by itself, establish the significance of that work. The petitioner submits several witness letters describing her work.

Professor J. Richard Spears, who supervises the petitioner's postdoctoral work at Wayne State University, states that the petitioner "is the most talented young investigator with whom I have had the privilege of collaborating in my career." Another faculty member states "I have seldom seen a biomedical scientist at a formative stage of career with more accomplishments and with greater future promise." We do not dispute the sincerity of these statements, but the question is not whether the petitioner is the most talented young investigator at a formative stage of career ever to work at one particular university, but rather whether the petitioner is one of the top figures in her field. "Young investigator" is not a separate field of endeavor, and to qualify for the highly restrictive immigrant classification that she seeks, the petitioner must compare favorably not only with postdoctoral investigators still completing their training, but also tenured professors, department heads, and other established researchers with decades of experience.

Prof. Spears describes the petitioner's role in projects with him and with another researcher:

[W]e have been investigating ways to reduce injury to heart muscle (myocardium) that occurs during opening a coronary artery that has been occluded for a prolong[ed] period, causing an infarction (heart attack). When patients have a heart attack, opening the occluded coronary artery has allowed "reperfusion" to occur. . . . However, upon reperfusion, the small capillaries are often so damaged during the heart attack that the flow of red blood cells through the tissue is still inadequate. . . . In my laboratory, we have developed a catheter-based method for providing local hyperbaric blood flow, based on a discovery of mine that extremely high levels of oxygen can be dissolved in a saline solution ("aqueous oxygen" or AO) and delivered through specially prepared silica capillaries only in liquid form into blood...Based on our encouraging work with the use of AO in a swine modal, a

The petitioner documents a small number of citations of her published work, along with one request for a reprint of an article. Counsel contends that this demonstrates international interest in the petitioner's work. In a field where the most influential articles are cited dozens if not hundreds of times by other researchers, the minimal citation here is not evidence that the petitioner stands above almost all others in her field (as she must if she is to qualify). The petitioner herself cites dozens of other papers in her own published work, but counsel does not claim that every one of the cited authors is nationally or internationally acclaimed.

Counsel asserts that the petitioner satisfies a previously unclaimed criterion:

*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.*

The petitioner submits a partial photocopy of *TechNotes*, with no legible date. The publication contains a three-paragraph discussion of one of the petitioner's projects. Because the publication is undated, we cannot determine whether it existed at the time the petitioner filed the petition. Also, the petitioner has not shown that *TechNotes* constitutes a major publication. It appears to be published by "Ambion, the RNA company," and every article contains several references to catalog numbers. *TechNotes* appears to be a newsletter issued by a supplier of laboratory equipment; the article about the petitioner's project focuses on Ambion products used in the experiments.

The director denied the petition, stating that the only criterion the petitioner has met is the one pertaining to publication of scholarly articles. The director discussed the arguments offered regarding other criteria and explained the flaws in those arguments. The petitioner has prepared her own appeal, and there is no indication that counsel was involved in any way with the preparation of that appeal. Nevertheless, the petitioner does not indicate that counsel no longer represents her and thus counsel remains the attorney of record. The Ohio address used by the petitioner on appeal indicates that the petitioner no longer works at Wayne State University.

On appeal, the petitioner submits a copy of a recent article by her, as well as background information about postdoctoral researchers in general. In a lengthy appeal statement, the petitioner argues that the director "did not consider the important facts in the record and misinterpreted" the pertinent regulations.

In arguing that she has in fact received a national award, the petitioner cites section 101(a)(21) of the Act, which defines a "national" as "a person owing permanent allegiance to a state." The regulatory reference to a nationally recognized award, however, clearly uses the word "nationally" as an adverb, rather than the noun "national." The petitioner does not explain the relevance of the cited definition. It remains that the documents in the record show, on their face, that the AHA fellowship was a grant from a regional organization rather than a national prize, and that the organization awards so many such grants (approving more than one application out

of five) that Wayne State University alone had at least eight other recipients concurrently with the petitioner, all of them receiving substantially more funding than the petitioner.

The petitioner maintains that she has performed a leading or critical role for an organization with a distinguished reputation, because of her purportedly irreplaceable role at Wayne State University. While Wayne State University may enjoy a distinguished reputation, the record does not show that the petitioner's role was leading or critical at the university-wide level. One specific laboratory within one of the university's many departments is not, itself, a distinguished organization, and whatever reputation that one laboratory may enjoy appears to be heavily reliant on the reputation of the professor in charge of that laboratory.

The petitioner asserts that the director made unfair and demeaning presumptions based on the petitioner's status as a postdoctoral researcher. While some of these presumptions are corroborated by Wayne State University faculty members who have referred to the petitioner's career being at a "formative" stage, there is nothing in the director's decision to show that the director would have approved the petition had the evidence been exactly the same except for the petitioner's job title. Rather, the petition was denied because the petitioner's claims to have satisfied most of the regulatory criteria rely on unsubstantiated assumptions or unrealistically broad interpretations of those criteria.

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 herself as a biomedical researcher to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.