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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



16 SEP 2004

File: EAC 01 110 50559 Office: Vermont Service Center 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:
[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, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

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 that he qualifies 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).

In support of the initial petition and in response to the director's request for evidence, the petitioner has submitted evidence, which he claims, satisfies several of the lesser regulatory criteria under 8 C.F.R. 204.5(h)(3). The petitioner's evidence includes, but is not limited to, the following: membership in the American Society for Virology, letters verifying his work as peer-reviewer of various scientific journals, letters attesting to his scientific contributions in the field of virology, and published articles appearing in journals such as *The Proceedings of the National Academy of Sciences* and *Virology*.

The director's decision, in addressing the evidence provided by the petitioner, merely stated:

In response you submitted letters from peers and evidence you published work which, while noteworthy, does not indicate your work was done alone, but rather as a part of teams of researchers, which does not appear to meet the high standard one would expect if one was a researcher of national or international renown. Having influential peers and having been published is not sufficient to meet the burden of proof in these proceedings. If a researcher truly was a person of extraordinary ability it would seem they would have earned something along the lines of a Nobel Prize, clear and convincing evidence that would indicate one has risen to the very top of the field in which you seek classification.

The director's decision contains flawed observations that are unsupported by statute, regulation or case law. The director's wording suggests that earning "something along the lines of a Nobel Prize" is the only means through which an alien could "truly" demonstrate "clear and convincing evidence" of extraordinary ability. While 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, internationally recognized award such as a Nobel Prize), such an award is not the only means of demonstrating extraordinary ability. Barring the alien's receipt of such an award, the regulation outlines ten lesser criteria, at least three of which may be satisfied, for the alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. In this case, the alien is seeking to satisfy several of the lesser criteria; therefore, the director cannot require the receipt of a major, international award.

The director's implication that the petitioner's work, because it was performed in collaboration with other researchers, "does not appear to meet the high standard" that one would expect of a renowned national or international researcher is also flawed. There is regulatory requirement or evidence to suggest that research "done alone" carries greater acclaim than collaborative research. The imposition of such a standard is onerous and ignores the fact that modern scientific research endeavors routinely involve collaborative efforts. Therefore, the collaborative nature of the petitioner's research is hardly fatal to his claim of eligibility under this classification. It could be argued that the director was simply seeking stronger evidence of the petitioner's prominent role in his research studies. However, we note that the petitioner's published articles themselves and statements from various witnesses confirm that the petitioner was often the principal or leading author. The director's decision does not address this issue. Finally, while the director is correct in stating that publication alone is insufficient to establish eligibility under the classification sought, such evidence must be considered by the director when addressing the ten lesser criteria set forth in the Service regulation at 8 C.F.R. 204.5(h)(3).

In this case, the petitioner claims eligibility under seven of the lesser criteria. While not all of the petitioner's evidence carries the weight imputed to it by the petitioner, the director's decision has failed to specify clearly the strengths and weaknesses of the evidence with regards to the evidentiary criteria set forth in Service regulations at 8 C.F.R. 204.5(h)(3).

The director's decision was flawed in that it raised issues of questionable relevance, failed to consider all of the evidence submitted, and did not offer a meaningful discussion of petitioner's deficiencies as they relate to the pertinent regulatory criteria. Accordingly, this matter will be remanded for the purpose of a new decision. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the director again denies the petition, the decision shall set forth the specific grounds upon which the denial is based, and such grounds must be couched in the pertinent statute and regulations.

ORDER: The director's decision is withdrawn. The matter is remanded for further consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.