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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[redacted]

APR 16 2003

File: WAC 01 280 51816 Office: CALIFORNIA SERVICE CENTER Date:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 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.

At the time she filed the petition, the petitioner was a postdoctoral research fellow at the University of California, San Francisco (UCSF). Counsel states that the petitioner's "expertise in her scientific field of Cancer Molecular Biology Research has reached a level of expertise that indicates she is one of those few who have risen to the top of her field of endeavor."

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, counsel 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 states that the petitioner received a research fellowship from the University of Iowa, two other scholarships, and two travel grants. The only documentation originally submitted to support any of these claims is identified as Exhibit R. Exhibit R of the initial submission consists of a single letter, informing the petitioner "you did not receive a travel grant award." The letter, from an Iowa State University official, goes on to state that the petitioner did receive $175 "which can be applied to your registration fee" to attend a symposium in 1997. The award did not cover the entire $200 registration fee, nor did it include any provision for the petitioner's travel and lodging expenses. The letter advised the petitioner to share a hotel room or a room in a private home "with a number of other students attending the conference."

In response to a request for additional evidence, the petitioner has submitted a copy of a June 1, 1993 letter informing her of her acceptance into the graduate program at the University of Iowa. The letter, from Professor [redacted], indicates "[t]he department currently provides each trainee with a stipend of $12,500 per year and in addition pays full tuition expenses." Because these benefits are paid to "each trainee" in the graduate program, we cannot consider the benefits to be prizes or awards unless we consider admission to the program to be, in itself, such an award. While admission to a competitive graduate program is a worthy achievement, graduate training is common in the petitioner's field, and indeed required for many occupations within that field.

The petitioner has also submitted a copy of an electronic mail message from Professor [redacted] offering information regarding "the 1997 competition" at Iowa State University. Prof. [redacted] indicates that "[t]he size of the pool for that particular competition was about 10 applicants. From that we chose 2." The award described is a student award, recognizing "a research project that is likely to be of interest to a scientific audience." The petitioner submits nothing to show that this award program at Iowa State University routinely attracts national or international attention, or that it differs in any meaningful way from internal student awards available at countless other universities with graduate programs in the sciences.

All of the above awards, even if they had been adequately substantiated, would not demonstrate eligibility. These awards are student awards and scholarships, amounting to nominal financial aid or stipends during ongoing study and training. By definition, these "awards" are available only to students and postdoctoral researchers at the beginning of their careers; the most established individuals in the field, such as tenured professors, are excluded from consideration. The petitioner has not shown that any award she has received is nationally or internationally recognized as a significant award in the 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.*

Counsel lists three associations under the heading of the above regulation: the American Association for the Advancement of Science (AAAS); the American Society of Hematology (ASH); and the Association of Women in Science (AWIS). If any one of these associations does not, in fact, require outstanding achievements of its members, then the petitioner's overall credibility is necessarily compromised. If counsel has no evidence of the above associations' membership requirements, then counsel's attestations regarding those requirements are entirely groundless. If, on the other hand, counsel is aware of the requirements and those requirements fall short of the regulatory requirements, then it is simply false to claim that the associations require outstanding achievements of their members.

The petitioner's initial submission includes a copy of a certificate from ASH, showing that she is an associate member, as well as dues payment receipts from AAAS and AWIS. None of these documents show the respective associations' membership requirements. Therefore, the director instructed the petitioner to submit evidence showing "the minimum requirements and criteria used to apply for membership in the associations . . . in which the alien claims membership." The director specifically identified AAAS, AWIS and ASH in this request.

In response to this request, the petitioner submits documentation regarding a previously unclaimed membership in Sigma Xi as well as a printout from the "Membership" page of the ASH web site, http://www.hematology.org/membership/categories.cfm. This printout states "[p]ost-doctoral fellows who reside in either Canada, Mexico or the United States and are in approved hematology or oncology training programs are eligible for associate membership." Participation in a postdoctoral program is not an outstanding achievement; it is routine training. Counsel adds "[m]embers have to be nominated by their training director to become a member of ASH," but counsel offers no proof to support this assertion. Even if this assertion is correct, nomination by a training director is not an outstanding achievement in the field. It remains that ASH's own web site lists no requirement except participation in an approved postdoctoral program in North America.

The petitioner's submission of materials from ASH's web site clearly demonstrates the petitioner's awareness of the Internet as a resource for membership information, yet despite the director's specific instructions, the petitioner did not submit comparable membership information from the AAAS or AWIS web sites (even though the record contains other material from the AWIS web site). Indeed, the petitioner's response to the director's notice mentions AWIS only obliquely and does not mention AAAS at all.[1]

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[1] According to AWIS' web site, http://www.awis.org/n_membershipsmain.html, "[m]embership is open to all—professionals, students, men, women, teachers, writers—who support women in science." According to http://www.aaas.org/membership/m-cat.shtml, "[m]embership in AAAS is open to all individuals who support the goals and objectives of the Association and are willing to contribute to the achievement of those goals and

Rather than provide the documentation regarding AAAS and AWIS that the director had requested, the petitioner has claimed a fourth membership and submitted documentation regarding Sigma Xi, the Scientific Research Society. A certificate in the record shows that the petitioner "was duly elected an Associate Member . . . in the year 2002." Sigma Xi's Constitution, in the record, states in part:

> ARTICLE II. Membership in the Society. . . .
>
> Section 3. Requirements for Election or Promotion to Membership.
> A. Member. Any individual who has shown noteworthy achievement as an original investigator in a field of pure or applied science is eligible for election or promotion to full membership in the Society.
> B. Associate Member. Any individual who has through initial research achievement in a field of pure or applied science shown aptitude for research which is expected in due course to lead to the fulfillment of the requirements for full membership, is eligible for election to associate membership in the Society.

Sigma Xi's Constitution contains no definition for "noteworthy achievement," but indicates that more details can be found in the Bylaws.[2] as an associate member, the petitioner has not shown "noteworthy achievement"; only that her work "is expected in due course" to result in "noteworthy achievement." Furthermore, the certificate shows that the petitioner "was duly elected . . . in the year 2002" and therefore she was not a member of Sigma Xi when she filed the petition in August 2001, which explains why the initial petition contained no mention of Sigma Xi membership. Even if the record unequivocally showed that Sigma Xi membership satisfies 8 C.F.R. § 204.5(h)(3)(ii), which it does not, the petitioner's 2002 membership cannot show that she was already eligible for the classification sought in August 2001. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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

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objectives." Plainly, neither association requires outstanding achievements of its members, despite counsel's specific (but now abandoned) claim to the contrary.

[2] Sigma Xi's bylaws are available to the general public at http://www.sigmaxi.org/about/organization/bylaw.shtml. Bylaw II, section 2B, indicates that noteworthy achievement "must be evidenced by publications, patents, written reports or a thesis or dissertation." Because the awarding of a graduate degree is generally contingent on the preparation of a thesis or dissertation, it is far from clear that "noteworthy achievement" is synonymous with "outstanding achievement." The home page of Sigma Xi's web site indicates that Sigma Xi has "nearly 75,000" members. The very size of this organization does not readily suggest a restrictive or exclusive membership policy.

Counsel states that the petitioner's "reputation is highlighted by the caliber of persons in her field who recognize her talent." The petitioner submits letters from witnesses whom counsel identifies as "internationally renowned experts." From the plain wording of the statute and regulations, it cannot suffice that the petition has the support of such witnesses; the alien herself must be an "internationally [or at least nationally] renowned expert."

The four witness letters submitted with the initial filing are all from individuals closely involved in the petitioner's doctoral studies at the University of Iowa and her postdoctoral training at UCSF. Even if the record independently established the claimed international renown of these witnesses, their assertions do not and cannot directly show that the petitioner's work is even known, much less acclaimed, outside of the universities where she has worked. While these individuals offer varying degrees of praise for the petitioner's work, their letters do not show that the petitioner has made original contributions that are nationally or internationally acclaimed as having major significance. Recognition that is largely limited to one's supervisors and co-workers is not national or international acclaim.

The petitioner's mentors at UCSF praise her dedication and skill, but they do not indicate that the petitioner has made discoveries or other contributions of major significance. Rather, they indicate that the petitioner's work is promising and that such contributions are, therefore, likely at some future point. Simply working on a project with important implications is not, by itself, a contribution of major significance.

As further documentation of the petitioner's claimed major contributions, counsel cites materials showing that the petitioner made presentations at international scientific gatherings. The petitioner's work did not take on major significance through the act of being presented at a conference, and the petitioner has not shown that only contributions of major significance are accepted for presentation at such gatherings. At best, this presentation is comparable to the publication of an article in a scholarly journal (for which a separate criterion exists, below), as it amounts to the dissemination of technical information to a specialized audience.

In response to the director's request for further evidence, the petitioner has submitted two additional witness letters. Dr. [redacted] an analyst in Global Scientific and Business Intelligence at Johnson & Johnson Pharmaceutical Research and Development, states that he is "primarily aware of [the petitioner's] outstanding work in the field of cancer research through her publications in several prestigious peer-reviewed journals." Dr. [redacted] indicates that he is "called upon to analyze scientific information from academic, government, and industry research to help guide future drug development at J&J," and therefore he must remain well-versed with current research. In terms of describing the petitioner's contributions, Dr. [redacted] states "I believe [her] work will have a very positive impact on US public health," and that the petitioner "is clearly one of the most promising young investigators in the area of cancer research. . . . I believe [the petitioner] will become a leader in the search for improved treatments." Assertions as to the petitioner's promise and what she may, at some future time, achieve amount to speculation and thus carry little weight. The petitioner has chosen to pursue a highly restrictive immigrant classification, intended for those who are, rather than "will become,"

leaders in their fields. Because "young investigator" is not a field of its own, ranking the petitioner highly among those with comparable experience cannot suffice.

Dr. [redacted] assistant professor at California State University, Northridge, states "[t]he research that [the petitioner] is currently doing . . . will be of fundamental importance to the US pharmaceutical industry and is at the forefront of what must be accomplished." Counsel refers to Dr. [redacted] as an independent expert, although Dr. [redacted] was formerly a researcher at the University of Iowa, where the petitioner obtained her doctorate. The record reflects no objective recognition of the petitioner's contributions as being of major significance. Letters from witnesses whom the petitioner has selected cannot suffice as the "extensive documentation" required by the statute.

The petitioner has submitted copies of articles from major publications such as *Time* and *Nature*, discussing the type of research that the petitioner has undertaken. While these articles illustrate the uncontested importance of the overall area of research, the articles contain no mention of the petitioner or her specific work. The petitioner cannot establish acclaim simply by working in a highly publicized field. If anything, these articles (which do single out other researchers for special mention) demonstrate a level of acclaim and recognition which is plainly attainable in the petitioner's field, but which the petitioner herself has not attained.

For the above reasons, we cannot conclude that the petitioner has earned national or international acclaim through original contributions of major significance.

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

Counsel lists six articles, two of which had not yet been published when the petitioner submitted them with her petition. Unpublished articles, by definition, have not appeared in professional or major trade publications or other major media. The petitioner submits citation records, showing moderate citation of two of her articles, and heavier citation of a third (with 23 citations). This level of citation demonstrates some degree of impact and influence on the field and thus the petitioner satisfies this criterion.

The director requested further evidence and advised the petitioner that the initial submission was insufficient to establish eligibility. Some of the petitioner's response has been addressed above, within the various evidentiary criteria discussed. The petitioner has also claimed a fifth, previously unclaimed criterion:

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

Counsel asserts that the petitioner played critical roles for the Hematopoiesis Research division of the UCSF Veterans Affairs (VA) Medical Center and the AWIS Mentoring Program. Dr. [redacted] director of Hematopoiesis Research at UCSF, states in a new letter that the petitioner "has been the lead scientist" in a study of "the role of phosphorylation of the HOXA9 protein in regulation

of its cancer causing activity." While the University of California system has a distinguished reputation, the petitioner has not shown that the Hematopoiesis Research division of the UCSF VA Medical Center, as a self-contained unit, has a distinguished reputation. The petitioner's role as lead researcher in one of many projects underway at this division has not been shown to be critical to the medical center, UCSF, or the University of California as a whole; her efforts affect only a very small portion of the university system, of UCSF, and of the medical center, and only one laboratory within the Hematopoiesis Research division.

Counsel observes that the petitioner "has been a volunteer member of the AWIS-Palo Alto chapter Mentoring committee since 2000." This work does not amount to a critical role for AWIS as a national organization; there is no indication that the petitioner's impact is felt within the organization beyond the Palo Alto chapter. To assert that every mentoring volunteer within AWIS plays a critical role for AWIS is impermissibly broad.

The director denied the petition, stating that the petitioner's evidence falls short of the evidentiary standards set forth in the regulations. The director observed that the petitioner wrote her scholarly articles with co-authors rather than on her own. On appeal, counsel states that the director failed to recognize (1) the petitioner's memberships in associations "based on outstanding achievements"; (2) "the original scientific contributions that have been acclaimed nationally and internationally"; and (3) the reasons for petitioner's co-authorship of scholarly articles. Counsel also indicates that a further brief is forthcoming.

With regard to co-authorship, we acknowledge that the increasingly specialized nature of scientific research means that collaboration is the norm, and thus scholarly articles tend to have several co-authors. The director's inference that sole authorship is inherently more indicative of acclaim than co-authorship is unsupported. While the circumstances of authorship can be one of many factors carrying weight when examining published work, co-authorship by itself does not justify the inference that an alien's contribution to a published article was minimal or that the article itself is insignificant.

The director's other findings are generally on stronger ground. The petitioner has not shown that any of her memberships in associations satisfy 8 C.F.R. § 204.5(h)(3)(ii), and the individuals providing opinions regarding the significance of the petitioner's work are concentrated almost entirely at universities where the work took place.

The supplemental submission that followed the appeal consists almost entirely of copies of previously submitted materials, with two new exhibits. The first new document, a letter from an official of Sigma Xi, informs the petitioner of her promotion to full membership as of October 22, 2002. This promotion did not occur until after the denial of the petition, and in any event the petitioner has not shown that membership in Sigma Xi requires any achievement beyond preparation of a dissertation.

The other new document on appeal is a letter from Dr. [redacted] of UCSF VA Medical Center, who states that the petitioner's "work is truly innovative and of fundamental importance" and "is progressing extremely well." Dr. [redacted] asserts that the research will be impeded if the petitioner is unable to remain at UCSF, but the issue here is not the employer's reliance on the

petitioner's work. The petitioner must, as a matter of law, have sustained national or international acclaim as one at the very top of her field in order to qualify for the highly restrictive visa classification she has sought. The newest letter on appeal fits the already established pattern of letters from the petitioner's mentors, collaborators and other close associates. No amount of testimony from the petitioner's own employers can objectively demonstrate that the research community throughout the nation or the world shares the employer's opinions regarding the petitioner's work. Whatever promise the petitioner's work has shown during her still ongoing professional training, the record does not show that such promise has blossomed into sustained acclaim as a leading figure in the field.

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 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.