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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
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: WAC-02-251-52838 Office: California Service Center Date: AUG 19 2003

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)

ON 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.

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.

On appeal, counsel argues that the denial of the immigrant visa on behalf of the petitioner is inconsistent with the approval of a nonimmigrant visa for the petitioner in a similar classification.

We do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis on the evidence of record. The nonimmigrant visa could have been issued based on different evidence or in error. The Service is not bound to treat acknowledged past errors as binding. *See Chief Probation Officers of Cal. v. Shalala*, 118 F.3d 1327 (9th Cir. 1997); *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 517-518 (1994); *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084 (6th Cir. 1987).

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 Bureau 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.

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

The petitioner submitted evidence that her paper presented at the 9th International Congress in Milan won the Henry M. Goldman International Award for Excellence in Research issued by the Italian Society of Periodontists in 1999. We note that the award certificate misspells the award as the Henry M. "Golman" prize. In his request for additional documentation, the director requested evidence of the significance of this award.

In response, the petitioner submitted the promotional materials for the 2003 award. These materials reflect that the society awards two papers, one in basic research and one in clinical research and that the prize amount is 1,000 Euros. An e-mail from Lucia Lazic indicates that a commission of three experts choose eight papers to be presented and two professors join the experts to judge the presentations for the awards. This e-mail is in response to an e-mail by counsel requesting the criteria used to judge participants and information regarding how the prize is awarded when the paper has more than one author. Ms. Lazic's reply is not responsive to either of these requests. The petitioner also submitted evidence that Henry M. Goldman is a former dean of Boston University's dental school.

The director concluded that the petitioner was not personally listed as the recipient of the prize on the certificate, the paper was, and that the award was for "best papers presented at the International Conference," not for "excellence."

On appeal, counsel notes that the award is not a student or academic award. She further asserts that the director's conclusion that the petitioner was not a recipient of the award constitutes "reversible error." Finally, counsel argues that authorship of a winning paper is an award for excellence.

We are satisfied that, as author of an award-winning paper, the petitioner can be credited with the award. Nevertheless, the director's failure to acknowledge this fact is not reversible error. An alien must meet three of the regulatory criteria. If the petitioner does not meet another two criteria, the director's error on this criterion is not determinative.

Moreover, we concur with the director that the petitioner has not established that the award itself could serve to meet this criterion. While the director's conclusion that the award is not for excellence is questionable, we find that the record does not demonstrate that the award is nationally or internationally recognized. There is no evidence regarding how many submissions the society receives or that establishes that the award is a prestigious honor to which experts in the field aspire. For example, there is no evidence that the selection of the prizewinners is a media-generating event. Nor is a monetary compensation of 1,000 Euros significant. As stated above, the name of the individual after whom the award is named, Henry M. Goldman, is misspelled on the award certificate. This glaring error is not indicative of or consistent with a nationally recognized award. The award, however, will be considered below as it relates to the significance of the petitioner's publications.

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 initially claimed membership in the following associations: the American Academy of Periodontology, the American Dental Association, the California Dental Association, the California Society of Periodontists, the San Francisco Dental Society, the Loma Linda University Alumni Association, the Societa' Italiana di Parodontologia, and the Associazione Italiana Odontoiatria.

The petitioner failed to submit evidence of the membership requirements for these associations. The director did not address this criterion in his request for additional documentation other than to list it as one of the regulatory criteria.

In response, the petitioner resubmitted the list of associations without any evidence of his membership or the membership requirements. The director determined that the record did not reflect that these organizations require outstanding achievements of their general membership. Counsel does not challenge this conclusion on appeal and we concur with the director.

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 submitted a single article by one of her co-authors that cites two of their articles. In his request for additional documentation, the director concluded that this article could not constitute published material about the petitioner. In response, the petitioner submitted evidence of five additional citations, two of which are self-cites by a co-author.

The director concluded that these articles were not "about" the petitioner as they did not "rate, critique, evaluate or discuss in depth the work of the petitioner."

Counsel does not challenge the director's conclusion on this issue and we concur with the director. The citing articles are primarily about the author's own work, not the petitioner or her work. As such, they cannot be considered published material about the petitioner.

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.

The petitioner submitted a letter from Dr. Art Miller, Chair of Admissions at the University of California at San Francisco's dental school, requesting that the petitioner serve on their admissions committee. The director concluded that the record contains no evidence that the petitioner actually served on the committee. The director also questioned whether evaluating prospective dental students, who presumably have no achievements in the field as of yet, could be considered to be judging the work of others in the petitioner's field. On appeal, counsel does not address the director's concerns on this issue.

We concur with the director's concerns and, in addition, note that the letter indicates that the committee will be made up of faculty and students. Thus, the petitioner has not established that an invitation to serve on the committee is indicative of or consistent with national acclaim.

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

Dr. Dimitris N. Tatakis, formerly a faculty member at Loma Linda University, discusses the petitioner's student research at that university. Dr. Tatakis provides general praise of the petitioner and ranks her in the top one to three percent of the field. These subjective conclusions are not helpful. The ten regulatory criteria provide types of objective evidence that the Bureau can evaluate instead of relying on the subjective opinions of references selected by the petitioner. Dr. Tatakis does not identify a specific contribution or discuss its significance other than to state:

> [The petitioner's] scientific contributions span the spectrum of basic science ["HLA-B27 transgenic rats are susceptible to accelerated alveolar bone loss"], applied science ["Periodontal repair in dogs: Effect of rhBMP-2 concentration on regeneration of alveolar bone and periodontal attachment"], and clinical science ["Reproducibility of clinical assessment of keratinized tissue width"] and have been very well received by her colleagues.

(All but first set of brackets in original.)

Dr. Ulf Wikesjö, formerly the Director of the Advanced Education Program in Periodontics at Loma Linda University School of Dentistry, also provides general praise of the petitioner. Regarding her contributions, he states: "Examples of significant research where [the petitioner's] contributions have been essential include studies of the application of recombinant human bone morphogenetic protein-2 for periodontal regeneration."

Dr. Arthur J. Ammann, Professor of Pediatrics at the University of California, asserts that he became acquainted with the petitioner while she was a student at Loma Linda University. While a medical doctor, Dr. Ammann asserts that he "worked closely with the faculty at the to [sic]

School of Dentistry to define oral manifestations of immunodeficiency disorders." Regarding the petitioner's specific contributions, he states: "At the cutting edge of her research have been her studies of bone loss in animal model, definition of factors that are associated with accelerated disease and evaluation of compounds directed toward repairing periodontal disease." He concludes that the petitioner "is recognized for her clinical skills and is referred some of the most difficult clinical periodontal disease disorders."

Dr. Gregory J. Conte, an assistant professor at the University of California at San Francisco, asserts that he became acquainted with the petitioner in 1997. He asserts that her thesis on periodontal repair in dogs was "an important investigation of growth factors in the field of periodontal regeneration," and that she continues as a leading researcher in her field.

In his request for additional documentation, the director requested evidence establishing how the petitioner's work constitutes a contribution of major significance in the field. In response, the petitioner resubmitted the above letters.

As noted by the director, the above letters are all from the petitioner's collaborators and immediate colleagues. On appeal, counsel asserts that the letters are from the top experts in the field and that the very fact that the petitioner worked with these individuals is an indication of the petitioner's ability. Counsel further asserts that the fact that the petitioner's articles were published in medical journals, not simply periodontal journals, is significant. Counsel concludes that the six citations of the petitioner's work constitute objective evidence that the petitioner's recognition is not limited to her colleagues.

While letters from one's immediate circle of colleagues are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's national or international acclaim. Moreover, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

Counsel's characterization of the petitioner's citation history as objective evidence of the petitioner's influence beyond her colleagues is not persuasive. A total of six citations is not remarkable. Moreover, half of those citations are self-cites by a co-author. While self-citation is a normal and expected practice, it is not evidence that the petitioner is known beyond her collaborators.

That an article authored by the petitioner was recognized at a conference is some objective evidence of the significance of the petitioner's work, but such recognition at a single conference is not evidence of sustained acclaim.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to present some benefit if it is to receive funding and attention from the scientific

community. The record, however, does not establish that the petitioner's work represented a groundbreaking advance in periodontics, or has far-reaching implications.

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

The petitioner initially submitted evidence that she has authored six published articles, two of which were cited by a co-author in a single article. In his request for additional documentation, the director requested that the petitioner establish the significance of these articles. In response, counsel asserted that the petitioner had been cited an additional five times (all prior to the date of filing). The petitioner provided evidence of the citations, information regarding the journals that have published her articles, and evidence that she had published additional articles after the date of filing. The newly published articles cannot be considered evidence of the petitioner's eligibility as of the date of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The director concluded that the record contained no objective evaluation of the impact the articles had had on the field. On appeal, counsel argues that the petitioner's articles are significant because they were published in medical journals, which is a rare honor for articles regarding periodontics and dentistry.

We cannot concur with the director that the record contains no evidence of the significance of the petitioner's articles. We find that the prize awarded to a paper co-authored by the petitioner demonstrates the significance of this article. As such, the petitioner has established that she meets this single criterion.

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

The petitioner claimed to have played a leading or critical role for the San Francisco Dental Society by serving on the Board of Directors beginning in 2003. As noted by the director, the petitioner filed the petition in August 2002. Thus, she had not served on the board of directors as of the date of filing. Counsel did not challenge the director's conclusion on this issue and we concur with the director.

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 periodontist 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 indicates that the petitioner shows talent as a periodontist, but is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.