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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: [redacted] (LIN-00-263-53123) Office: Nebraska 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, Nebraska 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 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 he 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 "scientist/researcher" in the field of orthodontics. 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 director concluded:

> The comprehensive record indicates that the petitioner meets several points of the evidentiary list promulgated by the Service to assist petitioners comply with [sic], and adjudicators to weigh, the "extensive documentation" required by statute for this classification. However, while the evidence is sufficient to demonstrate the petitioner's credentials as an accomplished researcher in a medical field of obvious importance, the evidence does not show that the petitioner enjoys the sustained national or international acclaim necessary for this classification.

On appeal, counsel argues that the Bureau may not look for evidence of national acclaim beyond the evidence submitted to meet three criteria, citing *Buletini v. INS* 860 F. Supp. 1222 (E.D. Mich. 1994). In that case, the court found that when evaluating evidence that an alien had judged the work of others, the Service (now the Bureau) could not require evidence that the alien was selected for such duties based on his extraordinary ability.

We do not read the director's decision as concluding that the petitioner was eligible under the regulations but that the petition was not approvable. Rather, a more reasonable interpretation of the decision is that the director concluded that while the petitioner had submitted documentation relating to or addressing three criteria, the evidence itself was not indicative of or consistent with national or international acclaim. A petitioner cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria. In determining whether a petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it establishes that the petitioner has sustained national or international acclaim.

The petitioner has submitted evidence that, 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.*

In his cover letter, counsel asserted that the petitioner had "received numerous awards in his country and the United States." The petitioner submitted an article in the University of Illinois Graduate School reports announcing the award of a John Grace Nuveen Scholar Award for International Students to the petitioner and a certificate for the scholarship.

Academic study is not a field of endeavor, but training for a future field of endeavor. As such, awards for academic work, scholarships and fellowships cannot be considered awards in a field of endeavor. Moreover, only students compete for such awards. As the petitioner did not compete with national or international experienced experts in the field, the awards cannot be considered evidence of the petitioner's national or international acclaim.

While not specifically claimed by the petitioner or counsel as evidence for this criterion, the record contains patent applications listing the petitioner as author. Patents are issued to the inventors of

original processes or devices that are useful. No evaluation as to the significance of the invention is made.[1] It is a property right, not an award for excellence.

Finally, at age 19, the petitioner won the Nation Journalism Club's Competition for Kenyan Schools. This award for authorship of a fictional story is not evidence of the petitioner's acclaim as an orthodontic researcher.

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 submitted evidence of his student and associate memberships in the American Association of Orthodontists. The petitioner also joined a constituent society of the association, the Midwestern Society of Orthodontists. Finally, the petitioner submitted his membership certificate for the Nairobi University Dental Students Association.

The petitioner failed to submit evidence of the membership requirements for these associations. As such, the record does not reflect that these organizations require outstanding achievements of their general membership and, thus, we cannot conclude that the petitioner meets the plain language of this 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 index of exhibits asserts that exhibit 7 is submitted to meet this criterion while counsel references exhibit 8 in his cover letter. We note that exhibit 5 could also be related to this criterion.

Exhibit 5 contains an article in the University of Illinois *Graduate School Reports* announcing several accomplishments by students, including the petitioner's scholarship. We cannot conclude that a university's own publication can be considered major media. Moreover, the article is not primarily about the petitioner.

Exhibit 7 includes a single article in Kenya's *Nation News*. The record contains no evidence regarding the circulation of the publication. As such, the petitioner has not established that it constitutes major media in Kenya. Regardless, the article is about the petitioner's fiction writing award and does not relate to the petitioner's work in the field for which classification is sought. Thus, the article does not meet the plain language of the regulation.

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[1] While the U.S. requires that the invention be "useful," the Mirriam-Webster Dictionary 759 (1974) defines "useful" as "capable of being put to use: advantageous." The same dictionary defines "excellence" as "the quality of being excellent," defined as "very good of its kind: first-class." *Id.* at 250. Thus, recognition of the development of a novel and useful process is not a competitive award for excellence in the field.

Exhibit 8 includes three editorials written by the petitioner and published in *Orale Medicus Digest*. An editorial written *by* the petitioner does not constitute published material *about* the petitioner relating to his work in the field.

Finally, we acknowledge counsel's assertion that the petitioner's own articles have been cited. Articles which cite the petitioner's work are primarily about the author's own work, not the petitioner. 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.

Counsel references Exhibit 8 as evidence that the petitioner meets this criterion. Exhibit 8 includes a letter from the University of Illinois at Chicago confirming the petitioner's agreement to "serve as judge for the 2000 Chicago NAACP ACT-SO competition on April 29, 2000 at Malcolm X College." While we recognize that a selection to judge the work of others need not demonstrate that the alien was selected based on his extraordinary ability, the Bureau may still evaluate the level of judging done by the petitioner. The selection to judge must be indicative of and consistent with national acclaim. Agreeing to serve as a judge for a local competition in a location where the petitioner was a student is not indicative of any recognition beyond the Chicago area. Moreover, it is not clear that the petitioner was judging work by members of his field or an allied field.

In addition, the petitioner's mentor in Nairobi, Professor Symon Guthua, asserts that the petitioner edited the *University of Nairobi Dental Journal* and founded *Orale Medicus Digest International*. According to counsel, the latter publication is currently edited by deans of the Harvard College of Dentistry (Dr. R. Bruce Donoff) and the College of Dentistry at the University of Stellenbosch in South Africa. The record contains no evidence regarding the reputation of either journal. The materials from *Orale Medicus Digest* reflect that the petitioner was the editor of that publication, several students at the University of Nairobi served as contributing editors, Professor Guthua was the "patron," and that Dr. Donoff was an international consultant. The journal is published by the University of Nairobi and can be found in Nairobi public libraries and major public universities and clinics in Nairobi and Nakuru. This information does not establish that the publication has garnered national attention. Without additional information about the circulation and significance of these journals, we cannot determine whether the petitioner's position with these journals is indicative of and consistent with national acclaim in Kenya.

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

The petitioner submitted letters from his colleagues in Chicago and Nairobi. Symon W. Guthua, Dean of the College of Dental Surgery at the University of Nairobi and the petitioner's co-author on several articles, asserts:

> In earnest, [the petitioner] has imposed rules on the scrutiny of some treatment modalities from ANUG in periodontics to endodontics and radiographic interpretation in orthodontics. The latter can be seen from his powerful censure of the American Board of Orthodontics grading system. The latest publication in the Angle Orthodontics Journal on fraud in science is a classical example.
>
> [The petitioner's] thesis project involved application of tooth proportions in orthodontic bonding. This has not been reported before and [the petitioner] went further to invest and demonstrate the concepts of a prototype device that would ease the process. Bonding is central in clinical orthodontics and debate on materials and modifications of current techniques have lately featured prominently in literature and orthodontic instrument manufacturing companies' activity.
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> * * *
>
> Finally, I would like to point out the national and international significance of [the petitioner's] work. He was the first to discover that anatomical proportion could be used to circumvent the problem of tooth variability with reference to bonding in orthodontics. He was also the first to suggest and demonstrate the feasibility of using a proportional fork that would estimate those proportions and individualize precise bracket positions. He was also the first to suggest a process that would combine and harness the good qualities of current bonding techniques.
>
> [The petitioner] was also the first to describe a method of cropping images and correcting radiographic distortion without modifying the currently used x-ray machines. Finally, he has carried out important work on the non-radical treatment of ameloblastoma and neurofibromatosis, two extremely disfiguring invasive tumors.

Dr. James Auta, an assistant professor of psychiatry at the University of Illinois at Chicago, asserts that he and the petitioner share a common interest in radio wave research. Regarding the petitioner's work in his own field, Dr. Auta states:

> His contribution is in a precision process and method for cropping standardized images. He has described a precise method for standardizing working images through the application of mathematical laws of segment bisectors. [The petitioner] was the first to demonstrate the potential clinical application of such every-day elementary geometrical constructions for medical sciences. Through his creative insights and innovation, [the petitioner] has employed basic information to theorize and demonstrate cutting edge processes and devices that are currently under consideration for patenting by the US office of Intellectual properties. . . .
>
> In the last two years, [the petitioner's] focus has been on his novel geometric method of correcting radio image distortion in panoramic radiographs in dental implantology and has been instrumental in the computerization of this radiographic method at the

> UIC department of Orthodontics. This feat achieved through collaboration with Dr. Kusnotoo, a previous inventor of Computer-enhanced three-dimensional cephalometry, promises to add more accuracy in interpretation of dental radiography, planning for metallic implants, reduction of cost and irradiation to patients.

Dr. Auta does not explain how he, as a psychiatrist, has first-hand knowledge of the petitioner's contributions to orthodontic research.

Dr. Alvaro A. Figueroa, Co-director of the Rush Craniofacial Center in Chicago, asserts that he knows the petitioner personally and professionally. Dr. Figueroa asserts that the petitioner investigated "analysis and correction of radiographic distortion with future applications in diagnostic radiology" and "tooth variability as it relates to improved placement of orthodontic brackets." While Dr. Figueroa asserts that the petitioner worked well with patients and colleagues, he does not explain how the petitioner's work is already considered a major contribution among members of the field nationwide.

Dr. Richmond Mumenya, the petitioner's supervisor during his internship at the Armed Forces Memorial Hospital, asserts that while the petitioner worked for the hospital, he designed "a modified Class I facial fracture splint . . . to be used in outpatient clinics both as a splint, denture and orthodontic appliance." Dr. Mumenya further asserts, however, that "military regulations restrict publication of information obtained from their hospitals and further own by default all resultant inventions." Dr. Mumenya does not indicate, however, that the petitioner's facial fracture splint gained widespread use in the military beyond the clinic where the petitioner worked.

Finally, Shyla McGill, Director of the Science and Math Learning Center at Columbia College in Chicago, provides general praise of the petitioner's teaching skills at the college, asserting that he contributed to their curriculum.

As noted by the director, the above letters are all from the petitioner's collaborators and immediate colleagues. While such letters 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. The petitioner did not provide more independent references on appeal. 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.

Regarding the patents, there is no evidence that the petitioner's patent applications had been approved as of the date of filing. Regardless, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n.7 (Comm. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* On September 26, 1997, Louis Spartin, Manager of Product Development at A-Company expressed interest in learning more about the petitioner's project. The petitioner wrote back to Mr. Spartin on December 23, 1998,

advising him of the results of his thesis. The petitioner sent a similar letter to Steve Francine of Rocky Mountain Orthodontics. The record contains no response from either company. Rather, on February 25, 1999, the petitioner entered into a nondisclosure agreement with the University of Illinois at Chicago. The record simply contains no evidence that major dental appliance manufacturers have expressed an interest in licensing or marketing the petitioner's devices. Thus, the impact of the devices is not documented in the record.

As will be discussed below, the petitioner's publication history does not reflect that his articles have been more influential than other articles published in his field. Any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains an advanced degree, is published or is working with a government grant has made a contribution of major significance to the field. The record does not establish that the petitioner's work represented a groundbreaking advance in orthodontics.

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

The petitioner lists 13 articles and five abstracts allegedly authored by him. He submitted evidence of 10 of those published articles and two abstracts. While counsel argues that the sole requirement for this criterion is the publication of scholarly articles with no other considerations, we cannot ignore that, in the petitioner's field, it is inherent to publish new findings. If this criterion is to have any meaning and we are to determine whether the scholarly articles are indicative of or at least consistent with national acclaim, the fact that publication is practically required for scientific researchers is not "inconsequential" as claimed by counsel. The list of criteria is a list of types of evidence; the evidence itself must still be indicative of or at least consistent with national or international acclaim.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Bureau's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles.

The list of exhibits indicates that exhibit 9 includes requests for reprints and publications citing the petitioner's work. In fact, exhibit 9 contains database searches of the petitioner's name and the name of Professor Guthua. While these searches produced lists of the petitioner's articles and those authored by Professor Guthua, they do not establish that any of the articles have been cited, much less

widely cited by independent researchers. Thus, the petitioner's publication history is not indicative of national or international acclaim.

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

The index of exhibits indicates that exhibit 13 contains evidence relating to this criterion. Exhibit 13 contains a letter from the Kenyan Embassy, in response to a letter from the petitioner, agreeing to try to raise money for Kenyan flags for inclusion in ceremonies where Kenyan citizens receive awards. Exhibit 13 also includes other evidence relating to the petitioner's efforts to patent and license his invention. None of these documents relate to the petitioner playing a role for a specific organization or the reputation of that organization.

Even assuming that the petitioner assigned or licensed his invention to the University of Illinois at Chicago, that act does not imply that the petitioner played a leading or critical role for the university as a whole. A university has several science departments, each with students developing new ideas as part of their thesis projects. It is not uncommon for students to assign or license any patents to their university. We cannot conclude that each and every student who does so plays a leading or critical role for the university as a whole.

In his initial cover letter, counsel merely stated that the petitioner "is performing in a leading and critical role in developing course curriculum, which is an establishment [sic] that has a distinguished reputation." At no point does counsel identify the entity for which the petitioner allegedly played a leading or critical role. The only evidence regarding curriculum is the letter from Shyla McGill, Director of the Science and Math Learning Center at Columbia College in Chicago, providing general praise of the petitioner's teaching skills at the college and asserting that he contributed to their curriculum. Ms. McGill indicates that the petitioner worked at the Columbia College in Chicago as part of his Optional Practical Training Program. We cannot conclude that participating in a training program constitutes a leading or critical role for the organization providing the training. Moreover, the petitioner has not provided any evidence regarding the national reputation of Columbia College.

Finally, while the petitioner may have played a leading or critical role for *Orale Medicus Digest*, the record contains no evidence that the journal enjoyed a distinguished reputation nationally.

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 an orthodontic 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 indicates that the petitioner shows talent as an orthodontic researcher, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.