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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: EAC-00-053-50381 Office: Vermont 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: SELF-REPRESENTED

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, Vermont 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 research scientist. 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, 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.

The petitioner submitted evidence of the following awards: a Senior Research Fellowship from the Council of Scientific and Industrial Research in India and a Travel Grant for Young Scientist from the Department of Science and Technology in India to present his work in Seattle.

The director concluded that the awards were for promising scientists, and not for those who had already demonstrated excellence in the field. On appeal, the petitioner notes that several thousand young scientists apply for the travel grant, which is only awarded to two percent of the applicants.

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. Similarly, only young scientists competed for the travel grant. 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.

We note that in response to the director's request for additional documentation, the petitioner submitted evidence that he had applied for a special fellow research grant. The petitioner had not received that grant as of the date of filing. As such, it is not evidence of his eligibility as of that date. *See Matter of* Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past achievement.

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 submitted evidence of his associate membership in the American Association for Cancer Research (AACR) and his general membership in the New York Academy of Sciences. Subsequently, the petitioner was elected as an active member of the AACR.

The director did not address this criterion and the petitioner does not reiterate his claim to meet this criterion on appeal. Nonetheless, we will evaluate the evidence relating to this criterion.

The petitioner failed to submit evidence of the membership requirements for these associations, although he asserts that associate membership in AACR requires the recommendation of a current member. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Regardless, peer recommendation is not an

outstanding achievement. The record does not reflect that these organizations require outstanding achievements of their general membership.

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.

In response to the director's request for additional documentation, the petitioner submitted evidence that he appeared in *Who's Who of Professionals*. The director did not address this evidence specifically and the petitioner notes his inclusion in this publication again on appeal.

The petitioner was invited to submit a brief biography for the *Who's Who* publication in 2000, after the filing date of the petition. As such, his inclusion in this compilation cannot be considered evidence of his acclaim as of the date of filing. *See Matter of Katigbak, supra*. Regardless, appearing as one of thousands, or even hundreds, of other successful individuals in a frequently published directory is not evidence of national acclaim.

Finally, while the petitioner submitted a review article that cites one of his 1992 articles, he did not claim that it serves to meet this criterion. Nevertheless, we simply note that 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.

The record reflects that the petitioner jointly refereed an article with Dr. Bruce Futcher, his supervisor, for *Molecular Microbiology*. The director did not specifically address this evidence and the petitioner does not claim to meet this criterion on appeal. Nevertheless, the evidence warrants some discussion.

The petitioner has not established whether the journal requested that the petitioner or Dr. Futcher review the article. Being requested by one's own supervisor to assist in the review of an article is not evidence of national or international acclaim. Further, the refereeing took place after the date of filing and is not evidence of the petitioner's eligibility as of that date.

We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim. Without evidence that sets the petitioner apart from others in his field, such as evidence that he has reviewed an unusually large number of articles, received independent requests from a substantial number of journals, or served in an editorial position for a distinguished journal, we cannot conclude that the petitioner meets this criterion.

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

Dr. Futcher, Associate Investigator at Cold Spring Harbor Laboratory, asserts that the petitioner is in a position to "make further scientific contributions, either in an academic, medical, or industrial setting." Dr. Futcher discusses the petitioner's work at Cold Spring Harbor Laboratory, which focuses on "finding the substrate proteins which are phosphorylated by cyclin-dependent protein kinases." Dr. Futcher explains that these proteins are responsible for controlling cell division, and, thus, are important for cancer research. Specifically, the petitioner has been working to purify the proteins and measure their biochemical parameters for phosphorylation. Dr. Futcher continues: "With a knowledge of these biochemical parameters in hand, [the petitioner] will go on to find additional new substrates with similar biochemical properties." While Dr. Futcher asserts that the petitioner's expertise as a protein biochemist allows the petitioner to continue projects for which the groundwork has been laid by geneticists and molecular biologists, he fails to explain how the petitioner's work as of the date of filing already constituted a contribution of major significance.

Dr. Brandt L. Schneider, a fellow scientist who previously collaborated with the petitioner at Cold Spring Harbor Laboratory and now collaborates with the petitioner from Texas Tech University, asserts that the petitioner has had tremendous success analyzing how cyclin-dependent kinases stimulate proliferation. Dr. Schneider notes that these kinases have been found mutated in breast and other cancers. While Dr. Schneider asserts that the petitioner has done ground-breaking research, he also states that the petitioner's work "could someday lead to a better understanding of the causes of cancer" and that "the impact of [the petitioner's] research will soon be apparent as much of his work is published in important articles."

Other individuals currently at or previously at Cold Spring Harbor Laboratory also provide letters. Dr. Bruce Stillman, Director of the laboratory; Dr. Ueli Grossniklaus, an adjunct professor at the laboratory; Dr. David Schieltz, a former collaborator of the petitioner's at the laboratory; Dr. Jean-Philippe Vielle Calzada, an adjunct faculty member at the laboratory; and Dr. Robert Martienssen, a professor at the laboratory, all provide general praise of the petitioner's skills but fail to explain how the petitioner has made contributions of major significance to the field.

Dr. Harish Sikka, a research professor at State University College at Buffalo, discusses the petitioner's work as a research associate from 1995 through 1997. During that time, the petitioner researched "the metabolism (*in vitro* and *in vivo*) of several carcinogenic chemicals including benzo[a]pyrene, debenzo[a]pyrene, and dibenz[a,h]acridine." (Brackets in original.) Dr. Sikka provides general praise and concludes that the petitioner "is in an excellent position to make valuable contribution[s] to research in these fields." Dr. Subodh Kumar, a research professor at the same university, provides similar information. Dr. Adam Drahushuk, one of the petitioner's collaborators and co-authors at State University of Buffalo, asserts that the petitioner's work on carcinogens is important because 70 percent of all cancers are caused by environmental factors such as carcinogens. In a subsequent letter, Dr. Sikka provides general praise of the petitioner's work at Cold Spring Harbor Laboratory.

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.

In response to the director's request for additional documentation, the petitioner submitted more independent letters.

Dr. Chabouté Marie-Edith, a graduate researcher at the Centre National de la Recherche Scientifique, asserts that the petitioner has "recently developed a novel technique to identify and study critical cell proteins." Dr. Marie-Edith asserts that this development will be published in *Nucleic Acids Research*. She continues that understanding gene sequences (genomics) and the proteins created by these genes (proteomics) is important for understanding cancer at the molecular level and that the petitioner's techniques "bring us closer to developing newer drugs and strategies."

Dr. Michael D. Tyers, Senior Scientist at the Samuel Lunenfeld Research Institute and an associate professor at the University of Toronto, asserts that the petitioner "has made some outstanding contributions to the cancer research field." Dr. Tyers further describes the petitioner's "novel method for the purification of cyclin-dependent kinases (CDKs) and their associated proteins." Given that CDK substrates are considered to be potential drug targets for cancer therapy, Dr. Tyers asserts that the petitioner's work "has generated much interest in the cancer research community."

Dr. Keiichi Shibahara, a principal investigator at the Japan Science and Technology Corporation, asserts that the impact of the petitioner's work "will soon be apparent" as his work is being published in peer-reviewed journals.

Finally, Dr. Saifuddin Sheikh, a research associate at the University of Pittsburgh School of Medicine, asserts that "scientists are excited about the use of [the petitioner's] method for the identification of some new potential drug targets."

The director concluded that the letters suggested that the petitioner's work was beginning to attract attention but had yet to garner him sustained national or international acclaim. On appeal, the petitioner references the publication of an article after the date of filing and its impact.

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. The record contains no evidence of clinical trials on humans or animals based on the petitioner's work. Nor has the petitioner documented that pharmaceutical companies have expressed any interest in his work. On appeal, the petitioner submits evidence that several laboratories have requested the plasmids used by the petitioner. This interest, however, was generated after the date of filing. Similarly, most of the breakthroughs discussed by the petitioner's independent references had yet to be published as of the date of filing. Thus, the petitioner has not demonstrated that his work in this area had been widely cited or that laboratories were requesting his plasmids as of the date of filing. *See Matter of Katigbak, supra.*

Given the record as a whole, we concur with the director's implication that, at best, the petition was filed prematurely.

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

The petitioner submitted evidence that, at the time of filing he had authored three published articles and four abstracts. 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 record contains evidence that, as of the date of filing, one independent expert had cited the petitioner's 1992 article in a review article. The petitioner's article was one of eight articles cited for the proposition: "Many reports have appeared indicating that zinc contents in the placenta are approximately 50-60 μg/g dry weight and 10 μg/g fresh weight." This citation history is not evidence that the petitioner's work published as of the date of filing had been widely cited or was otherwise influential.

Subsequently, the petitioner submitted evidence that he had published two other articles and had other articles under review. Of the second article, the petitioner asserted, "this research has also been featured, by Oxford University Press, as a *new method* on the Internet . . . for studying protein-protein interaction." On appeal, the petitioner submits a printout from Oxford Journals Online listing the petitioner's article as a new feature. In addition, the petitioner submits numerous reprint requests and requests for the petitioner's plasmid. As stated above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak, supra.* At the time of filing, this article had not been published or generated any requests for reprints or the petitioner's plasmid. Thus, we cannot consider it evidence of the petitioner's acclaim as of that date.

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

The petitioner does not claim to meet this criterion. The petitioner does claim, however, that his mere association with the Cold Spring Harbor Laboratory is indicative of his national acclaim. The director concluded that the petitioner could not rely on the prestige of his peers. On appeal, the petitioner reiterates his claim that only researchers with extraordinary ability get the opportunity to perform research at this laboratory.

As the regulations specify that performing a leading or critical role for an organization with a distinguished reputation is evidence of national or international acclaim, we cannot conclude that simply working for such an organization is evidence sufficient to meet any criterion or comparable evidence to any of the regulatory criteria. Otherwise, specifying that a leading or critical role for such an organization is evidence of national acclaim would be meaningless.

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 a research scientist 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 a research scientist, 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.