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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, D.C. 20536*

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

[redacted]

File: WAC 02 268 53699 Office: California Service Center Date: AUG 21 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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:

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, 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 that 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). It should be emphasized that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on August 29, 2002, seeks to classify the petitioner as an alien with extraordinary ability as a plant genetics researcher. At the time of filing, the petitioner was employed as a postdoctoral research associate in th[redacted]
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 sustained acclaim necessary to qualify as an alien of extraordinary ability.

On appeal, the petitioner states:

> The petition, from my own standpoint, was not fairly evaluated and the decision was made without consideration of additional materials or information that I provided upon request by the [Service Center]. For example, in the decision letter, it was [stated] that "the petitioner's membership in that organization could not be considered as evidence of having satisfied this criterion as the petitioner did not become a member until after the filing of the I-140 petition." I did become a member after filing the I-140 petition, but [the membership] was provided as additional evidence requested by your office and before the decision was made.

We concur with the director's finding regarding the membership evidence that came into existence subsequent to the filing of the petition. The petitioner presented documentation indicating that he became a member of Sigma Xi in 2003. A petitioner, however, must establish eligibility at the time of filing; new circumstances or evidence that did not exist as of the filing date cannot retroactively establish eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Bureau requirements. *See Matter of Izummi*, 22 I&N 169 (Comm. 1998). The director's reliance on relevant, published, standing precedent decisions does not constitute error. Even if we were to accept the petitioner's Sigma Xi membership as evidence, it would not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii). According to the e-mail fro[redacted] the petitioner was elected to membership by officials from the [redacted] It is clear from the regulatory language, however, that members must be selected at the national or international, rather than the local, level.

The petitioner further states: "Apparently, the new papers I published after the filing of the I-140... were not considered as additional evidence either." A review of the director's decision, however, indicates that the petitioner was found to have satisfied the criterion (related to the authorship of scholarly articles) at 8 C.F.R. § 204.5(h)(3)(vi).

The final issue raised by the petitioner on appeal relates to the director's decision referring to him as a female "in one place." There is no indication, however, that the director would have rendered a substantially different decision without this single minor typographical error.

The petitioner has not specifically disputed any of the director's other findings. The appeal includes no further discussion of the evidence or how it satisfies any of the remaining regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner has failed to demonstrate receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as

an alien of extraordinary ability. Therefore, we concur with director's finding that the petitioner has not established his eligibility pursuant to the pertinent statute and corresponding regulations.

A review of the record does not establish that the petitioner has distinguished himself as 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 is not persuasive that the petitioner's achievements set him significantly above almost all others in his 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.