

BA
U.S. Department of Homeland Security
Citizenship and Immigration Services

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

ADMINISTRATIVE APPEALS OFFICE

DEC 03 2003



File: [Redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner: [Redacted]
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:



prevent clearly unwarranted
invasion of personal privacy

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 Citizenship and Immigration Services (CIS) 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.

for *Maui Johnson*
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 CIS 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 professor of psychology. 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 submits evidence of scholarships and fellowships. In response to the director's request for additional documentation, counsel argues that the regulations do not preclude scholarships and fellowships and focuses on the petitioner's receipt of the American Association of University Women (AAUW) fellowship awarded to the petitioner but which she declined. Counsel notes that the AAUW received 1,104 applications but awarded only 48 fellowships. The petitioner submitted materials regarding the fellowship indicating: "Applicants are judged on academic excellence, professional potential, and on the importance of their studies to their home countries."

The director concluded that the fellowship was not limited to the petitioner's field and that it was essentially funding for those preparing to practice in their fields. As it was not designed for those at the pinnacle of their field, the director concluded that it could not meet this criterion.

On appeal, counsel argues that the fellowship should not be disqualified because it was not limited to those in the petitioner's field. Counsel further asserts: "Petitioner's award from the American Association of University Women was based on merit and academic excellence in her field of endeavor and qualifies as a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor."

We concur with the director. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, fellowships and other student awards cannot be considered prizes or awards in the petitioner's field of endeavor. Moreover, as stated by the director, competition for the AAUW fellowship is limited to those just starting their careers. Experienced experts in the field are not seeking this fellowship. Thus, the fellowship is not indicative of or consistent with the claim that the petitioner is one of the very few at the top of her 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.

In response to the director's request for additional documentation, counsel conceded that the petitioner's license and professional memberships did not meet this criterion. Counsel does not argue that the petitioner meets this criterion on appeal. We concur with the director's determination that the petitioner does not meet 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 petitioner relies on nine articles that cite her own articles as evidence to meet this criterion. The director determined that the record did not demonstrate that the petitioner's work had "been relied upon and cited by other researchers to an unusually high degree."

On appeal, counsel asserts that "the citations in the record certainly are about the petitioner's work." Counsel further notes that the number of citations can increase as time progresses.

Counsel is not persuasive. While the one-sentence citation itself is arguably "about the petitioner's work," the articles, which cite the petitioner's work, are primarily about the author's own work or about new research in the field in general. As will be discussed in more detail below, none of the articles focus on the petitioner's work. As such, they cannot be considered published material about the petitioner and cannot meet the plain language requirement of the criterion. Moreover, the petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). We cannot presume that the petitioner will someday be widely cited.

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 relies on a book review published in the *Journal of International Migration Review* and an invitation to serve as "guest editor" for a column entitled "Quotable Quotes and Reputable Reframes" in the *Journal of Clinical Activities, Assignments & Handouts in Psychotherapy Practice: Innovations in Resources for Treatment and Intervention*. The director concluded that the petitioner had met this criterion. We cannot concur. The record contains no evidence regarding how book reviewers are selected for the *Journal of International Migration Review*. Moreover, reviewing a single book, regardless of the prestige of the book's author, is not comparable to serving on the editorial board of prestigious journals, as some of the petitioner's references do. Finally, a review of the "Quotable Quotes and Reputable Reframes" column reveals that as "guest editor," the petitioner merely contributed three anecdotes from her own clinical practice. Thus, it is not clear whose work she is claiming to have judged in her capacity as "guest editor." Moreover, the record reveals that the journal in which that column appeared was a new journal with no established reputation.¹

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

The director stated that the opinions of witnesses ought to be supported by objective evidence and concluded that the petitioner had not demonstrated that her influence on the field is recognized as having major significance to the field. On appeal, counsel argues that the objective evidence supporting the witness letters includes the petitioner's "quality" publications. Counsel

¹ The publisher's website, www.haworth-press.net, reveals that the *Journal of Clinical Activities, Assignments & Handouts in Psychotherapy Practice* was cancelled after Volume 2 and was replaced by the *Journal of Adjunctive Therapies in Mental Health*, a publication with different editors.

questions the director for recognizing that the petitioner's articles meet the criterion relating to scholarly articles but minimizing the articles' importance in considering this criterion.

Concluding that a petitioner meets one criterion does not mandate a finding that a petitioner meets any other criterion. Otherwise, the requirement that an alien meet three criteria would be meaningless. We will discuss the witness letters below and whether the remainder of the record supports the assertions in those letters.

Dr. Christopher Peterson, a professor at the University of Michigan and the petitioner's co-author, summarizes the petitioner's work in the field and explains its significance. According to Dr. Peterson, the petitioner's research at the University of Michigan focused on "the complex processes by which traumatic experiences do and do not produce negative outcomes among victims." Specifically, the petitioner demonstrated a "pattern of repeat victimization via dating violence for child witnesses of parental conflict" uniquely by using "non-clinical women." This work "significantly advances our knowledge in this area, and presents colleagues with an original and relevant model and theory of family violence to build upon for future research." In another project, the petitioner established "the link between antisocial behaviors and sexual predatory behaviors." More specifically, the petitioner delineated "how antisocial features are a risk factor for child molestation." The implications of this work, according to Dr. Peterson, are that it could improve assessments of parental antisocial features made by lawyers, clinicians, and social workers. Dr. Peterson further asserts that the petitioner also conducted original research investigating the relationship between sexual abuse and adult sexual assault, controlling for varying risk factors. Dr. Peterson explains the significance of the above work as follows:

Thus, her theory and findings are unique to the field and set the stage for much more comprehensive and sophisticated investigations in the future. Based on [the petitioner's] work, expert researchers have been provided with a new model that explores sexual abuse and adult sexual assault simultaneously. Researchers will also have to include peer sexual abuse and other stressors in their risk model, as identified by [the petitioner]. Finally, the developmental lifespan specificity model of trauma as proposed by [the petitioner] will be the cutting-edge theory on which researchers will base their investigations. There is no doubt that [the petitioner's] research is original, exemplary, and will make a substantial impact in the field in current and prospective ways.

This statement does not suggest that researchers are already basing their investigations on the petitioner's theory and that her theory is already considered in the field to be a contribution of major significance. Finally, Dr. Peterson discusses the petitioner's incorporation of cultural factors into her theories. He states that the petitioner "establishes a relationship between exposure to violence, beliefs, and gender role attitudes – a theoretical framework which will quickly attract national attention for its extraordinary implications." Once again, while Dr. Peterson predicts that the petitioner's theory will garner national attention, he does not indicate that it is already recognized as a major contribution to the field.

The petitioner submitted letters from other collaborators who provide similar information. Dr. Cheryl A. King, Chief Psychologist at the University of Michigan Medical School and the petitioner's fellowship supervisor, adds that the petitioner served as a consultant to the Women's Action Forum, Sahil, the Women's Action Against Rape in Pakistan, and Apna Ghar, a counseling center and shelter for South Asian victims of domestic violence in Chicago. The record does not include any letters from these organizations detailing the petitioner's connection with them. We note that the petitioner was an instructor for R.E.A. Dyslexics, Ltd. in Karachi, Pakistan in 1998 and is currently an assistant professor at the Illinois School of Professional Psychology. Providing assistance to a local organization or shelter is not evidence of national acclaim.

The record does include letters from more independent witnesses. These witnesses, including two from Ireland, one from Germany, one from India, and another from Mexico, provide similar information to that discussed above. Dr. Denise Kavanagh indicates that the petitioner's articles have influenced her own studies and that she intends to cite the petitioner's work in her own article. Dr. Rachana Johri, a professor at Lady Shri Ram College, indicates that she has incorporated the petitioner's research into her own courses and in her "work with non-governmental organizations." Dr. Margarita Tarragona, a professor at Mexico City's Bilingual University, also indicates: "[The petitioner's] papers on violence have been influential in my own work training and supervising therapists in a public psychiatric hospital in Mexico City, where family violence is a disturbingly common occurrence."

Dr. Barbara Krahe notes that she has already cited the petitioner's work. While highly complementary in her letter, in her article citing the petitioner, Dr. Krahe states:

Several studies suggest that victims of sexual abuse differ from nonvictims in terms of negative home environments. . . . [The petitioner and her co-authors] found a significantly higher rate of sexual abuse as well as physical abuse among children who witnessed marital violence in their family than in a comparison group of nonwitnesses.

This paragraph, which cites other researchers for similar propositions, fails to single out the petitioner's work as more significant than similar research articles. In another article that cites the petitioner's work, the petitioner's article is one of four articles cited for the conclusion: "In addition, it may be important to ask mothers about victimization during their childhood and adolescent years because of its influence on their parenting ability." In the same article, the petitioner is one of five articles cited for the statement: "Long-term studies have found that child physical and sexual abuse are associated with adult mental health problems, particularly depression." In another article, the petitioner is cited along with 10 other articles for a sentence detailing the various effects of witnessing violence between parents. One of the petitioner's articles was one of two articles cited as a study demonstrating that "witnessing interparental aggression increased the likelihood that respondents (men and women) were victims of aggression rather than perpetrators." Another article citing the petitioner's work cites it for "frequently reported problems" of childhood sexual abuse.

Most significantly, the petitioner submitted an entire review article discussing children's problems associated with witnessing violence. The section in which the petitioner's article is cited states: "The area in which there is probably the greatest amount of information on problems associated with witnessing adult domestic violence is in the area of children's behavioral and emotional functioning." The section then cites several articles in addition to the petitioner's, including one published as early as 1983. The petitioner's article is one of three (including one published in 1988) cited for the proposition: "Children who witnessed violence also were found to show more anxiety, depression, trauma symptoms, and temperament problems than children who did not witness violence at home."

We concur with the director that 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 unsolicited materials in this case, the citations of the petitioner's articles, do not support the claims made in the solicited letters that the petitioner's work is considered to be a contribution of major significance in the field.

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, she had authored five published articles, a journal column consisting of brief clinical anecdotes entitled "Quotable Quotes and Reputable Reframes," one book review, and an unpublished domestic violence training manual. 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 CIS'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 nine independent experts have cited the petitioner's work. While this number of citations is not evidence that the petitioner's work is widely cited, we acknowledge the international letters discussed above relating to the significance of the petitioner's articles. Considering these letters and the moderate citation history, we concur with the director that the petitioner meets this criterion, if minimally. We do not find this conclusion inconsistent with the conclusion that the petitioner has not demonstrated a contribution of major significance. Evidence relating to two criteria may suffice to meet the criterion for which it directly relates and not meet another criterion to which it only indirectly relates.

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 professor of psychology 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 professor of psychology, 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.