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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: LB 05 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 Service 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 THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for 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 Associate Commissioner for Examinations 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 Service 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.

The petitioner is a postdoctoral research associate at the University of Kansas. The petitioner describes his work as "bio-physical chemistry research of heart disease and aging related proteins."

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 which, 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.*

Under this criterion, the petitioner submits documentation showing that the American Heart Association ("AHA") provided funding for his postdoctoral fellowship. The petitioner has not shown that this funding represents a prize or award for excellence in the field of endeavor. Documents in the record state that "each year of funding is contingent upon adequate progress," indicating that the funding pays for ongoing work, rather than recognizing past achievements. A postdoctoral fellowship is essentially an advanced training assignment rather than a career position, suggesting that the petitioner is at the beginning of his career rather than the top of the field.

The director requested additional evidence regarding the fellowship. In response, the petitioner has stated that the AHA "received **1,423** grant applications and affiliate[s] received **2,358** grant and fellowship applications" (emphasis in original). The petitioner's fellowship falls in the latter group, having been approved by the Heartland Affiliate Research Committee of the AHA.[1] He has not submitted documentation to support these figures or to show how many of these applications were approved. The petitioner has also not shown that the most prestigious awards in his field are awarded based on applications, rather than on third-party nominations. He offers only the vague assertion that he is among "the few selected among thousands of applicants."

The petitioner submits what appears to be a "form" letter from the Customer Service office of the AHA, indicating that the petitioner is a member of the "Basic CV Science Council." The petitioner clearly indicates that he desires this council membership to be considered as a prize or award, but he does not explain how it constitutes a prize or award. AHA documentation in the record indicates that the AHA has 12 scientific councils, comprised of 31,000 AHA members. Given this very substantial number of council members, we cannot conclude that membership in an AHA scientific council is a mark of sustained acclaim. Rather, such membership appears to be an optional addition to standard AHA membership.

> *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.*

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[1] The Heartland Affiliate consists of six states, plus one county in Illinois. Thus, at best the petitioner's fellowship is a regional award rather than a national one, even if the petitioner proves that the fellowship is an award for excellence rather than a typical stipend to pay ongoing expenses.

Under this criterion, the petitioner submits five letters "from different nationally as well as internationally recognized experts." The letters themselves do not indicate that the petitioner is a member of any associations at all, let alone associations that require outstanding achievements of their members. The petitioner cannot satisfy this plainly worded criterion simply by submitting letters from witnesses whom the petitioner declares to be recognized national or international experts. The witness letters are of greatest value in discussing the significance of the petitioner's contributions, in conjunction with a separate criterion, addressed below.

Subsequent to a request for additional evidence, the petitioner submits a certificate documenting his election as a member of the American Chemical Society. The certificate is dated January 1, 2002, and thus the petitioner was not a member of this association as of the petition's December 2001 filing date. The petitioner submits no evidence to show that the American Chemical Society requires outstanding achievements of its members or that members are chosen by recognized national or international experts.

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

Dr. Jeffrey L. Urbauer, assistant professor at the University of Kansas, describes the petitioner's work at that university:

> [The petitioner's] endeavors currently consist of scholarly investigations of the structure and function of proteins using state-of-the-art multinuclear and multidimensional nuclear magnetic resonance (NMR) spectroscopic techniques. Specifically, [the petitioner] is performing the very *first* study, to our knowledge, of the effect of the *specific* oxidation of the amino acid side chains of proteins on protein structure at high resolution. The implications of the research are very broad, and the results of the research will contribute in a substantial and significant way to our understanding of many health-related issues. These include the general areas of oxidative stress and calcium signaling, and, more specifically, aging, heart disease, disease states of the central nervous system, and almost certainly cancer and microbial pathogenesis. The results of these studies will also be important in the development of new generations of pharmaceuticals to combat and control these pathologies.

The above assertions do not persuasively establish that the petitioner has made original scientific contributions of major significance in the field. [redacted] states, in essence, that such contributions will eventually result from the petitioner's work, at some unspecified point in the future. Whatever the goals of the petitioner's research, if those goals have not yet been reached then it is premature to ascribe major significance to the petitioner's unfinished work. Dr. Urbauer adds that "[t]he importance of [the petitioner's area of research] and the dearth of qualified US scientists in this field alone justify [the petitioner's] petition." While we do not dispute Dr. Urbauer's sincerity, the classification that the petitioner seeks is highly restrictive. The importance of the type of research, and the scarcity of researchers, are not relevant to the

petitioner's acclaim in the field. If the petitioner cannot establish such acclaim, then general information about his type of research cannot compensate for that shortcoming.

Professor Gerd N. La Mar of the University of California, Davis, who supervised the petitioner's postdoctoral work there from 1998 to 2000, states:

> [The petitioner's] "project comprised the characterization of the effect of an important point mutation on the structure of the enzyme, horseradish peroxidase (HRP), in its high-spin ferric, resting state form, and the comparison of the solution active site structure of a ligated form of substrate-bound heme oxygenase (HO) with that of the crystal structure of the unligated form. The work on the HRP mutant represents the first ever successful NMR structural characterization of a high-spin ferric heme enzyme and represents an important benchmark in structural characterization of enzymes in solution. The work on the HO complex provided the first description of the active site where it was possible to establish the nature of the steric influence on the enzyme specificity.

Prof. La Mar indicates that the above project required highly specialized training in order to conduct "2D solution NMR characterization of paramagnetic enzymes," and that the petitioner is one of "probably only a handful of chemists in the U.S. who have received this sort of unique training in the last several years." The scarcity of expertise in a particular, specialized laboratory technique is not a factor in this petition, because the petitioner has not shown that chemists with such expertise are inherently more highly acclaimed than chemists without such training, or who possess other highly specialized training that the petitioner lacks.

Other professors who have supervised or collaborated with the petitioner offer similar descriptions of the petitioner's work. The opinions of the professors who supervised or participated in the above research cannot suffice to establish that the petitioner's role in the above research constitutes a contribution of major significance, contributing to sustained acclaim at a national or international level. These letters are not first-hand evidence that the petitioner has earned sustained acclaim beyond the institutions where he has worked.

In response to the director's request for further evidence, the petitioner has submitted additional witness letters. Like the initial letters, the newly-submitted letters are from acquaintances and collaborators of the petitioner. One witness [redacted] ssistant professor at the University of Kansas, states that the petitioner is at "the very top of the NMR spectroscopy field used to study the specific amino acids in large protein molecules." It is impermissibly restrictive to define NMR spectroscopy study of specific amino acids in large protein molecules as a "field." More accurately, it is a subspecialty in the larger field of biochemistry. Witnesses have already claimed that there are very few researchers working in this particular subspecialty, with perhaps three laboratories in the United States equipped to conduct such studies. The petitioner cannot place himself at the top of his field simply by defining his "field" so narrowly that there is almost no one else in it.

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

The petitioner submits copies of six published articles, five of which credit him as first author. Subsequently, in response to the director's request for additional evidence, the petitioner asserts that his work "has been highly cited/referred by many international researchers in well recognized major international journals." The petitioner submits partial copies of eight articles containing citations of his work. An aggregate total of eight citations of six articles does not establish that the petitioner's published work ranks at the top of the field. 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 were 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 Service'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.

Responding to the director's request for additional evidence, the petitioner claims to have satisfied a previously unclaimed criterion:

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submits evidence regarding his participation at a scientific conference. Scientific conferences are not artistic exhibitions or showcases; presentations of this kind are more akin to publication of scholarly articles, in that they represent the dissemination of highly technical research information to a specialized audience. In addition, the conference did not take place until April 2002, several months after the petition's December 2001 filing date. Given the petitioner's failure to mention this conference in his initial submission, it appears likely that the petitioner did not learn of his acceptance at this conference until after the filing date.

The director denied the petition, stating "the petitioner's publishing history does not appear unusually extensive," citing various other shortcomings in the petitioner's evidence, and determining that the petitioner has not shown sustained national or international acclaim at the top of his field.

On appeal, the petitioner asserts that the director "has failed to acknowledge my outstanding work and achievement in a newly emerging & growing field of science with very few alien scientists in it." As noted above, the proportion of alien scientists in the petitioner's specialty is without consequence, because the field is the same regardless of the national origin of individual

workers in that field. We have also already addressed the contention that the petitioner's narrowly defined specialty is a "field" in its own right.

With regard to his AHA fellowship, the petitioner states "AHA **could only fund** about **two-thirds** of the eligible applications," and does not specify what percentage of fellowship applications were found to be "eligible." The petitioner adds "[o]ut of **2,358** applications [received by AHA affiliates in 2000] **only 37** awards were given to [researchers in the] State of Kansas." As noted above, the petitioner received his fellowship from an affiliate that serves only six states and one county in a seventh. The "2,358 applications" figure applies not to the Heartland Affiliate, but to all of the AHA's affiliates throughout the United States. Competition for every one of these affiliate fellowships was regional rather than national. The petitioner does not indicate how many of those applications were from researchers in Kansas. Without such information, the fact that only 37 such applications were approved is of little value. Most significantly, the petitioner still has not shown that the fellowship is an award for excellence rather than frequently-encountered stipend funding (the latter being suggested by the fact that continued funding is contingent on the petitioner's productivity).

With regard to his published work, the petitioner asserts "**quality** is much more important than **quantity**." This assertion is a reasonable one, but it then becomes incumbent upon the petitioner to establish the quality of his published work. The petitioner's own assessment of this quality does not constitute evidence. The petitioner submits background information about the journals that have carried the articles, some of which are the number one cited journals in their specialties. We concur that frequency of citation is a key indicator of impact. It cannot suffice, however, for the petitioner to show that the journals carrying his work are highly cited. The journal's ranking is based on averages and does not imply that the petitioner's own articles are heavily cited. The petitioner acknowledges on appeal that his work does not have "an unusually high degree of citations," owing to the small number of other researchers in the specialty,[2] but he maintains nevertheless that it "is widely cited by many different research groups." The petitioner submits documentation of 12 more citations on appeal, totaling 20 citations, averaging just over three citations each for his six articles. At best, this evidence satisfies one criterion out of the ten specified in 8 C.F.R. 204.5(h)(3), but even then the record lacks evidence to show that the citation pattern of the petitioner's work is wider than that of others conducting similar work.

On appeal, the petitioner submits additional witness letters and argues yet again that these witness letters satisfy 8 C.F.R. 204.5(h)(3)(ii), pertaining to membership in associations which require outstanding achievements of their members. The new letters, like the old letters, do not mention any membership in any associations and it is far from clear why the petitioner has repeatedly asserted that these letters satisfy the criterion. Also like the previous letters, the new letters are from individuals who have worked with the petitioner.

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[2] Despite this assertion, one of the footnotes containing a citation of the petitioner's work also names eight other publications. The footnote follows the assertion that "HRP . . . has been and continued to be one of the most studied enzymes."

The overall pattern suggested by the record is that the petitioner has attempted to establish acclaim by association, relying for instance on the prestige of the laboratories where he has worked, the journals that have published his work, and the AHA which has funded his postdoctoral fellowship. The evidence in the record does not establish that the petitioner, as an individual, has earned significant recognition outside of the facilities where he has worked, or that he has otherwise become one of the best-known or most highly acclaimed figures in his field.

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 biochemical 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.