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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

[redacted]

File: EAC 02 097 52955 Office: VERMONT SERVICE CENTER Date: FEB 28 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:

[redacted]

identifying data deleted to 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 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.

Elizabeth Hayward
for 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 ("AAO") on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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.

The director's decision contains no discussion of the merits of the petition. Apart from "stock" language citing statutes and regulations, the decision consists of a single sentence in which the director states "[w]hile the beneficiary, no doubt, is a gifted researcher doing important research, however, the evidence furnished does not establish the beneficiary to be one of the very top researchers in the field today." On appeal, counsel correctly protests that this skeletal decision contains "no legal analysis," making it "virtually impossible to submit a comprehensive appeal." The director has simply offered a summary conclusion, offering no indication as to what defects led to the denial of the petition.

To remedy this flaw in the decision, counsel requests "that the Service reopen and grant the petition." The appropriate response to a poorly rendered decision, however, is not the automatic approval of the petition, but rather a new decision which, whatever its outcome, is carefully considered. The director erred in issuing an inadequate decision, but in doing so the director did not forfeit the discretion to deny the petition, and the lack of specificity in the decision is not a tacit admission that no specific grounds for denial exist.

The AAO has the authority to approve the petition at the appellate stage, but upon review of the record the AAO has not found sufficient evidence to warrant approval. We will not offer a comprehensive discussion of the record here, because the initial determination is the responsibility of the director, but we will offer illustrative examples of deficiencies in the record of proceeding.

8 C.F.R. § 204.5(h)(3)(ii) calls for 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. Counsel initially stated that the petitioner is a member of two "prestigious scientific associations . . . which only admit individuals who have made significant achievement[s] in their field of endeavor." The two associations are the Society for Leukocyte Biology ("SLB") and the American Society of Human Genetics ("ASHG"). Counsel asserted that SLB admits "only . . . the top scientists in the field, by invitation only. Recommendation of a member required." The initial submission contained no evidence to show the membership requirements of either association.

Subsequently, the petitioner submitted a copy of an SLB membership application. While the application form does have a section to be completed by a member sponsor, this section is followed by the statement "[i]f you do not have an SLB member sponsor, complete all other sections of the application and send with the appropriate dues. The Membership Committee will review and process all qualifying applicants." This contradicts counsel's claim that a member recommendation

is required; the form itself shows that the SLB will accept applications without a recommendation. At most, recommendations are preferred.

The SLB application form indicates that applicants for full membership "should have a doctorate degree and provide evidence of scientific achievement." The form does not equate "scientific achievement" with "outstanding achievements," which would require a finding that "scientific" and "outstanding" are synonymous. Nothing on the membership application supports counsel's claim that SLB admits "only . . . the top scientists in the field."

Regarding the petitioner's membership in the ASHG, the petitioner has submitted a printout from ASHG's web site, www.faseb.org/genetics/ashg. This evidence proves that the petitioner visited the site for the purpose of obtaining evidence relating to the present petition. On the home page is a plainly marked link to a section marked "Membership," which in turn shows ASHG's membership requirements at www.faseb.org/genetics/ashg/membership/001.shtml. According to this page on ASHG's own official web site, "[a]ny person residing in the Americas who is interested in research in human genetics or in issues pertaining to human genetics is eligible for membership in the Society upon election by the Board of Directors."

Simply being "interested in research in human genetics" is not, by any reasonable standard, an achievement, let alone an outstanding one, and it is obvious from this official source that ASHG does not, as counsel has claimed, "only admit individuals who have made significant achievement[s] in their field of endeavor." This contradiction necessarily reflects on the overall reliability of counsel's claims regarding the evidence of record.

The petitioner has submitted numerous letters that refer to the petitioner's international reputation in her field. Without exception, the authors of these letters are the petitioner's collaborators, mentors, and co-workers, and the letters are therefore not first-hand evidence of the petitioner's reputation outside of the National Cancer Institute and various academic institutions in the Russian city of Novosibirsk. The petitioner has written a number of published scholarly articles, but a citation index submitted by the petitioner shows a grand total of only three citations of her work (one citation of her 1995 doctoral thesis, and two of a 2001 paper). Most of the information on the citation index pertains to other authors who share the petitioner's surname.

As stated previously, the above observations are merely examples rather than a complete analysis of the record, because it is incumbent upon the director rather than the AAO to conduct the first such analysis. The examples do, nevertheless, serve to explain AAO's rejection of counsel's proposed remedy, i.e. the immediate approval of the petition without further review of the record.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.