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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.
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[redacted]

File: WAC 01 254 55882 Office: CALIFORNIA SERVICE CENTER Date: JAN 17 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

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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 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 CFR 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 CFR 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 an assistant research scientist at the University of California's San Diego Supercomputer Center.

The regulation at 8 CFR 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.

The petitioner claims a "significant number of national and international research awards." The petitioner lists seven awards. The first is a Junior Research Fellowship from the Council of Scientific and Industrial Research, which the petitioner states is awarded "to M.Sc. students to support their Ph.D. program." The award cannot place the petitioner at the top of his field because it is available only to students who have not even completed their master's degree programs. Academic study is not a field of endeavor, but rather training for future entry into a field of endeavor. The many conditions attached to the fellowship stipend are further evidence that the fellowship has more to do with the petitioner's continued student work than with recognition of past excellence in the petitioner's work.

Several other claimed awards are research fellowships and scholarships, intended to provide financial support to the petitioner's then-ongoing professional training. This funding, by nature, is provided not to the most established and recognized scientists, but rather to researchers at the beginning of their careers (as the petitioner acknowledges through his repeated use of the phrase "young scientists"). Travel awards received by the petitioner appear to be nominal sums, intended to assist the petitioner in attending professional gatherings. A research grant that the petitioner received is not recognition for past achievements, but rather funding for future research. Such grants are awarded on the strength of proposals submitted by researchers, rather than recognition for excellence initiated by awarding entities.

Of the remaining claimed award, the petitioner states:

> Indian National Science Academy (INSA) and British Royal Society (RS) have an exchange visitor program to nominate distinguished scientists to develop collaborative research activities through exchange visitor program. I was one of the three scientists nominated by INSA in the year 1998. I [worked] in [the] Department of Biochemistry, University of Cambridge, England and have joint research publications.

The petitioner has not shown that participating in an "exchange visitor program" resulted from sustained acclaim, or that it caused subsequent acclaim. Program documents indicate only that the petitioner conducted research at Cambridge for 90 days from March to June of 1998, again with various conditions attached which demonstrate that the fellowship was contingent on the petitioner's continued progress, rather than a prize for his past work.

The director requested additional information to establish the significance of the above awards. In response, the petitioner submits additional materials offering details about some of the petitioner's fellowships and associateships. These materials reinforce the conclusion that the awards are limited to "young scientists." There is no indication that the petitioner has received any significant award for which he would have faced competition from throughout his field, rather than his approximate age group within that field. "Young scientist" is not a distinct field

of endeavor and the petitioner cannot place himself at the top of his field by arbitrarily excluding scientists who work in his field, but who have already completed their training and are therefore no longer contending for these types of funding.

> *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 asserts that he satisfies this criterion through his membership in the International Society for Computational Biology ("ISCB") and the Protein Society. The petitioner submits letters from officials of both associations to confirm his membership. The letter from ISCB does not mention the society's membership requirements. Dr. Robert W. Newburgh, executive officer of the Protein Society, states "[i]n order to become a member it is necessary to provide evidence of significant contributions to protein science." Dr. Newburgh does not elaborate.

The director instructed the petitioner to submit "the minimum requirements and criteria" for membership in the above associations. In response, the petitioner submits a photocopy of Dr. Newburgh's letter, and a letter from Dr. Philip E. Bourne, president of the ISCB, who asserts "membership for ISCB is open for academicians from universities and institutions who have contributed significantly to the area of Computational Biology and Bioinformatics. Most of the members of the ISCB have Ph.D. degree[s] either in biology or in computer sciences with significant research contributions." Dr. Bourne also ranks the petitioner "as one of the top 5-8% of the total membership of the association." In addition to his ISCB post, Dr. Bourne is a professor at the San Diego Supercomputer Center, where the petitioner works.

The petitioner submits a document entitled "Membership in The Protein Society," which states, in part, "**WHO IS ELIGIBLE?** Protein Society membership is open to scholars and researchers interested in the analysis, chemistry, folding, structure, function, and regulation of proteins." Elsewhere, the document states "[w]e invite you to join our Society today," and "Full Membership-Applicants should have an academic degree." This document (which, unlike Dr. Newburgh's letter, was not created specifically for the petitioner's benefit) makes no mention of "significant research contributions."

The petitioner's response to the director's request did not include any direct documentation of ISCB's membership requirements, such as bylaws, even though such documentation presumably exists and is available to members, if only to allow for objective determinations regarding membership applications. Neither Dr. Bourne nor Dr. Newburgh define "significant contributions." A contribution can fall short of "outstanding" without necessarily being "insignificant." An example of an association that falls under this criterion is the U.S. National Academy of Sciences, which elects a very small number of new members each year, based on the achievements of the candidates for membership. An association does not meet this criterion if membership is contingent on such factors as payment of dues, employment or training in a given field, or interest in the association's goals. Requiring "contributions" may suffice only if those contributions place the member at the very top of the field; simply demonstrating that one has been a productive researcher is not sufficient.

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 did not initially claim to have satisfied this criterion, but in response to the director's request for additional evidence, the petitioner has asserted that he has "reviewed several research articles published or submitted for publication in international journals." The petitioner submits no evidence that he had conducted such reviews as of the petition's August 17, 2001 filing date. One review form is dated November 19, 2001, and a letter identifying the petitioner as "a regular and trusted reviewer for the Bioinformatics journal" is dated March 18, 2002. Judging work undertaken after the filing date cannot retroactively establish that the petitioner was already eligible when he filed the petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Furthermore, the record does not indicate that manuscript review is a privilege reserved for the elite in the field, or that the petitioner was selected to review the manuscripts because of his reputation. A review form in the record is a "form" letter, with the petitioner's name and information about the manuscript handwritten into blank spaces, suggesting that review of this kind is common enough to necessitate the creation and use of such "form" letters. That review form also asks that, if the reviewer is unable to perform the review, the reviewer "pass it on for evaluation by a colleague." If a reviewer is able unilaterally to select a replacement reviewer, then it is not clear how manuscript review in this sense is a sign of distinction that elevates the petitioner above his peers.

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

The petitioner lists 20 scholarly articles that he co-authored, and deems them "scientific publications of major significance." Scholarly articles fall under a separate criterion, below. While the findings set forth in an article may constitute a contribution of major significance, the burden is on the petitioner to establish the significance of his work. The petitioner cannot meet this criterion simply by showing that his work has been published.

Elsewhere, the petitioner claims "contributions in teaching specialized topics in bioinformatics," and asserts that "several UCSD-extension students from various biotech companies in San Diego are benefiting through my teaching activity." It does not appear to be unusual for employers to arrange for their employees to take specialized coursework at local colleges or universities. Furthermore, it is not clear to what extent the petitioner could derive national acclaim by teaching, in San Diego, courses to San Diego-based workers. Any recognition accruing from such work would appear to be local, even assuming that only the top researchers in the field conduct such training.

In response to the director's request for further evidence, the petitioner states that he has "developed a method to identify conserved key amino acid positions in protein structures. This has a

tremendous significance in protein engineering and fold recognition." The petitioner asserts that Dr. W.W. Li, who collaborated with the petitioner on this project, "has used this work to develop a CKAAP's database for all the protein structures in [the] Protein Data Bank. This database is available on the San Diego Supercomputer Center web site and is receiving more than hundred [sic] hits in each month." The petitioner's assertions do not demonstrate that the petitioner has earned national or international acclaim as a result of the database. The fact that the database's co-creator, Dr. Li, "has published two articles describing [the] usefulness and availability of this database" is likewise not sufficient to demonstrate that other researchers throughout the country or the world regard the creation of the database as an original contribution of major significance.

The petitioner asserts that he has "been invited" to contribute chapters to textbooks, and he asserts that such chapters "are written by experts who have contributed significantly in the research area." The petitioner submits nothing from the publishers to confirm that such chapters are, in fact, accepted only from scientists who have made significant contributions. Of the three chapters claimed, two were unpublished as of the petitioner's 2002 response to the director's notice, and thus they did not exist as of the filing date. The third claimed chapter is from a 1990 publication, *Computers in Biomedicine*. The record does not establish the significance of this publication.

The petitioner states "[r]eviews in scientific journals and special issues on research progress are written by independent experts in the subject area . . . [who] select the articles which have contributed significantly [to] the progress of science in that area. There are five reviews which have referenced and cited my article," the article in question having appeared in the *Journal of Molecular Biology* in 1993. The petitioner continues "[i]n the article I identified a very important relation between packing distance and the amino acid residues involved in packing of secondary structural elements. This provides an improved method to model protein structure from amino acid sequence which is useful to identify and design the drugs depending on the property of the protein." The petitioner submits excerpts from some of these reviews, which show only that the petitioner's work merited mention of a sentence or two within the articles. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his work is novel and useful, but also that it has attracted sustained attention and had a demonstrable impact at the national or international level. The petitioner has not shown how the field has changed as a result of his work, beyond the incremental improvements in knowledge and understanding that are expected from valid original research.

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

The petitioner states that his work has been "published widely in several international research journals," and "cited . . . by several research groups world wide in their publications." As noted above, the petitioner contributed to 20 articles. The petitioner submits excerpts of articles by other researchers, showing citations of his work. The record shows multiple citations of several of the petitioner's published articles, consistent with his published work attracting particular attention in the field. While these citations do not, as the petitioner claims, establish that the petitioner's work is of major significance, they do demonstrate a degree of impact and attention in the field. The petitioner satisfies this criterion.

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

The petitioner submits eight letters from researchers who have supervised or collaborated with the petitioner in India, the United Kingdom, and the United States. These individuals clearly hold a high opinion of the petitioner and of his abilities as a researcher, but their letters do not indicate that the petitioner has played a critical role at Cambridge, the University of California, or other institutions where he has worked and studied. Rather, virtually all of the petitioner's work as a researcher has been either as a graduate student or as a trainee (for instance, as a postdoctoral researcher). Such individuals, while contributing their talent and effort, occupy positions on the lower end of the research hierarchy, in contrast to (for instance) tenured professors, department heads, deans, officials of scientific societies and associations, and so on. The witness letters, in general, praise the petitioner highly but do not establish that the petitioner has already earned national or international acclaim as a result of his research, or that the petitioner's work is well known outside of his circle of mentors and collaborators.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner did not initially claim to have satisfied this criterion. In response to the director's request for evidence, the petitioner submits salary tables for University of California employees, and asserts "an Assistant Research Scientist at step IV receives 62,900. . . . However, though I am a Ph.D. in Life Sciences I have been put in the Business/Management/Engineering Scales as Assistant Research Scientist at step IV with remuneration of 82,200." The same tables show that assistant research scientists rank below associate research scientists and research scientists. There are six steps under "assistant research," five under "associate research," and nine under "research." Of these twenty steps, the petitioner's is fourth from the bottom. A research scientist, step IX, earns up to $162,200 per year, nearly double the petitioner's salary. Research scientists do not constitute a separate "field" from assistant research scientists, and even if it were otherwise, the petitioner earns less than a step V or step VI assistant research scientist. The tables submitted do not even address the salaries paid to professors at the university. The petitioner has not established that he is among the highest-paid researchers in the field of bioinformatics at the University of California, let alone at a national or international level.

The director denied the petition, stating that the petitioner had failed to establish that the evidence submitted is indicative of sustained national or international acclaim.

On appeal, the petitioner argues persuasively that frequent citation of his articles demonstrates that his work has caught the attention of many researchers around the world. We acknowledge that the petitioner has satisfied the criterion pertaining to his authorship of scholarly articles. Less persuasive is the petitioner's attempt to refute the director's finding that those citations amount to published materials about the petitioner and his work, pursuant to 8 CFR 204.5(h)(3)(iii), a criterion which the petitioner had not even claimed to have satisfied prior to the filing of the appeal. The citations demonstrate the impact of the petitioner's own work but it is unrealistic to claim that an article is "about" the petitioner's work because that work is mentioned in passing, along with the

work of perhaps dozens of other cited researchers. The articles are "about" bioinformatics, protein folding, genetics, and so on; they are not about the petitioner and his work in particular.

Several of the petitioner's arguments amount, in essence, to repetition of earlier claims, such as the petitioner's insistence that his annual salary of $82,200, on a pay scale that tops out at $162,200, "proves that I am a scientist at [the] very top of the field." Similarly, in response to the director's finding that the petitioner's evidence was not adequate to establish the membership requirements of the associations to which he belongs, the petitioner has simply resubmitted copies of the same materials that the director had already found to be insufficient.

The petitioner submits two new "advisory opinions," both of them from officials of the University of California's San Diego Supercomputer Center. Even if the petitioner were to obtain letters from every faculty member of the University of California, San Diego, such letters are first-hand evidence only of the petitioner's reputation at the university that employs him. While we do not doubt the sincerity of the views stated by those officials, if the petitioner enjoys acclaim throughout the United States, or internationally, then ample evidence of such acclaim ought to be available from sources other than the petitioner's own employers and superiors. Other witness letters submitted on appeal are essentially similar to previously submitted letters.

The petitioner submits further materials about his awards, but these materials merely reinforce that the awards are for "young scientists" and thus at best they compare his work with researchers who are at the beginning of their careers. The petitioner cites the credentials of individuals who discuss his awards, but a simple comparison of those credentials against the petitioner's own undermines the claim that the petitioner is at the top of 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 researcher in biology or bioinformatics 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.