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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

PUBLIC COPY

[redacted]

File: EAC 02 088 54040 Office: VERMONT SERVICE CENTER Date: JUN 12 2003

IN RE: Petitioner:
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:

[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 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, Vermont 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 pertinent regulations 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.

Counsel identifies the petitioner's field as "psychopharmacology and child and adolescent psychiatry." 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, counsel claims, meets six of the ten criteria.

The regulations, by calling for evidence under a variety of criteria, reflect the statutory demand for "extensive documentation" of sustained acclaim. In this instance, however, the petitioner relies on

witness letters to satisfy five of the six claimed criteria (and uses the letters as supporting information for the sixth). These letters contain factual claims, which ought to be readily amenable to verification by first-hand documentary (rather than testimonial) evidence. A handful of letters, from witnesses selected by the petitioner, cannot be considered "extensive documentation," regardless of the number of claims contained within those letters.

We identify here the authors of the letters. Dr. Barry Fisher is medical director of the Behavioral Medicine/Post-Traumatic Stress Disorder Clinic at the Highland Drive Veterans Affairs Medical Center (VAMC), Pittsburgh, Pennsylvania. Dr. Fisher states that he supervised the petitioner's clinical rotation in anxiety disorders at the Pittsburgh VAMC. Dr. Scott A. Golden, full-time staff psychiatrist at the Pittsburgh VAMC, also supervised one of the petitioner's 2-month clinical rotations. Dr. Golden states that the petitioner "has outstanding credentials for an individual early in his psychiatric career," but the threshold for this highly restrictive classification is acclaim at the top of the entire field, rather than comparison with individuals at the same career stage.

Dr. Viveca Meyer is the program director for the Combined Adult and Child/Adolescent Psychiatry Residency Training Program at Western Psychiatric Institute and Clinic (WPIC), part of the University of Pittsburgh Medical Center. Dr. Meyer was the petitioner's training director at that facility. Dr. Peter Murray and Dr. Vineeth John are assistant professors of Psychiatry at the University of Pittsburgh School of Medicine, and thus had close contact with the petitioner during the petitioner's training there.

Professor Ayse Avci chairs the Child and Adolescent Psychiatry Department (which Prof. Avci founded) at Cukurova University Faculty of Medicine in Balcali, Turkey. Professor Bekir Aydin Levent chairs the Psychiatry Department at the same institution. These witnesses indicate that the petitioner worked as a resident at the university for approximately five years.

As shown above, the authors of the letters all have demonstrable ties to the petitioner, and participated in his professional training. Thus their familiarity with him and his work is not *prima facie* evidence of national or international acclaim. The letters are not, and cannot be, first-hand evidence of acclaim or recognition beyond the facilities where the petitioner has trained.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

Counsel's initial discussion of this criterion follows, in its entirety:

> [The petitioner] has received various awards and grants to complete his research. Dr. Fisher emphasizes how the mere reception of these grants is evidence alone of profound accomplishment:
>
> > The extensive research experience in both biological and psychosocial psychiatry with publications, presentations, as well as the recognition with awards and grants suggest that early in his career he established himself as a top [sic] in the field of child psychology.

> This is evidence that [the petitioner] has received nationally and internationally recognized prizes and awards for excellence in the field of endeavor as contemplated by 8 C.F.R. § 204.5(h)(3)(i).

A single, vague reference to unidentified "awards and grants" is not, by any reasonable definition, documentation of the alien's receipt of prizes or awards. Because the awards themselves are never identified, it is impossible to determine whether they are recognized nationally or internationally. In many areas of scientific research, it is commonplace to rely on grant funding from various sources. This grant funding is not recognition for excellence in the field; rather, it is obtained via detailed proposals, and continued funding is contingent on the progress of the research. Even if the petitioner had produced any documentation of grant funding, it cannot suffice for the petitioner simply to demonstrate that he has relied on outside funding for his research activities.

> *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 states:

> [The petitioner] is a member of numerous professional organizations such as the Turkish Society for Child and Adolescent Psychiatry, the Turkish Society for Psychiatry, the European Society for Cognitive Behavioral Therapy, the Allegheny County Medical Society and the EMDR International Association.
>
> Membership in these societies is both prestigious and merit-based. Candidates are granted membership only after they have been judged and scrutinized by recognized experts in the field.

The petitioner does not provide any evidence at all from any of the associations named above, either to confirm his membership in the associations or to verify their membership requirements. Instead, the petitioner relies entirely on letters from witnesses who claim no affiliation with many of the named associations; they simply offer assertions such as "[i]t is well known that membership in these societies comes with careful scrutiny of accomplished peers." The petitioner has not explained why he must rely on letters from colleagues rather than on documentation from the associations themselves to confirm the associations' membership requirements and the petitioner's own claimed membership in the associations named. The petitioner has also failed to explain why the membership requirements of psychiatric associations in Turkey are "well known" to non-Turkish faculty members of the University of Pittsburgh. Letters from the petitioner's professors and supervisors do not constitute documentation of the petitioner's membership in the above associations, and the petitioner has failed to submit documentary evidence of the associations' membership requirements.

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.

Under this criterion, counsel cites two phrases from Dr. Avci's letter, indicating that the petitioner "served as chief resident during his training. . . . He also provided supervision to nearly 400 medical and psychology students each year." Routine supervisory duties do not equate to acting as a judge of the work of others at a level commensurate with national or international acclaim. The petitioner has not shown how his duties "as chief resident during his training" differed appreciably from the duties of chief residents at other medical schools and teaching hospitals around the world. Furthermore, this activity took place "during his training." To place the petitioner at the very top of his field before he had even fully completed his training is clearly an impermissibly broad interpretation of the regulations. Indeed, most of the witnesses were themselves responsible for "judging" the petitioner's work while he trained under them. The petitioner does not satisfy this criterion simply because he, like every teacher, supervisor or manager, was at one point responsible for evaluating the performance of students or subordinates.

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

Counsel states that the petitioner "is recognized internationally for his original research in psychopharmacology. . . . He is a true pioneer and leader in the administration of selective serotonin reuptake inhibitors (SSRI), especially Paroxetene. He has determined that Paroxetene is an effective short term treatment for children suffering from various anxiety disorders." Counsel cites no independent evidence to show that the petitioner's contributions are widely known by researchers other than his own professors and supervisors. Even the excerpts of the letters that counsel cites in this regard fail to support counsel's finding that the petitioner is a "pioneer" who is "recognized internationally." Various witnesses report that the petitioner was the first to conduct certain studies or to announce certain findings, but originality is routinely demanded of scientific research. It is not clear why a researcher would study a question for which the answer was already known, unless the specific goal was replication (and thus verification) of another researcher's findings. Furthermore, one does not establish the significance of the petitioner's research simply by describing it. Some of the witnesses assert that the petitioner is "at the top" of his field, but there is no documentation to show that this opinion is shared by anyone who was not involved in training the petitioner.

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 partial copies of 46 articles, papers and abstracts. Dr. Fisher comments on the volume of the petitioner's output, but qualifies these remarks with a reference to the early stage of the petitioner's career. Dr. Fisher states "for an early career psychiatrist [the petitioner] has both presented and published extensively in his field." The phrase "for an early career psychiatrist" makes sense only if the petitioner's publication record is not "extensive" for a more established psychiatrist. Because the petitioner's field is psychiatry, rather than "early career psychiatry," this distinction is crucial. Dr. Golden makes a similar distinction when he refers to "the number of publications and presentations [the petitioner] has at this stage of his career."

The record contains no citation index or other documentation to establish the impact that the petitioner's published work has had outside of WPIC and Cukurova University. Even if we were to find that the very existence of published material by the petitioner is sufficient to satisfy this criterion, it remains the only one of the ten regulatory criteria for which the petitioner has provided any supporting documentary evidence.

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

Counsel states that the petitioner's "career has taken him through some of the most well-respected academic medical centers in Turkey and the United States. He has been selected to lecture and present research findings at the most prestigious scientific meetings in his field." Counsel does not show that to give a lecture or presentation amounts to a leading or critical role. Furthermore, the record lacks documentation from the establishments themselves, attesting to the leading or critical nature of the petitioner's participation.

Counsel notes that the petitioner "completed a psychiatry residency at the world-renowned Western Psychiatric Institute and Clinic," and counsel cites letters from WPIC officials named above. The reputation of WPIC is not at issue. Completing a residency is not a leading or critical role; WPIC, and its parent body the University of Pittsburgh, had far more influence over the petitioner's destiny than the petitioner had over theirs. By counsel's logic, every successful student at every well-regarded college or university likewise performs in a leading or critical role. Dr. Fisher states that the petitioner "has been invited to join [WPIC's] programs both as trainee and as faculty," but again to equate "joining programs" with a leading or critical role requires an untenably loose definition of the phrase "leading or critical." Other cited excerpts from witness letters do not mention or imply leading or critical roles at all.

The director instructed the petitioner to submit evidence of sustained national or international acclaim. The director noted that it cannot suffice simply to list the petitioner's claimed accomplishments, and then declare that those accomplishments place him at the top of the field. In response to the director's notice, the only new evidence that the petitioner submitted consisted of twelve more published articles and materials relating to the petitioner's writings and presentations.

Counsel deems the director's notice "hogwash," and asserts that the director cannot "dismiss the expert opinion in support of the petition, which opinion itself is supported by substantial documentation." Counsel fails to specify what "substantial documentation" there is to substantiate the witness letters; the record consists almost entirely of witness letters and published articles. Thus, almost any assertion that the witnesses make, except for assertions about the petitioner's published articles, is uncorroborated by documentary evidence. Counsel states that the petitioner has submitted "documentation which is tied together, analyzed and placed in context by experts." Certainly witness letters can be valuable in providing context, in the way counsel describes, but in this case the letters are not simply providing context to other "documentation." Rather, the letters serve in lieu of such documentation. For instance, there is no primary documentation of the petitioner's many claimed memberships; there are only witness

letters, attesting to those memberships and to the membership requirements. No such primary documentation is in the record, and the evidence list submitted with the petition does not identify any such primary documentation. Therefore, we can only conclude that no primary documentation has been submitted.

Counsel notes that 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence." That regulation reads, in full: "[i]f the above standards [i.e., the ten criteria outlined in 8 C.F.R. § 204.5(h)(3)] do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." As its plain wording shows, the "comparable evidence" clause is triggered only when the ten regulatory criteria "do not readily apply to the beneficiary's occupation." The regulation does not indicate or imply that a petitioner may arbitrarily substitute witness letters for primary documentation, or that an alien can rely on "comparable evidence" when the standard criteria do, in fact, readily apply to the occupation but the alien is personally unable to meet them.

The director denied the petition, stating that the petitioner "has obtained national and international recognition through awards and grants; has presented his research findings at a conferences [sic]; has authored published material in major journals, and should be commended on his accomplishments." Nevertheless, the director found the petitioner's evidence insufficient to establish sustained national or international acclaim.

We cannot concur with the director's finding that the record shows that the petitioner "has obtained national and international recognition through awards and grants." As noted above, the record contains no documentation from any entity that conferred any award or grant upon the petitioner. The petitioner's claim of prizes and awards rests on a vague, third-party reference to unidentified grants and awards. We cannot find that this general claim from one of the petitioner's mentors amounts to documentation of the petitioner's receipt of prizes or awards. As noted above, without even knowing what the awards are, it is impossible to determine that the awards are nationally or internationally recognized.

Counsel, on appeal, states that the director "impos[ed] additional evidentiary requirements beyond those set forth in the regulation." In point of fact, as explained above, the petitioner has failed to meet the evidentiary requirements set forth in the regulation. Furthermore, the regulation at 8 C.F.R. § 204.5(h)(2) defines "extraordinary ability" as 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. The underlying statute calls for "extensive documentation" of "sustained national or international acclaim." Thus, it is entirely appropriate, within the scope of the statute and regulations, to weigh the evidence in terms of whether it establishes sustained national or international acclaim, and whether it places the alien at the top of the field.

Counsel asserts that "[s]even established experts in psychiatry submitted letters on behalf of" the petitioner, but it remains that every one of these experts has been involved with the petitioner's training at one of two universities and their affiliated clinics and centers. Their letters do not and cannot demonstrate, first-hand, that the petitioner is acclaimed outside of the University of Pittsburgh, Cukurova University, and their affiliated entities. At best, the letters could show that the faculty members of those two institutions believe the petitioner to be so acclaimed. Appeals

to the expertise of the witnesses do not resolve the issue, because even if the petitioner's witnesses were the world's top experts in his field, their statements would not objectively show recognition outside of two universities where he has trained. The issue is not the credibility of the witnesses, but the very narrow range of institutions that those witnesses represent. If personal acquaintance with the petitioner is a prerequisite for familiarity with his work, then the petitioner is not nationally or internationally acclaimed.

Counsel discusses these seven letters again on appeal, and maintains that these letters satisfy numerous regulatory criteria. As we have already discussed these letters, and explained why they cannot carry the same weight as specific, primary documentary evidence, further discussion of the letters here would be redundant. Rather than provide primary evidence, as requested by the director, counsel simply criticizes the director for failing to treat the seven witness letters as primary evidence. Counsel does not even comment on the total absence of primary evidence, let alone attempt an explanation for that absence.

At best, the petitioner has satisfied one of the ten criteria at 8 C.F.R. § 204.5(h)(3) through his prolific publication record. The petitioner has not even identified, much less documented, any specific nationally or internationally recognized prize or award. The petitioner has not documented the membership requirements of, or his membership in, the associations named as associations requiring outstanding achievements of their members. Regarding the petitioner's original contributions, the petitioner has not demonstrated that anyone other than his own collaborators view those contributions as having major significance, and therefore we cannot conclude that those contributions have earned him sustained national or international acclaim. The petitioner's claims to have judged the work of others, and to have played in a leading or critical role, rely on unacceptably loose definitions of those terms. The petitioner has not met at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and therefore he has not established sustained national or international acclaim.

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 psychiatrist or psychopharmacologist 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.